



Central Administrative Tribunal
Principal Bench, New Delhi

OA No.3025/2018

Reserved on: 21.11.2019
Pronounced on: 10.01.2020

Hon'ble Ms. Aradhana Johri, Member (A)

Arun Kumar Verma, Age 61 years
S/o K.L. Verma
Retired from NTRO,
New Delhi on 31.7.2017
R/o 792, Sector 7,
Gurgaon – 122 001 (Haryana) ...Applicant
(By Advocate: Sh. Padma Kumar S.)

Versus

1. Union of India through
Chairman,
National Technical Research Organization,
Block III, Old JNU Campus,
New Delhi – 110 067.
2. Secretary,
DoPT, North Block,
New Delhi – 110 011. ...Respondents

(By Advocate: Sh. Hanu Bhaskar)

O R D E R

Applicant Sh. Arun Kumar Verma was Commissioned in the Indian Navy as Sub Lieutenant on 01.01.1980 and discharged from the Navy service on 01.10.2003 in the rank of Commander. He joined National Technical Research Organization [hereinafter referred to as NTRO] on 07.07.2005 on re-employment as Scientist 'C'. The applicant superannuated from NTRO on 31.07.2017 on attaining the age of superannuation. Before that he applied for leave encashment but was allowed encashment of only

55 days EL despite his having more leave to his credit, since he had availed of 245 days encashment when he left the service of Indian Navy.

2. The applicant has filed this OA praying for granting him leave encashment against the earned leave and half pay leave available to his credit in NTRO subject to ceiling of maximum 300 days, independent of the leave encashment allowed from the Armed Forces, along with quashing of impugned orders dated 29.05.2018, 24.07.2017 and 14.08.2017 respectively [Annexure A-1 (Colly.)] by which he has been granted leave encashment of only 55 days and his request for grant of leave encashment subject to ceiling of 300 days in NTRO has been rejected.

3. It is the contention of the applicant that after his discharge from Indian Navy, he joined NTRO on re-employment on 07.07.2005 and as per Rule 34 of the Central Civil Service (Leave) Rules, 1972 [hereinafter referred to as Leave Rules], it is to be treated as if he had entered government service for the first time on the date of his re-employment. On this basis he has claimed that leave encashment given to him before he joined NTRO should not be included in the ceiling of 300 days leave encashment.

4. The respondents have vehemently denied the claim of the applicant. They have stated that while Rule 34 of Leave Rules treats the re-employed persons as if they had entered government service for the first time, leave encashment on re-employment in respect of re-employed person is regulated under Rule 39 (6)(a)(iii) of Leave Rules, which clearly provides for a ceiling of 300 days inclusive of earlier service. It has also been argued by the learned counsel for the respondents that the applicant has no case since in the normal course had he continued in service till the age of superannuation, he would have availed only 300 days leave encashment whereas because he took premature discharge from Indian Navy and got the benefit of encashment of all the leaves he had to his credit subject to ceiling of 300 days, he cannot now claim another 300 days ceiling on attaining the age of superannuation.

5. Heard Sh. Padma Kumar S., learned counsel for the applicant and Sh. Hanu Bhaskar, learned counsel for the respondents.

6. The first Rule to be looked at is Rule 34 of Leave Rules, which reads as under:-

“34. Persons re-employed after retirement.

In the case of a person re-employed after retirement, the provisions of these rules shall apply as if he had entered Government service for the first time on the date of his re-employment.”

7. It appears from the above that in case of a person re-employed after retirement, the provisions of these rules shall apply as if he had entered government service for first time on the date of his re-employment. Therefore, this rule broadly states that these rules apply as if it was a fresh appointment.

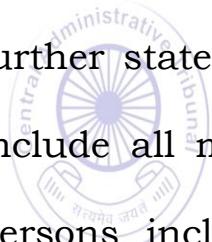
8. Rule 39 (6) (a)(iii) of Leave Rules states the following:-

“39(6)(a)(iii) – A Government servant, who is re-employed after retirement may, on termination of his re-employment, be granted, suo motu, by an authority competent to grant leave, cash equivalent in respect of both earned leave and half pay leave at his credit on the date of termination of re-employment subject to a maximum of 300 days including the period for which encashment was allowed at the time of retirement and cash equivalent payable shall be the same as in sub-rule (2) of Rule 39.”

This rule is very specific regarding encashment of leave and as per settled law the specific rule overrides the general rules and will have overriding effect over the general provisions.

9. The only issue here is whether the case of the applicant is covered under the definition “on termination of re-employment”.

10. Learned counsel for the applicant has stated that this is not a case of termination but of superannuation whereas learned counsel for the respondents states that the word ‘termination’ is used to say that there is cessation of re-employment period on superannuation and not pre-mature



termination on disciplinary grounds etc. *per se*. He has further stated that the intention of this phraseology is to include all methods of ending the service of re-employed persons including attaining the age of superannuation. None of the counsels have pointed out any other provision of Leave Rules pertaining to any other methodology of cessation of service of re-employed persons. Keeping this in mind, the interpretation of the word 'on termination of re-employment' will be that this includes all forms of cessation of services of a re-employed person. Therefore, the provisions of this rule 39 (6)(1)(iii) applies in the case of the applicant as well. In other words, ceiling of 300 days will be applicable which includes the period for which leave encashment was allowed to the applicant at the time of his discharge from Indian Navy.

11. The applicant has cited the decision of Ernakulam Bench of this Tribunal in ***Senthil Kumar M. & Ors. Vs. Union of India & Ors.*** [OA No.146/10 decided on 28.10.2011] wherein protection of pay as envisaged in FR 22(1)(a)(2) subject to ceiling as contained in FR 22(1)(a)(3) was allowed and it was held that validity of administrative instructions would be affirmed only when the provisions of the administrative instructions borrow their colour from the statute or they are in tandem and not otherwise. In the

current case, ceiling of 300 days draws from the rules themselves and not just from administrative instructions.

12. The applicant has also cited the rulings of Hon'ble High Court of Gujarat in ***H.M. Bhatt Vs. State of Gujarat & Ors.*** [C/SCA No.2590/1998 decided on 29.01.2015] wherein the petitioner was allowed additional benefit of leave encashment on his re-employment as Member of Gujarat Revenue Tribunal and subsequently President of the same, even though he had already availed of the maximum leave encashment on his retirement on attaining the age of superannuation. However, this decision was based on the fact that instructions of Gujarat Government prevalent at the relevant point of time were to allow additional leave encashment of 240 days on re-employment even after this ceiling had already been availed of on attaining the age of superannuation. The facts of the present case are different since Rule 39 (6)(a)(iii) of Leave Rules includes the earlier service before re-employment as part of the ceiling of 300 days.

13. In view of the above discussion, I do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.

**(Aradhana Johri)
Member (A)**