



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Engineering Wing - Counting of prior service and other service benefits - Order dated 25.02.2022 of the Hon'ble Kerala Administrative Tribunal in OA No.312/2022 - Compiled with - Orders issued.

LOCAL SELF GOVERNMENT (EWB) DEPARTMENT

G.O.(Rt)No.2565/2022/LSGD Dated, Thiruvananthapuram, 22-10-2022

- Read
1. Circular No.36/94/Fin dated 14.06.1994.
 2. Circular No.46/2008/Fin dated 08.08.2008.
 3. G.O (Rt) No.1747/2020/LSGD dated 25.09.2020.
 4. GO(P) No.27/2021/Fin dated, 10/02/2021.
 5. Representation submitted by Smt.Sheela.S dated 30.12.2021.
 6. Order of the Hon'ble Kerala Administrative Tribunal dated 25.02.2022 in OA No.312/2022.
 7. Letter No.E18/17696/2019/CE/LSGD dated 24.03.2022 and 06.05.2022 from the Chief Engineer, LSGD.

ORDER

Smt.Sheela.S, Assistant Engineer (Rtd.) has filed OA No.312/2022 before the Hon'ble Kerala Administrative Tribunal, praying for a direction to count her prior service with Health Department, to sanction of Leave Without Allowance under medical certificate under Rule 88, to sanction Time Bound Higher Grade on completion of 8 years, to sanction Pay Revision benefits for the pay revision implemented on 01.07.2020 and such other reliefs.

2. The Hon'ble Kerala Administrative Tribunal, in its order dated 25.02.2022, disposed off the OA with a direction to the first respondent, ie, the Secretary to the Government, LSGD to consider and pass appropriate orders on Annexure A1 representation in accordance with

law after affording an opportunity of being heard to the Applicant, within a period of three months from the date of receipt of a copy of the order.

3. The Applicant had availed earned leave and Half pay leave from 26.11.2018 to 17.02.2019. In the continuation to the above, she also availed Leave Without Allowance from 18.02.2019 to 31.03.2020. As per Government Order read as 3rd paper above. It is emphasized that the Leave Without Allowance on Medical Certificate for the period from 18.02.2019 to 05.06.2019 under Rule 88, Part I KSRs will not count for accumulation of Earned leave and for the remaining period ie, from 06.06.2019 to 31.03.2020, granted LWA otherwise than on Medical certificate, subject to the condition that the leave period will not count for increment, higher grade, pension and accumulation of Earned leave.

4. Based on the Court Direction the petitioner was heard on 14.06.2022 at the presence of the Officers from the Chief Engineer's Office. At the time of the hearing the petitioner argued that she has availed Leave without allowance on medical certificate for the period from 18.02.2019 to 31.03.2020. But as per GO read as 3rd paper above, Leave Without Allowance on Medical Certificate is granted only for the period from 18.02.2019 to 05.06.2019 and the remaining period ie, from 06.06.2019 to 31.03.2020, is granted only otherwise than on Medical certificate. The Applicant argued that leave granted otherwise than on medical certificate is injustice because she has submitted the leave applications at proper time and the delay is not occurred from her part and also stated that her pensionary benefits were worked out excluding the provisional service as well as the LWA sanctioned without medical certificate as stated above. If these periods are regularized she will become eligible for 8 years time bound higher grade and other benefits.

5. Government have examined the matter in detail. The petitioner requested for LWA on MC from 18.02.2019 to 31.03.2020. The petitioner was earlier sanctioned LWA on Medical Certificate from 18.02.2019 to 05.06.2019 under Rule 88 Part I KSRs by the proceedings of Chief Engineer (which later got cancelled as the leave got extended beyond four months). This might have been done after assessing the genuinity of the Medical Certificate furnished at that time. Therefore, benefits of the Medical Certificate was given to that period. However, in view of the instructions issued vide Circular read as 1st paper above, the request for LWA on Medical Certificate for the period

06.06.2019 to 31.03.2020 got declined for reason that the chance to seek second medical opinion has been lost.

