

## **CDJ 2012 CAT CHANDIGARH 064**

**Court :** Central Administrative Tribunal, Chandigarh Bench

**Case No :** Original Application No.862-CH of 2011

**Judges:** THE HONOURABLE MRS. SHYAMA DOGRA, MEMBER (J)

**Parties :** Rajesh Kumar Verma Versus Union of India, through the Secretary, Government of India, Ministry of Home Affairs, New Delhi & Others

**Appearing Advocates :** For the Applicant: Y.P. Singla, Advocate. For the Respondents: R1, Deepak Agnihotri, R2 - R5, Vinay Gupta, Advocates.

**Date of Judgment :** 14-02-2012

**Head Note :-**

Subject

**Judgment :-**

MRS. SHYAMA DOGRA, MEMBER (J):

1. The applicant has come against the impugned orders dated 19.11.2010 (Annexure A-1) and order dated 4.8.2011 (Annexure A-2) vide which his request for grant of disability leave from 30.6.2010 to 31st March, 2011 and from 1.4.2011 to 31st July, 2011 and thereafter has been rejected on the ground that the leave applied for by the applicant is not covered under Rule 8.124(1)(6) of PB CR Vol. Part I as he has applied for the same after expiry of two and half years from the date of occurrence of the accident and said accident had not occurred during the performance of official duties.

2. Thus the applicant has prayed for issuance of directions to the respondents to grant him disability leave from the relevant period as the applicant had suffered temporarily disability due to Lizarov Fixator which was fastened on his leg on 1.7.2010 as per medical certificate and Doctor had recommended leave for four months with full pay and allowance and in view of Rule 8.125 read with Rule 8.124 of Punjab CSR Vol. I Part I.

3. The facts of the case as narrated in the application are that the applicant is working as Assistant Fireman with the respondents since 1986. On 28.3.2008 he sought leave which

was duly sanctioned. On 30.3.2008 when the applicant along with his colleagues went to Paonta Sahib, Himachal Pradesh on a trip after taking station leave from the department, he met with an accident on way back to Chandigarh and applicant suffered multiple fracture in his both legs. He got admitted in the PGI for the treatment where a nail was inserted in his left thigh bone where he developed infection and he had to be operated again for dead bone and removal of pus for 10-11 times in the PGI Chandigarh. At the time of accident the applicant was having 165 Earned Leave and 360 half pay leave at his credit. From 1.4.2008 to 31.10.2008 the leave of the applicant was duly sanctioned by the department from time to time vide Annexure A-3. Thereafter on 1.2.2009 the applicant joined his duties in the department. He remained on duty till 29.6.2010 except for a short period from 22 April 2010 to 29th April 2010 and 12.5.2010 to 5.6.2010 for which he duly applied for leave . He was again granted leave w.e.f. 1.11.2008 to 31.12.2008 vide Annexure A-4. He was granted leave upto 31st January 2009 vide Annexure A-5 and during this period the applicant was operated upon twice in the PGI and for this period also applicant applied for leave which was declined by the respondents. Thereafter the applicant was admitted at Sri Ganga Ram Hospital, New Delhi on 30.6.2010. Due to persistent infection in his left leg and due to implant of rod in his left leg he had taken two days Casual Leave from the department. He was operated upon on 1.7.2010 and discharged on 5.7.2010 from the hospital vide discharger slip Annexure A-6. The doctor who operated upon the applicant has given in writing a medical certificate that applicant was disabled to carry out his active work and was advised to bed rest. The doctor had duly recommended leave for the period w.e.f. 30.6.2010 to 27.10.2010 for four months vide Annexure A-7.

4. In view of this the applicant's wife submitted an application dated 7.7.2010 to the SDO Division No. 3 for granting leave to the applicant vide Annexure A-8. However, no reply was given by the respondent and in the meantime the doctor recommended further rest from 28.10.2010 to 31.3.2011 vide Annexure A-9. Left with no other choice the applicant again submitted an application for grant of disability leave for this period from 20.10.2010 to 31.3.2011 for 145 days vide Annexure A-10. But, instead of granting him disability leave the respondents served memo dated 9.9.2010 and 10.9.2010 upon the applicant showing him as absent from duty and with further direction to submit his leave duly recommended by the doctor within two days failing which this period would be treated as absent from duty. Thereafter another letter was issued in which he was given a stern warning that strict legal action would be taken against him. These letters are placed on record as Annexure A-11 to Annexure A-13.

