

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1000/2001

New Delhi this the 14th day of January, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

Om Prakash Kain,
Retired Junior Employment Officer,
R/O House No. 113, Bakoli,
Post Office Alipur
Delhi-110036

... Applicant
(By Advocate Shri S.N. Anand)

VERSUS

1. Government of National Capital Territory of Delhi through Chief Secretary, 5, Sham Nath Marg, Delhi-110054
2. Secretary-cum-Director, Directorate of Employment Govt. of National Capital Territory of Delhi, 2-Battery Lane, Delhi-54
3. The District Employment Officer (West), Government of Delhi District Employment Exchange (West), Pusa, New Delhi-110012.

.. Respondents
(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The applicant has impugned the validity of the order dated 29.6.2000 passed by Respondent No.3, which he has alleged is illegal and arbitrary. According to him, by this order he has been denied the benefit of Leave Encashment after his compulsory retirement following the disciplinary proceedings, by order dated 4.5.1999.

2. I have heard Shri S.N. Anand, learned counsel and Shri Ajesh Luthra, learned counsel for the respondents.

3. One of the main contentions of Shri S.N.Anand, learned counsel is that the impugned order dated 29.6.2000 has been passed by the respondents with regard to regularisation of his period of suspension following the final order of compulsory retirement passed against him dated 4.5.1999. He has submitted that the respondents have not complied with the provisions of sub-rules(5) and (8) of FR 54-B as they have failed to provide him reasonable opportunity to make a representation after giving him notice of the quantum of punishment proposed to be given to him and regularisation of period of his suspension. In this case, the applicant was admittedly placed under suspension for the period from 2.7.1997 to 24.7.1998 i.e. for a total period of 388 days.

4. On the other hand, Shri Ajesh Luthra, learned counsel for respondents has pointed out that the impugned order dated 29.6.2000, calculating the period of leave against the aforesaid suspension period from 2.7.1997 to 24.7.1998, is exactly in terms of applicant's representation dated 22.6.2000. In that representation, the applicant had prayed that his Earned Leave (EL) should not be deducted and the period of suspension should be adjusted against the Half Pay Leave (HPL) so that he would be in a position to encash maximum number of ELs. Learned counsel for the respondents has, therefore, submitted that it cannot be stated that there

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is any violation of the provisions of sub- rules (5) and (8) of FR 54-B as the applicant himself had made a representation prior to the order dated 29.6.2000 which is incidentally in terms of his own request made in his representation dated 22.6.2000.

5. The applicant's counsel has submitted that the balance of suspension period after deducting HPL should have been done by granting the applicant Extra Ordinary Leave (EOL), for which the main contention of the learned counsel for the respondents is that no such prayer had been made by the applicant in his representation dated 22.6.2000. While that may be so, the action of the respondents also clearly shows that they have themselves not cared to give notice to the applicant on the quantum of punishment proposed to be given to him in terms of sub-rules (5) and (8) of FR 54-B. There is also no reference in the impugned order to the representation made by the applicant dated 22.6.2000 and this order itself has been passed within a week of that representation. Nothing has been brought on record by the respondents to show that even this representation had been considered by the competent authority while passing the order dated 29.6.2000. From the facts on record, it appears that the applicant was not given notice as required under the provisions of sub-rules (5) and (8) of FR 54-B. It is also on record that the applicant had made a representation to the respondents as to how he would like ~~to be treated~~ his suspension

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period to be treated dated 22.6.2000. It is also clear that the impugned order dated 29.6.2000 passed by the respondents is in terms of applicant's representation dated 22.6.2000 regarding the treatment of his suspension period and with regard to the leave due to him which falls short of treating the period under EOL. This is the main prayer made by the applicant in the present application. Considering the facts and circumstances of the case and noting the fact that there is some error on account of not giving an opportunity to the applicant to make a composite representation to the show cause notice at the appropriate time, I do not think that the respondents ought not to consider his request for treating the suspension period against EOL, which perhaps he would have done in case he was given notice by the respondents. In the facts and circumstances of the case, the respondents cannot take the benefit of their own omission in fully complying with the statutory provisions contained in sub-rules (5) and (8) of FR 54-B and the principles of natural justice.

6. Therefore, in the facts and circumstances of the case, and in the interest of justice, the OA is disposed of with the following directions:-

The respondents shall pass a detail and speaking order, after taking into consideration the request of the applicant for granting EOL in addition to other leave of the kind due to him as

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already done in the order dated 29.6.2000 . This shall be done within three months from the date of receipt of a copy of this order with intimation to the applicant.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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