

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2851/2002

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New Delhi, this the 11th day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K. NAIK, MEMBER (A)

J.S. Thakur,
UDC, Office of the Registrar,
News Paper of India,
West Block - 8, Wing No.2,
R.K. Puram, New Delhi

... Applicant

(By Advocate : Shri M.L. Chawla)

Versus

1. Union of India
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi

2. Registrar of Newspapers of India,
(Ministry of Information &
Broadcasting)
West Block 8, Wing No.2,
R.K. Puram, New Delhi

... Respondents

(By Advocate : Shri R.N. Singh, learned proxy
counsel for Shri R.V. Sinha)

O R D E R (Oral)

BY HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J) :

This case has been listed before a Larger Bench in pursuance of Hon'ble Chairman's order in terms of Section 26 of the Administrative Tribunals Act, 1985. This has been occasioned because of the dis-agreement of the Single Bench by order dated 26.4.2003 in OA 2851/2002 with the order dated 28.9.2001 passed by another Single Bench in OA 2524/2000.

2. In OA 2524/2000, the applicant had assailed the order dated 22.10.1999 and another order dated 12.1.2000

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whereby his appeal was rejected for grant of Special Leave under Rule 44 of the CCS (Leave) Rules, 1972 (hereinafter referred to as the Leave Rules) and he was allowed Extra-Ordinary Leave (EOL) under Rule 32 instead of leave under Rule 44 of the Leave Rules. By Tribunal's Single Bench Order dated 28.9.2001, it had, after hearing the parties and perusing the pleadings and other relevant documents, come to the conclusion that the competent authority is required to act fairly in discretionary matters in the facts of the case. The applicant had not made out a case and the OA was accordingly dismissed.

3. The present Original Application has been filed on 31.10.2002 in which the prayers are for quashing and setting aside the impugned order passed by the respondents dated 24.1.2002 turning down his request for conversion of his EOL for the period from 23.1.1998 to 18.12.1998, with a direction to the respondents to convert the EOL into Commuted Leave on medical grounds. It is relevant to note that in paragraph 8 of the earlier OA filed by the applicant (OA 2524/2000), he had not only prayed for quashing and setting aside the impugned order of rejection of leave under Rule 44 of the Leave Rules but also a direction to the respondents to grant him the leave as applied for for the period from 23.1.1998 to 28.12.1998 (~~the~~ ^{the} SIC which was clarified during hearing as 18.12.1998). Learned counsel for applicant has very vehemently submitted that the applicant had to leave Headquarters Office, Delhi, on leave to his home town on personal grounds w.e.f. 23.1.1998 and he remained on leave till 18.2.1998 because he fell ill. According to him, the

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period of leave remained unsettled because of administrative lapses. He has submitted that on rejection of his claim in OA 2524/2000, the applicant had filed RA 359/2001 which was also rejected by order dated 13.11.2001. According to the learned counsel, the applicant was ill and had produced medical certificates. He had sought grant of dis-ability leave under Rule 44 of the Leave Rules which was rejected not only by the respondents but also by the Tribunal vide aforesaid order dated 28.9.2001. He has submitted that the applicant had filed another representation dated 26.11.2001 regarding conversion of his leave under Rule 10 of the Leave Rules followed by another representation dated 3.1.2002, which has also been rejected by the respondents. He has submitted that a Government servant could make a request to the competent authority for commutation of one kind of leave into another at any time and the authority should exercise the power judicially and properly. He has submitted that as the applicant was on medical leave, there was no ground for the respondents to reject his request to convert his EOL to Commuted Leave as he has plenty of Commuted Leave ~~to~~ his credit. He has, therefore, prayed that the OA should be allowed.

