

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21183 of 2023

Application under Articles 226 & 227 of Constitution of India.

AFR Jeetendra Sahu **Petitioner**

- Versus -

State of Odisha and others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : Ms. Babita Kumari Pattanaik, Advocate

For Opp. Parties : Mr. T. Pattnaik
Addl. Standing Counsel.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
18th October, 2023

SASHIKANTA MISHRA, J.

The petitioner has filed this writ application with the following prayer:

“It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to admit the case, call for the records and after hearing both the parties pass the following reliefs;

i) To quash the order dtd 24.06.2022 under Annexure-2.

ii) To quash the order dtd order dtd.4.4.2023 under Annexure-4.

iii) To direct the opposite parties to treat the period from 26.5.2022 to 7.6.2022 as commuted leave or EL.

iv) To direct the opposite parties to grant all financial and consequential benefits.

v) And pass such other order/orders as may be deemed fit and proper for the interest of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

2. The facts of the case are that the petitioner was initially appointed as a Constable on 16.11.2011 and posted at Bolangir. He was promoted to the post of Havildar on 20.07.2022. In the meantime, in the year 2016, he underwent treatment for Functional Endoscopy Sinus Surgery (FESS) with Septoplasty and was advised by his treating doctor to avoid excess exposure to cold, hot, rain and humidity condition as also to avoid forceful sneezing. He therefore, submitted a representation for being entrusted with general duties, which was allowed. The ailment resurfaced after five years, for which the petitioner had a medical check-up at Sum Ultimate Medicare, Bhubaneswar on 17.12.2021. The Consultant Physician advised him to undergo CT Para Nasal Sinus examination and also for Sinus surgery. Because of Panchayat and Urban Local Body elections in the month of February and March, 2022, the petitioner was not allowed to apply Earned Leave (E.L.)

during that period. He was granted 20 days E.L. by order dated 28.03.2022 but because of non-availability of funds, the petitioner did not avail the said leave and underwent homeopathic treatment. While continuing as such, he suffered from Sinusitis on 25.05.2022 and therefore, applied for leave to the IIC, Bangomunda Police Station for his medical treatment. He was sent to P.H.C., Bangomunda along with Constable Girija Kanta Patel for medical examination and treatment as per Command Certificate dated 26.05.2022. The doctor at PHC referred him to consult an ENT Specialist at DHH, Bolangir. On being informed, the IIC instructed Constable Patel to take the petitioner to DHH, Bolangir. The petitioner thus, reported before the ENT Specialist on 26.05.2022, who prescribed certain medicines and advised home rest till completion of the course of medicine. Therefore, Constable Patel left the petitioner with the care of his wife at DHH, Bolangir. The petitioner underwent medical treatment as an outdoor patient in ENT Department of DHH, Bolangir from 26.05.2022 to 07.06.2022. He was declared fit by the doctor and joined in his duties on 08.06.2022. He also submitted his medical

reports but by order dated 24.06.2022 of the S.P., Bolangir, the period from 26.05.2022 to 08.06.2022 was treated as 'No Pay'. Feeling aggrieved, the petitioner submitted a representation before the I.G. of Police (Northern Range), Sambalpur. However, by order dated 04.04.2023, the representation was rejected mainly on the ground that the petitioner had not undergone any surgical procedure and was treated only as an outdoor patient. Being thus aggrieved, the petitioner has approached this Court in the present writ application.

3. A counter affidavit has been filed on behalf of opposite parties. It is stated that while the petitioner was posted at Bangomunda Police Station, he was mobilised for law and order duty in connection with by-election of six Brajarajnagar Assembly Constituencies of Jharsuguda District to be held on 31.05.2022. He was commanded by the IIC, Bangomunda P.S. to report before S.P., Jharsuguda vide Command Certificate dated 25.05.2022 but the petitioner refused to perform election duty on the plea that he had performed such duty at Bolangir during three-tier Panchayatiraj Election, 2022. Further, he refused to receive

Command Certificate and created a hue and cry and declared himself sick. All these facts were recorded in the Bangomunda P.S. General Diary on 25.05.2022 and 26.05.2022. It is further submitted that the petitioner intentionally avoided to perform election duty as directed and took the false plea of being sick even though no surgical treatment had been undergone by him. The period in question was therefore, rightly treated as 'No Pay' by the competent authority.

4. Heard Ms. B.K. Pattanaik, learned counsel for the petitioner and Mr. T.K. Pattanaik, learned Addl. Standing Counsel for the State.

5. Ms. B.K.Pattanaik, learned counsel for the petitioner would submit that there can be no dispute that the petitioner was sick and was treated at DHH, Bolangir as evident from the medical documents submitted by him before the authority. It is also a fact that he was advised rest by the treating doctor. So, only because there was no surgical procedure, cannot imply that he was not ill. Secondly, the allegation that he had refused to receive the Command Certificate as he wanted to avoid performing election duty is

completely baseless. Therefore, treating the sick period as 'No Pay' is completely illegal. Ms. Pattanaik would further submit that the I.G. did not appreciate the matter in the correct perspective but was swayed away by the allegation made by the IIC that the petitioner had intentionally avoided to perform election duty.

