

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 297/98

T.A. No.

199

DATE OF DECISION 27-11-1998

Sh. Satya Dev Sahni

Petitioner

Sh. Arun Bhardwaj

Advocate for the Petitioner(s)

Versus

Govt. of NCTD

Respondent

Mrs. Jyotsna Kaushik

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Biswas, Member(A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(S.P. Biswas)
Member(A)

Cases referred:

1. A.P. Venkatesan Vs. U.O.I. (1992(19) ATC 473).
2. B.S. Sood Vs. U.O.I. (OA-232/97)
- 3.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-297/98

New Delhi this the 27th day of November, 1998.

Hon'ble Shri S.P. Biswas, Member(A)

Sh. Satya Dev Sahni,
S/o late Sh. C.L. Sahni,
R/o C-4/D-24-A,
Janakpuri,
New Delhi-58.

..... Applicant

(through Sh. Arun Bhardwaj, advocate)

versus

1. The Govt. of NCT Delhi
through its Principal Secretary,
Ministry of Education,
5, Sham Nath Marg,
Old Secretariat,
Delhi.
2. The Directorate of Education,
through its Director,
Old Secretariat, Delhi.
3. Dy. Director of Education,
District West, New Moti Ngr.,
New Delhi-15.
4. The Drawing & Disbursing Officer,
Govt. Composite Model Boys,
Gr. Secondary School No.1,
Subhash Nagar,
New Delhi.

..... Respondents

(through Sh. Ajesh Luthra for Mrs. Jyotsna Kaushik)

ORDER

Applicant, a retired Principal under the Directorate of Education/ Govt. of NCT/Delhi, is aggrieved by respondents' action in granting leave encashment for 149 days instead of 240 days under the rules. By an order dated 20.11.95, Deputy Director of Education, West Zone granted the applicant leave salary only for 149 days against the unutilised earned leave. Applicant is before us claiming leave encashment for the remaining period of 91 days. This is the second round of litigation. The earlier O.A. No.249/96, decided on

20.1.97, was disposed of with a direction to the applicant to make a comprehensive representation before the Respondent No.1 setting out the details of his claims for leave encashment. Having examined the said representation, the respondents' vide A-1 impugned order dated 29.7.97, have now come out with the following conclusion:-

"His (applicant's) representation does not indicate the specific orders vide which DDOship was assigned to him, the full particulars of schools where he performed duties, specific period for which duties were performed and the orders of higher authorities which required him to attend duties during vacation."

The applicant seeks to challenge the aforesaid orders of the respondents.

2. As argued vehemently by Shri Arun Bhardwaj, learned counsel for the applicant, the respondents have failed to take proper account of the earned leave (EL for short) that accrued to the applicant in respect of the following:- (i) that the applicant was due for 8 days of earned leave under Rule 29(3) for working during summer vacations from 26.6.95 to 14.7.95; (ii) that the applicant was due for 15 days' earned leave for attending a summer seminar during 1977-1978 but respondents, by wrong application of the principles of calculation, allowed him only 12 days; and (iii) that the applicant having worked in a non-vacation post of Drawing & Disbursing Officer (DDO for short), during 1987-1994 was entitled to get 30 days' E.L. for each year under Rule 28(3)(b) of CCS (Leave) Rules. As per the applicant, if,

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he is made to forego the vacation. Rule 28 of the aforesaid CCS rules shall apply for the purpose of providing benefit of leave encashment. The functions of DDO are clearly laid down in the Financial Rules and he could not have avoided working in that capacity in the background of the formal warning having been communicated to him vide Annexure A-12 dated 30.6.89 wherein it has been mentioned that "Shri S.D. Sahni is hereby directed to send his specimen signatures and assume the charge of DDO of Hiran Kundna School within 3 days failing which necessary action as per rules will be taken".

3. In support of his claim, the learned counsel for the applicant has relied on the decisions of this Tribunal in the case of A.P. Venkatesan Vs. Union of India (1992(19) ATC 473) as well as the case of B.S. Adhikari Vs. Govt. of NCT Delhi in OA-1905/96 decided on 8.10.97. In Venkatesan's case, the Tribunal laid down that it is for the respondents to maintain leave account of its employees and it is not open to the respondents to call upon the applicant to produce official references or other records to show leave at his credit. As argued by the ld. counsel, the respondents have not even cared to send a reply in this connection despite the applicant's representation dated 1.06.95 wherein the applicant had requested for completion of all leave account formalities well before his superannuation on 30.10.95. That apart, the respondents decided not to show the leave account by producing the service book to the applicant which is permissible under GFR 81 on payment of necessary fees. The applicant did pay the requisite fee for this purpose but without any result.

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4. Shri Ajesh Luthra, learned proxy counsel for the respondents, while rejecting the claims, submitted that the job of DDO required the applicant's presence very rarely and if at all, it was required it was only for appending his signatures and did not require full time duty. The learned counsel further submits that under Rule 59(2)(h) of Delhi School Education Rules, 1973, the head of the school shall also be the DDO for the employees of the school. The applicant being head of the department functioned as DDO as part of his duties and is, therefore, not entitled for the claims made. Relying heavily on the decision of this Tribunal in the case of B.S. Sood Vs. U.O.I. in OA-232/97, decided on 17.8.98, the learned counsel submitted that the admissibility of earned leave is subject to (i) the submission of the certificate by Deputy Director (Education) indicating the specific work that was done by the individual officer concerned and that (ii) the attendance of the individual officer had been duly verified. The applicant herein has not come out with any certificate of the competent authority ordering him to perform the duties of DDO. There is no letter or written direction from any superior authority that the DDO should attend the office during the period of vacation. What actually the applicant has functioned as is not known nor there is justification of details as regards what actually he has done. It is for the applicant to prove that he has really performed the duties of DDO and in the absence of any collateral evidence, the applicant cannot legally claim the benefit of leave encashment for working as DDO under the three heads as mentioned in para 2 aforesaid.

