

M. Sasikumar and Others Vs. the Comptroller and Auditor General of India and Others

M. Sasikumar and Others Vs. the Comptroller and Auditor General of India and Others

SooperKanoon Citation : sooperkanoon.com/938974

Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Jul-25-2012

Judge : P.R. Raman, Judicial Member & the Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : Original Application No. 798 of 2011

Appellant : M. Sasikumar and Others

Respondent : The Comptroller and Auditor General of India and Others

Advocate for Def. : Mr. V.V. Asokan

Advocate for Pet/Ap. : For the Applicants: T.C. Govindaswamy, Advocate. For the Respondents: R1 to R4, V.V. Asokan, Advocate.

Judgement :

K. George Joseph, Administrative Member

1. Most of the staff of the Audit and Accounts Wing of the Office of the Deputy Accountant General (AandE), Kerala, Thrissur Branch, could not enter the office due to a blockade organized by the DYFI workers from morning to evening on 26.03.2010. The respondent authority issued orders rejecting the applicants' request for grant of special casual leave, while considering favourably the case of

95 others. The applicants were asked to submit earned leave application for 26.03.2010. As they did not do so, their absence from duty on 26.03.2010 was ordered to be treated as dies-non resulting in recovery as overpayment as well as denial of service benefits including pension. Aggrieved, the applicants have filed this O.A. challenging Annexures A-1, A-2, A-3 series and A-10 series and sought following reliefs:

"(i) Call for the records leading to the issue of Annexures A1 to A3 series and A10 series to the extent they relate to the applicants and quash the same and direct the respondents to grant the applicants special casual leave on 26.3.2010 as has been granted in the case of all the others included in A6 and A8;

(ii) Direct the respondents, the 5th respondent in particular, to pay cost of this application within a time limit as may be found just and proper by this Hon'ble Tribunal;

(iii) Pass such other orders or directions as deemed but just fit and necessary in the facts and circumstances of the case."

2. The applicants submitted that no reason is stated in Annexures A-1 to A-3 as to why they have been denied the benefit of special casual leave for their unavoidable absence on 26.03.2010, while in the case of 95 others, special casual leave was sanctioned vide Annexures A-6 and A-8. They have been singled out for a differential treatment by the 5th respondent without assigning any reason. The applicants are identically situated as those who are included in Annexures A6 and A-8. For the above reason, Annexures A-1 to A-3 in so far as they relate to the applicants are arbitrary, discriminatory and violative Articles 14 and 16 of the Constitution.

3. The respondents in their reply statement submitted that as per the existing instructions of the Government of India for grant of special casual leave for regularising absence on account of picketing etc., the competent authority should satisfy itself that the absence of the individual concerned was entirely due to reasons beyond his control. The 3rd respondent being the recommending authority exercised the discretion available to him under the extant rules to satisfy

himself that the absence was entirely due to reasons beyond the control of the applicants. He found that the applicants had not come anywhere near the gate of the office. Therefore, it was decided not to recommend the special casual leave to those who did not even come anywhere near the office on 26.03.2010. The Accountant General (AandE) had sanctioned special casual leave to 57 officials, who reported before the Deputy Accountant General (AandE), Thrissur, in the morning on 26.03.2010. The orders rejecting the special casual leave were communicated to the applicants on 04.03.2011.

4. In the rejoinder statement, the applicants submitted that the special casual leave is granted to many officers in a non-transparent manner and the applicants were subjected to differential treatment. No attempt was made by the administration to ascertain who were present outside the gate. The applicants waited for hours outside the office and as there was no way to get in, they returned to home. The applicants were already sanctioned and paid leave salary for 26.03.2010.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicants and Mr. V.V. Asokan, learned counsel for the respondents and perused the records.

6. As per the reply statement, the 3rd respondent had exercised the discretion available to him to satisfy himself that the absence of the applicants on 26.03.2010 was due to reasons beyond their control. As he found that the applicants had not come anywhere near the office, he did not recommend for special casual leave to them on 26.03.2010. There is nothing on record to show that the reasons for not recommending special casual leave to the applicants were communicated to them. The power of discretion is to be exercised in a transparent and objective manner. Whenever it is exercised to allow or disallow an application, the reasons for doing so should be clearly stated. When the grounds are not given for taking a particular action the exercise of power conferred by the rule is arbitrary. When the power to recommend special casual leave is exercised in favour of some and against others, who are similarly placed, there is discrimination which cannot be tolerated where rule of law prevails. The instant case is characterized by arbitrariness, discrimination and non-transparency in the exercise of discretion granted under

the rule to the 3rd respondent in not granting special casual leave for regularising their absence on account of the blockade of the Office of the Deputy Accountant General, Kerala, Thrissur Branch, on 26.03.2010 by the DYFI workers. Imposition of dies-non on the applicants for their absence on 26.03.2010 will result in not counting the day for any service benefits, including pension. This action on the part of the 5th respondent, for having failed to apply for eligible leave, as directed, is unreasonably harsh and opposed to the equality clauses enshrined in Articles 14 and 16 of the Constitution.

7. It is stated in the reply statement that the 3rd respondent found that the applicants had not come anywhere near the gate of the office on 26.03.2010 in the morning. It is not clear whether he stood at the gate and marked the presence of those who came or he got a report. In the context of an effective blockade of entry into the office premises by large mass of determined outsiders, the method of marking attendance of the employees who came there, is not clearly stated. The applicants submitted that no responsible officers were present at the gate in the morning of 26.03.2010 and that the gate was over crowded by the agitators and nobody could go anywhere near the gate. The applicants have stated that they could not enter the office building due to the blockade. We would hold that the absence or presence of the applicants at the gate in the morning of 26.03.2010 is not conclusively proved.

8. A large majority of employees could not enter the office building on 26.03.2010. The respondents could not ensure with the help of the police a passage for those who came upto the gate. In the absence of large majority of employees in the office, the productivity of the day could have been much below normal. In such a context, there was no point in making a mountain of a mole hill. The right course of action for the respondents would have been to grant special casual leave to all those who applied for it, as was done by the concerned authority in the audit office situated in the same compound. Instead, the respondents wasted their energy in differentiating a few employees on the basis of a not-so-dependable criterion of presence at the gate at a particular point of time.

9. Government employees should be punctual and disciplined. These virtues should not be compromised at all. But these virtues should come out of self motivation and commitment to the ideal of serving the people. The higher up should be endowed with proper judgement as to when to spare the stick and when to use it. In the circumstances of the instant case, it would have been desirable if the respondents appreciated the punctuality of those who came upto the gate rather than targetting those whom they suspected of not having come. Even if a handful of employees played smart, by not coming to office on 26.03.2010, the respondents should not have gone to the extent of imposing dies-non on them. Instead, they could have been just informed that their presence was not registered at the gate at a particular time and allow them to draw appropriate conclusion as to their performance on that day.

10. In the facts and circumstances of the case, we are of the considered view that the respondents should reconsider the matter of non-grant of special casual leave to the applicants in the light of the observations above. It is desirable that all cases of rejection are reconsidered.

11. The impugned orders are set aside. The respondents are directed to reconsider judiciously the case of the applicants for grant of special casual leave on 26.03.2010 within a period of 2 months from the date of receipt of a copy of this order.

12. The O.A. is allowed to the extent indicated above. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com