6. Mr. T.K. Pattanaik on the other hand would argue that police force works on discipline and demands absolute obedience by the personnel to the orders of the higher authority. The petitioner grossly violated such discipline by refusing to receive the Command Certificate issued in his favour, which is highly unbecoming on his part as a member of the police force. On facts, Mr. Pattanaik would argue that as rightly held by the I.G., the petitioner was not suffering from such a serious ailment as to prevent him from performing his duties and therefore, his representation was rightly rejected.

7. It appears that the Command Certificate was issued by the IIC on 25.05.2022 directing the petitioner (C/415, J. Sahoo) to report before the S.P., Jharsuguda Camp at RO, Jharsuguda for by-election duty and to return to P.S. after

the duty is over. At the bottom of Command Certificate it is endorsed by the IIC that “denied for receive CC”. It has been alleged that the petitioner refused to receive the Command Certificate on the ground of his sickness and also raised hue and cry. Such fact has been entered in the General Diary No.21. Surprisingly however, on the next day, i.e. on 26.05.2022 at 9 a.m., the very same IIC issued Command Certificate to Constable, C/80 G.K. Patel to take the petitioner to the hospital for his treatment and to return to the Police Station thereafter. Again, on the same day at 10.30 a.m. Constable G.K. Patel was directed to take the petitioner to DHH, Bolangir and to hand him over to his family after his check up. Firstly, if the petitioner had refused to receive the Command Certificate for the election duty on 25.05.2022, it is not comprehended as to why such fact was simply entered in the General Diary and no action was taken against him. On the contrary, a Command Certificate was issued to another Constable to take the petitioner for medical check-up to DHH, Bolangir. This obviously implies that the IIC was well aware of the sickness of the petitioner as otherwise there was no reason to depute another constable to

take the petitioner to DHH for treatment. Issuance of both the Command Certificates therefore, strikes as mutually contradictory. Be that as it may, the OPD Card issued by DHH, Bhim Bhoi Medical College and Hospital, Bolangir refers to the medical condition of the petitioner, the medicines prescribed and specific advice of the doctor for home rest, avoiding travelling and allergent conduct. The petitioner was also directed to follow up after seven days. The petitioner appeared before the Asst. Professor, ENT on 07.06.2022, who certified that the patient was under the treatment for Sinusitis and that he is fit to resume his duties. These facts are corroborated by copies of the documents on record which have not been specifically denied or disputed by the opposite parties in their counter. In fact, nothing has been stated at all about issuance of the Command Certificate on 25.05.2022 to Constable G.K. Patel. Thus, the averments of the writ application relating to the petitioner's treatment at DHH, Bolangir having not been specifically denied, the doctrine of non-traverse would apply in full measure and hence, would be deemed to have been admitted. Even otherwise, this Court finds that the order of the S.P. in

treating the period in question (14 days) as 'No Pay' was passed without citing any reason whatsoever. Since the order was passed to the detriment of the petitioner, rules of natural justice require the S.P. to have granted the petitioner at least an opportunity of hearing before passing the same. Perusal of the order passed by the I.G. reveals that he has analysed the previous and current medical documents and held that on 26.05.2022, the petitioner was treated at DHH, Bolangir and was prescribed routine medicines of chronic Sinusitis. Though the OPD card has been referred to yet the specific advice of the doctor for home rest etc. appear to have been overlooked by the I.G. in his order. On the other hand, the so-called circumstantial evidence surrounding the report of IIC Bangomunda P.S. was accepted in toto by the I.G. This Court has already noted the apparent incongruity in factual aspects in that if the petitioner refused to receive the Command Certificate on 25.05.2022, why no action was taken against him and instead a fresh Command Certificate was issued on the next date to another constable to take the petitioner to the hospital for his treatment. As already indicated, this appears entirely contradictory. That apart, a

doctor is always the best and most competent person to opine as regards the condition of a patient. So, if he advised home rest, such advice cannot be overlooked or ignored. The further finding of the I.G. that he was prescribed routine medicines and no special surgical procedure was undergone by the petitioner, is untenable. It is obviously not in hands of the petitioner to undergo the surgical procedure on his own. The same obviously depends on prognosis of the treating doctor. On the face of clear advice by the doctor for home rest the above reasoning of the I.G. is rendered untenable. Moreover, it is not a rule of law that in order to be eligible for sick leave, the concerned employee must undergo a surgical procedure.

8. For the foregoing reasons therefore, this Court is of the considered view that the impugned orders cannot be sustained in the eye of law and therefore, warrants interference by this Court.

9. Resultantly, the writ petition is allowed. The impugned orders dated 24.05.2022 (Annexure-2) and 04.04.2023 (Annexure-4) are hereby quashed. The opposite party authorities are directed to pass necessary orders to

consider the period from 26.05.2022 to 08.06.2022 as Commuted Leave or Earned Leave as the case may be. Such order shall be passed within three weeks from the date of production of certified copy of this order.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack.
The 18th October, 2023/ A.K. Rana, P.A.