5. The applicant then again submitted a representation to the Executive Engineer to convert his leave of 90 days sanctioned to him on medical grounds to half pay leave and grant him Disability leave for four months vide Annexure A-14. However, his request was turned down vide Annexure A-1 & Annexure A-2 for grant of disability leave. The applicant also moved an application before the District Legal Services Authority who passed an order while giving liberty to the applicant to have recourse to usual legal remedy vide Annexure A-15. Vide Annexure A-16 the applicant was sanctioned Earned Leave from 22.4.2010 to 29.4.2010, 12.5.2010 to 29.5.2010 and Half Pay Leave w.e.f. 30.5.2010 to 5.6.2010.

6. Unfortunately, the applicant was again admitted in Sir Ganga Ram Hospital, New Delhi and he was operated upon for implant removal (interlocking intramedullary nail) with reosteosynthesis right femur with 14-hole locking plate and bone grafting done under GA and he was advised total bed rest and recommended leave from 1.4.2011 to 31.7.2011 and again further advised bed rest upto September 2011 vide charge summary and certificate Annexure A-17 & A-18. In view of these the Chief Engineer wrote a letter to the Respondent no.4 vide which he asked him to take a decision at his own level for sanction to leave to the applicant under Rule 8.124 (6) of Punjab CSR Rules Vol. II vide Annexure A-19. The applicant issued demand notice from time to time. However, his request was turned down vide impugned orders which are now challenged by the applicant in the present O.A.

7. It is further submitted by the applicant that he has still confined to bed and unable to move and he has been advised bed rest by the doctor of Sir Ganga Ram New Delhi. Therefore the action of the respondent not granting him disability leave is unwarranted and violates the various provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and other provisions of Punjab Civil Services Rules. The respondents have also not provided some alternative job to the applicant like table work job so that he could live dignified life even after such disability.

8. In the written statement the respondents have not disputed the factual position as narrated herein above but their submission is that the disability leave can only be granted if the disability manifested for in itself within three months of the occurrence to which it is attributed, and the persons disabled acted with due promptitude in bringing it to the notice of the competent authority. If it is satisfied as to the cause of disability, may permit leave to be granted in cases where the disability manifested itself is more than three months after the

occurrence of its cause as has been provided under Rule 8.124 read with Rule 8.125 of Punjab C.S.R. Rules. In the said very Rule it is provided that such period of leave shall be such as certified by the authorized Medical Attendant of the Govt. Employee concerned and maximum of leave of this kind can be granted not exceeding 24 months.

9. The learned counsel for the respondents has further drawn my attention to clause 6 of aforesaid Rule wherein it is provided that this disability leave is sanctioned to a civil employee disabled which is certified by a Medical Board to be directly attributable to his service and in the present case the accident cannot be attributed to his service as he sustained such injury when he was on trip at his own and not while performing the official duties. Therefore, the applicant' case has rightly been rejected by the respondents. It is also submitted that whatever leave was due to his account that has been granted to him and since the case of the applicant is not covered under the aforesaid Rule therefore this O.A. is devoid of merits and is liable to be dismissed as the applicant has met with an accident when he was on his personal trip. However, it is not denied by the respondents that the applicant has sought station leave duly sanctioned to visit Paonta Sahib for said personal tour.

10. Applicant has not filed any rejoinder.

11. I have heard the learned counsel for the parties and carefully gone through the record. The main points which needs adjudication for grant of disability leave to the applicant is whether this case is covered under the Rule and provisions under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and whether the period when he met with an accident can be attributed to his service to apply the provisions of aforesaid rules in his case.

