

Reasoned

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: INDORE

Original Applications No.201/00156, 157, 158 & 159/2017

Indore, this Monday, the 09th day of December, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Dr. Pankaj Kumar Jain, S/o Late Shri Kamal Chand Jain Aged:55 years, Occupation:Service, Specialist Grade-II (Senior Scale) in Orthopedics, ESIC Hospital and ODC Centre, Nandanagar, Indore, R/o 18 EG, Scheme No.54, Vijaynagar, Indore-452010 (MP)

-Applicant in OA No.201/00156/2017

Dr. M.R.Sukehja, S/o Late Shri S.R.Sukheja, Aged:53 years, Occupation: Service, Specialist Grade-I, Specialist in Anesthesia, ESIC Hospital and ODC Centre, Nandanagar, Indore, R/o 48, Rajmahal Extension, Indore-452009

-Applicant in OA No.201/00157/2017

Dr.(Ms) Sonal Dhalwani, D/o Dr. N.K.Mansharamani, Aged 52 years, Occupation: Service, Junior Specialist Gr.I in Pediatrics ESIC Hospital and ODC Centre, Nandanagar, Indore, R/o 6-A/3 New Palasia Indore 452001 (MP)

-Applicant in OA No.201/00158/2017

Dr. Dinesh Jain, S/o Shri Heeralalji Jain, Aged 48 years, Occupation: Service Specialist Gr. I ESIC Hospital and ODC Centre Nandanagar, Indore R/o Ramchandra Nagar Extension Airport Road, Indore 452 005 (MP)

-Applicant in OA No.201/00159/2017

(By Advocate –**Shri L.C. Patne for all the applicants**)

V e r s u s

1. The Union of India, through Secretary to the Govt. of India, Ministry of Labour, New Delhi-110001

2. The Employees State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi-110002 Through its Director General

3. The State of Madhya Pradesh, Through Secretary to the Government of Madhya Pradesh, Department of Labour, Vallabh Bhavan, Bhopal-462004 (MP)

4. The Director, Employees Insurance Service, Government of Madhya Pradesh, Nandanagar, Indore-452010 (MP)

-Common Respondents in all the OAs

(By Advocate –**Shri Rishi Agrawal for respondents Nos.1 and 2 and Shri Aditya Narayan Shukla proxy counsel for Shri Akash Choudhary for respondents Nos.3 and 4**)

COMMON ORDER

By Navin Tandon, AM:-

All the four Original Applications are being adjudicated through this common order as the issue involved is the same. For the purpose of facts, the same are being taken from O.A. No.201/157/2017.

2. The applicant(s) are aggrieved that the earned leave in their credit while being in service with respondents No.3 and 4 is not being encashed either by respondent No.3 and 4 (Govt. of M.P.) or by respondents Nos.1 and 2 (Govt. of India), where they have gone with full benefit of the prior service.

3. The applicant has made the following submissions:-

3.1 He was initially appointed in the service of respondent Nos.3 and 4 on 09.11.1994 pursuant to his selection and appointment on the post of Assistant Surgeon.

3.2 He remained on deemed deputation with respondents Nos.1 and 2 by virtue of a policy decision taken by the respondents from 01.04.2007 to 08.10.2009.

3.3 Respondents Nos.1 and 2 offered appointment to him vide order dated 03.08.2009 (Annexure A/1).

3.4 Pursuant to order dated 09.10.2009 (Annexure A/2) of Govt. of M.P., he was relieved to join respondent No.2 on permanent absorption basis.

3.5 Accordingly, he stood absorbed permanently w.e.f. 09.10.2009. It has been stated in the offer of appointment dated 03.08.2009 (Annexure A/1) in Para 3(i) reads as under:-

“3.i. In case, he/she is holding a post in Central/State Government/Central/State Autonomous Body, his/her appointment will be on immediate absorption basis as envisaged in the Government of India, Ministry of Personnel, Public Grievances’ and Pensions (Department of Personnel and Training) O.M./No.28016/5/85. Estt.(C) dated 31.01.1986 and Government of India, Department of Pension and Pensioner’s Welfare O.M. No.4/12/85/p&PW dated 31.03.1987 and no lien will be allowed to be retained on the permanent post, if any, in the parent office. All his/her connection with the Government/Autonomous Body will be severed on his/her release for appointment in the Employees State Insurance Corporation and he/she will not be allowed to revert his/her parent cadre.”

3.6 For all practical purpose, such as the payment of GPF, protection of pay drawn by the applicant(s) in the services of respondents Nos.3 and 4 before his absorption is also been recognized in the services of respondents Nos.1 and 2.

3.7 However, for the purpose of encashment of earned leave, which was to the credit of the applicant(s) while working with respondents Nos.3 and 4, the issue has not attained finality.