4. We have heard Shri R.N. Singh, learned proxy counsel for respondents and also perused the reply filed on their behalf. The respondents have submitted that in the light of the findings of the Tribunal in OA 2524/2000 read with the order in RA 359/2001, which raised the same issues raised in the present OA, the OA is barred by the principles of res judicata/constructive res judicata. The learned proxy counsel has submitted that the Tribunal's

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order dated 26.4.2003 dealing with the question whether the medical certificates given by the applicant were genuine or bogus is not the issue but what has been challenged by the applicant is the action of the competent authority in not agreeing to his request for conversion of his leave. Shri R.N. Singh, learned proxy counsel has submitted that the medical certificates, copies annexed by the applicant at page 49 of the paper book, are neither in the Doctor's letter head nor these contain the Registration number, address or any other details of the Doctor, which are normally given in such medical certificates issued by a medical practitioner. He has also brought out the fact that the Doctor while giving the medical certificates to the applicant has precisely stated that the applicant requires leave/period of absence from duty for a period of 3 months and 19 days and in the other certificate a period of 3 months and 10 days for different periods which, according to him, are not again the usual manner in which such certificates are issued. He has vehemently submitted that the Doctor could have prescribed the period of rest for the applicant for some time but not so exactly as "so many months and days" as he has done in the present case. Besides he has also submitted that both the certificates are in the same ink and in same style. He has also produced the relevant official records, including the original certificates, which have also been shown to the learned counsel for applicant during the hearing. In the facts and circumstances of the case, the learned proxy counsel for respondents has submitted that the principle of waiver will also apply as the applicant had already challenged the action of the respondents in the earlier OA

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2424/2000 and on this principle also, in addition to constructive res judicata, the OA is barred. He has also submitted that this is more so after the Tribunal's order dated 13.11.2001 rejecting RA 359/2001, against which ^{it is} the applicant is aggrieved, he could have filed an appeal or taken such other remedies which are open to him in accordance with law.

5. We have read the order of the Tribunal dated 28.9.2001 in OA 2524/2000 as well as the order dated 26.4.2003 in the present OA on the basis of which a reference has been made to the Larger Bench because of divergent views. From the relevant facts in the two OAs, briefly mentioned above, it is clear that the applicant is aggrieved by the action of the respondents in not converting his EOL to some other kind of leave as requested by him in accordance with the Leave Rules. The genuineness or otherwise of the medical certificates produced by the applicant in OA 2524/2000 was not disputed by the applicant in the present OA but ^{it is} the action of the respondents in rejecting his request for conversion of his EOL for the same period of absence from 23.1.1998 to 18.12.1998 under the Leave Rules. In the facts and circumstances of the case, we find merit in the submissions made by the learned proxy counsel for the respondents that the applicant cannot agitate his grievance in piece-meal or in instalments, as such ^{the} action will be barred by the principles of constructive res judicata.

6. In K. Ajit Babu and Others v. Union of India and Others (JT 1997 (7) S.C. 24), the Hon'ble Supreme Court

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has held that consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". In this case it was further held that whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgement rendered in ^{the} earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgement or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of ^{the} earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgement and declare the law, which would be binding on all the Benches. Similarly, in Daryao v. State of Uttar Pradesh (AIR 1961 SC 1457), the Hon'ble Supreme Court has held that the principles of res judicata is a rule of "universal law pervading every well regulated system of jurisprudence and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity which makes it to the interest of the State that there should be an end to litigation-interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause. These salutary principles are applicable to the facts in this case and the applicant cannot, therefore, agitate his grievances from

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time to time, rather as contended by Shri M.L. Chawla, learned counsel for applicant, vehemently "at any time" the applicant likes i.e. to request the competent authority to commute one kind of leave into another under Rule 10 of the Leave Rules. Such a contention, if up-held, would mean endless litigations which is against public policy and public interest as held in Daryao's case (supra).

7. In view of what has been stated above, we are unable to agree with the decision of the Single Bench in the order dated 26.4.2003 as the OA is barred by the principles of constructive res judicata. Therefore, the order of the Single Bench dated 26.4.2003 is over-ruled and the earlier Single Bench order dated 28.9.2001 stands.

8. Accordingly, for the reasons given above, the OA fails and is dismissed.

No costs.

S.K. Naik

(S.K. NAIK)
MEMBER (A)

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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