6. In Circular read as 1st paper above, it is clarified that the genuineness of the ground on which the leave is applied for is doubtful, the same may be declined. In the case of the petitioner, Medical Certificate produced is for the diseases like for Kadeegraham & Santhigatha vatham. Without the second medical opinion the genuinity of such cases cannot be confirmed. Hence she was granted LWA under KSR Part 1 Rule 88 without granting the benefits of Medical Certificate.

7. The cardinal principle of LWA is that it will not be considered for any service benefits. But when LWA is sanctioned on the strength of Medical Certificate, it would enable the officer concerned to secure for himself almost all service benefits. But is observed that many employees misuse this facility and apply LWA on Medical Certificate for long periods with a view to enjoy all service benefits, flouting all guidelines for submission of application for LWA on Medical Certificate. In order to avoid undue delay in submitting and processing leave applications, strict instructions have been issued vide Circular read as 1st paper above wherein it is specified that LWA on Medical Certificate for long periods including piecemeal applications shall be processed immediately so that the leave sanctioning authority will not be deprived of a chance to seek a second medical opinion if the genuineness of the Medical Certificate is doubtful.

8. In the instant case, piecemeal leave applications reached government later and so there was no opportunity to seek a second medical opinion in time. The Petitioner was therefore sanctioned LWA otherwise than on Medical Certificate for the period from 06.06.2019 to 31.03.2020 subject to the condition that the leave period will not count for increment, higher grade, pension and accumulation of earned leave. Note 1, below Rule 117, Part 1, the KSRs says in unequivocal terms that possession of a Medical Certificate by itself does not confer on the employee any right to leave. So the discretion of the leave sanctioning authority is what matters. Hence it is clear that GO read as 3rd paper above which sanctioned LWA without Medical Certificate for the period from 06.06.2019 to 31.03.2020 is in order and the proposal to reconsider the same is rejected.

9. As far as Time bound higher grade is concerned, as per para 4,

7 & 13 of Circular read as 2nd paper above the request to sanction Time Bound Higher Grade on completion of 8 years is declined as the period of leave on loss of pay, not reckoned for increment will not be reckoned as qualifying service for granting time bound higher grade.

10. Since the absence of duty from the period from 18.02.2019 to 31.03.2020 has been regularised as LWA partially on Medical Certificate and the rest without Medical Certificate under Rule 88 Part I, KSRs, it can be inferred that the officer is in service as on 01/07/2019. As such as per para 2 in Annexure II of GO read as 4th paper above, the officer will normally come over to the revised scale of pay without any option. But as per para 16 in Annexure II of the said GO, in the case of employees who are on LWA on 01/07/2019, fixation of pay in the revised scale can be done only on the date of return from the leave. In the instant case, the petitioner had not returned from LWA until the date of superannuation, and hence her pay cannot be fixed in the revised scale. In the above circumstance, though the incumbent had come over to the revised scale of pay corresponding to her pre-revised scale w.e.f 01/07/2019, no fixation can be done in the revised scale, as she was on LWA without Medical Certificate on 01/07/2019 and had not returned from such leave till the date of her superannuation.

11. Her prior service for the period 03.09.1991 to 06.08.1992 as staff nurse with Health Department will not be treated for pension purpose as that appointment was made provisionally under W&C hospital, Thiruvananthapuram.

12. In the above circumstances, the request of Smt.Sheela.S, Assistant Engineer (Rtd) in Annexure A1 representation to count her prior service with Health Department, to sanction of Leave Without Allowance under medical certificate under Rule 88, to sanction Time Bound Higher Grade on completion of 8 years, to sanction Pay Revision benefits is rejected and the Order of the Hon'ble KAT in OA No.312/2022 is compiled with accordingly.

(By order of the Governor)
BIJUKUTTAN.M.S
ADDITIONAL SECRETARY

To:

1. The Officer concerned (through the Chief Engineer, LSGD).

2. The Advocate General, Thiruvananthapuram (with Covering Letter).
3. The Chief Engineer, LSGD, Thiruvananthapuram.
4. The Accountant General (A&E/Audit) Kerala, Thrissur.
5. The Executive Director, Information Kerala Mission.
6. The Web & New Media, I & PRD.
7. Stock File/Office Copy.

Forwarded /By order

Signed by Subha S

Date: 28-10-2022 14:26:56

Section Officer