12. It is an admitted fact that the applicant went on personal trip. He has taken a station leave which was duly sanctioned vide Annexure A-2 and therefore it cannot be said that applicant has met with an accident while remaining unauthorized absence from the station or from the office and provision of relevant clause of Rule 8.124 is applicable in the present case which reads as follows:-

“Such leave shall not be granted unless the disability manifested in itself within three months of the occurrence to which it is attributed, and the persons disabled acted with due

promptitude in bringing it to the notice, but the competent authority, if it is satisfied as to the cause of disability, may permit leave to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause.”

13. It is also relevant to quote provisions of Rule 8.125, which reads as follows:-

Rule 8.125 “The application of provisions of Rule 8.124 may subject to the conditions given below be extended by a competent authority to Government Employees disabled by injury accidentally incurred in or in consequence of the due performance of his official duties or in consequence of his official position or by illness incurred in the performance of any particular duty, which has the effect in increasing his inability to illness or injury, beyond the ordinary risk attaching to the civil post, which he holds:-

1. The disability, if due to disease, must be certified by the authorized Medical Attendant of the Government Employee concerned to the directed due to the performance of the particular duty;

2. If the Government Employee has contacted such disability during service otherwise than with a military force, it must be, in the opinion of the competent authority, exceptional in character;

3. The period of absence recommended by the Authorized Medical Attendant of the Government Employee concerned may be covered in part by leave under this Rule and in part by other leave; and

The amount of Special Disability Leave Granted on full pay will be less than:-

(i) 120 days in the case of a Government Employee in class I, II and III service;

(ii) 60, 90 or 120 days, the case may be in the case of Government Employee of Class IV.”

14. Plain reading of these provisions clearly shows that even if the accident occurs in or in consequence of his official position, which has the effect in increasing his disability to illness or injury, beyond the ordinary risk attaching to the civil post, which he holds, he can be granted disability leave by the competent authority, if the period of absence is recommended

by the Authorized Medical Attendant. Such disability leave can also be granted if the Govt. employee has contacted such disability during service otherwise than with a military force, it must be in the opinion of the competent authority, exceptional in nature.

15. In the given facts and circumstances of the case, this Court is of the opinion that the applicant fulfill all the conditions laid down in these Rules for grant of disability leave. Applicant was away on duly sanctioned station leave, which he was entitled to by virtue of holding official position and accident occurred and injury kept on aggravating which by all stretch of imagination is held to have been contacted during service making it exceptional in nature. Therefore, it cannot be said that applicant has not contacted such disability during service.

16. As the record of the leave application and sanction leave details shows that even after occurrence of said accident, the disability is manifested in the applicant's case who is disabled even till date and has acted with due promptitude for bringing it to the notice of respondents who have also granted him leave to his credit from time to time from the date of accident to the relevant period and he has been asking for leave from time to time whenever the doctor has advised him rest and recommended leave for the purpose. Therefore, it cannot be said that the applicant has not acted with due promptitude in bringing to the notice of the respondents with regard to said accident which has aggravated his disability further while some infection was developed in his left thigh bone. If the competent authority was not satisfied with such disability to grant disability leave to the applicant he should have got the medical board constituted to examine the applicant which was not done by the respondents and rejected the case of the applicant without even appreciating the various provision of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Therefore, it is held that provisions of relevant Rules and Act (Supra) have not been construed by the competent authority in right perspective while rejecting the disability leave to the applicant.

17. Resultantly, keeping in view that the provisions of aforesaid Punjab Civil Services Rules and of the aforesaid Act has not been construed properly by the respondents and also taking into consideration that the applicant is still bed ridden and has applied for disability leave long time back impugned orders are hereby quashed and set aside. Applicant's case is directed to be reconsidered for such sanction of disability leave by the Competent Authority for the relevant period as mentioned in the applications submitted by the applicant

along with other benefits legally permissible within a period of two months from the date of receipt of copy of this order.

18. So far as the request of the applicant to grant him some suitable table job is concerned, applicant can make a request to that effect to the competent authority within a period of one month from the date of receipt of copy of this order, which may be considered sympathetically as per law and rules also while passing appropriate orders thereon within a reasonable period.

19. In terms of these observations and directions, this O.A. stands disposed of with no order as to costs.