4. The following reliefs have been prayed for by the applicant(s) :-

“8.1 to call the relevant records of the case from the respondents;

8.2 to command the respondents No.1 & 2 to recognize and to add 233 days of earned leave in the leave account of the applicant maintained by them after his permanent absorption in the services of respondents No.1 & 2 and to make payment of the same at the time of the applicant's retirement from the services of respondent No.1 & 2 and to release arrears thereof together with interest at the rate of 12% per annum by an appropriate order or direction in the interest of justice;

OR

to command the respondents No.3 and 4 to make payment of encashment of earned leave of 233 days during the service rendered by the applicant with respondents No.3 and 4 and to release arrears thereof together with interest at the rate of 12% per annum by an appropriate order or direction, in the interest of justice;

8.3 to allow this application with costs; and

8.4 to pass such other orders as may be deemed appropriate to grant relief to the applicant.”

5. The respondents Nos.1 & 2 while quoting DoPT's OM No.28016/5/85-Estt.(C) dated 31.01.1986 (Annexure R/1) have stated that the encashment of earned leave is to be paid by respondents Nos.3 and 4. They have also attached the Govt. of India, Ministry of Personnel, Public Grievances' and Pensions Department of Pension & Pensioners Welfare communication No.28(10)/84-P&&PW.Vol.II dated 07.02.1986 (Annexure R/3) regarding counting of service for purpose of Pension of employees of Central Government and Central Autonomous Bodies seeking absorption in Autonomous Bodies under the State Governments and vice-versa. This communication is applicable to the employees of M.P. Government.

6. Respondent Nos.3 and 4 in their reply have stated that the applicant is still working and all the benefits, which he is entitled after the superannuation, will be given to him by the respective department including the benefit of earned leave, as his services have been absorbed by respondent No.2.

6.1. Respondent No.4 vide letter dated 06.05.2014 (Annexure R/3/1) have stated that the leave to the credit of the applicant while he was serving with respondents Nos.3 and 4 have been carried forward to the present services, and therefore, no leave encashment can be done by respondents Nos.3 and 4.

7. Learned counsel for the respondents Nos.3 and 4 raised objection regarding the annexures attached with Original Applications Nos.201/156, 158 and 159/2017 are not of the applicant(s).

7.1. We find that the annexures of O.As of these four applicant(s) have not been collated properly and document pursuant to one applicant has been placed in the O.A. of another one. Since these objections are only technical in nature and do not change the substantive nature of the relief sought, the same are brushed aside.

8. Heard the arguments of the learned counsel for the applicant(s), respondent No.1, 2 and respondents Nos.3 and 4.

9. Learned counsels for both the respondents viz. respondents Nos.1 & 2 (Government of India) and respondents Nos.3 & 4 (Government of M.P.) cited several circulars to buttress their point that the encashment of earned leave should be done by the other party.

10. However, it was not disputed by any of the parties that the earned leave available in the credit of applicant(s) at the time of permanent absorption with respondents Nos.1 and 2 should be paid to the applicant(s).

11. Perusal of Para 1 (ii) of DoPTs OM No.4(12)/85-P. & P.W., dated 31.03.1987 (Annexure A/7) reads as under:-

“(ii) Those absorbed in the autonomous-bodies having pension scheme shall have an option to receive pro rata retirement benefits or continue to have the benefit of combine service under the Government and in the autonomous body subject to the conditions laid down in the Department of Personnel and A.R.’s OM No.28/10/84-PU, dated the 29th august, 1984 and 12th September, 1985 [vide Order (6)] such option should be exercised within six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined service.”

12. It has been confirmed by the learned counsel for the applicant(s) that the applicant(s) is eligible for pension based on combined services. Since the past services have already been counted for fixation of pay scale as well as payment of pension, it is also clear that the earned leave in the credit of the applicant(s) prior to absorption also can be monetized. To that extent the O.A. deserves to be allowed.

13. It is also clear that the money for the leave encashment is to go through public exchequer, whether through Govt. of India or through Govt. of M.P. The two Governments have not been able to decide on the issue even after the lapse of 10 years from the date of absorption of the applicant(s).

14. Normally the encashment of leave is done at the time of retirement therefore, we find it logical that the leave encashment should be done when the applicant(s) finally retires from the service of respondents Nos.1 and 2. The earned leave available to

the credit of the applicant(s) at the date of absorption should be carried over to the leave account maintained by respondents Nos.1 and 2. Respondents Nos.1 and 2 are directed to issue necessary office order on the above lines within 60 days from the date of receipt of certified copy of this order.

15. Accordingly, these four Original Applications are disposed of. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member