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5. In the face of aforementioned rival contentions of learned counsel for both parties, the questions that fall for determination are:-

(a) If the applicant was in receipt of any order to act as DDO?

(b) If he has provided any details to the respondents as regards the jobs done by him as DDO as required by the latter? and

(c) If the records support applicant's claim of leave encashment having been denied wrongly by the respondents?

6. We shall extract the legal provisions that would govern the case on hand. They are as under:-

"(1)(a) The leave account of a teacher, principal, headmaster, librarian, laboratory assistant or a waterman working in a school shall be credited in advance with Earned leave in two instalments of five days each on the first day of January and July, of every year.

(3)(a) In respect of any year in which a Government servant avails himself of a portion of the vacation he shall be entitled to earned leave in such proportion of 30 days or 45 days when governed by the Exception to sub-rule(1) of Rule 26, as the number of days of vacation not taken bears to the full vacation:

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- (b) If, in any year, the Government servant does not avail himself of any vacation, earned leave shall be admissible to him in respect of that year under Rule 26.

Note 1.- A Government servant entitled to vacation shall be considered to have availed himself of a vacation or a portion of a vacation unless he has been required by general or special order of a higher authority to forgo such vacation or portion of a vacation.

Note 3.- In the case of a teacher, principal, headmaster, librarian, laboratory assistant or a waterman working in a school the earned leave, if any, admissible under sub-rule (3) will be in addition to the earned leave admissible under sub-rule(1).

7. In the counter filed on 22.9.98, the respondents have admitted that "he (applicant) was merely directed to perform the duties of DDO and to arrange disbursement of salary in time.....He was only directed to work as DDO to sign the bills either in school or at home". In the face of such an admission, the respondents contention that there was no directions or written orders for the applicant to perform the job of DDO cannot be sustained.

8. We shall next discuss legitimacy of the applicant's claim of earned leave on three different accounts as mentioned in para 2.

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✓ With regard to applicant's claim that he was due for 8 days earned leave during summer vacations of 1975 (i.e. 26.6.75 to 14.7.75), the respondents have admitted in writing that two days' earned leave was due for the applicant and should have been encashed. However, before the earned leave could be so revised, the applicant had approached the Court which forced the respondents not to issue the revised order of earned leave for 8 days.

The applicant has also claimed 15 days earned leave for having attended the summer seminar in the year 1977-1978. Here again, the respondents vide their letter dated 28.12.96 stated that "only where an individual has been prevented from enjoying more than 15 days of vacation, benefit of leave in lieu of summer vacations not availed can be given". The applicant has assailed the aforesaid submission dated 28.12.96 on grounds that the applicant had actually worked for 15 days during summer vacations in the year in question and that there is no embargo on giving benefit of 15 days leave in terms of O.M. dated 30.11.95 wherein an illustration has been given as to how to calculate earned leave in cases where the employee had worked for 14 days in a vacation period of 60 days. The formula to be applied is 14×30 divided by 60 and not 77. What we find is that the service records of the applicant maintained by the respondents clearly indicate "attended summer institute in Physics from 27.5.78 to 7.6.78 for 15 days". But while applying the formula, the respondents appear to have committed an error.

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✓ In the impugned order indicating the reasons for denial of the claim, the respondents have mentioned that the applicant has not given full particulars of the school where he performed his duties, the specific periods for which he had performed the said duties as well as the specific nature of jobs he did. We find, the applicant's representation dated 6.2.97 is abundantly clear in this respect. It has been mentioned therein the following particulars as regards discharging of applicant's duties as DDO from 1987 to 1994:-

- i) DDO in Dichaon Kalan School and 1988-89
Hiran Kudana School.
- ii) DDO in School at Delhi Cantt-1. 1990-91
- iii) DDO in School at Palam Village 1992-93

The specific jobs the applicant did are also available at page 4-5 of the representation. In the background of such details, it does not lie in the mouth of the respondents to say that the reliefs could not be provided only because of lack of details.

9. We find that the applicant have had the misfortune of having received a warning vide Annexure A-12. This happened when the applicant had expressed his reluctance to work as DDO and the Deputy Director of Education (West) directed him to assume the charge of DDO threatening the applicant to initiate departmental proceedings in case he does not do so. Under these circumstances, the applicant had to work as DDO at two schools, namely, Dichaon Kalan and in Hiran Kudana schools. We also find that the functions of DDO are clearly well defined in financial rules. They are highly

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responsible in nature and does not involve in merely appending signatures. His functions related to authorisation of payments and virtually it is through him that all the financial transactions got authenticated for the vacation periods. Asking the teacher to perform the jobs of DDO and then to say that earned leave cannot be credited to him because it was "merely to arrange disbursement of salaries or to sign the bills sitting in the schools or in home" is highly inconsistent and unreasonable.

10. It is not disputed that the judgement in the case of C.B. Agarwal Vs. Delhi Admn. in OA/TA 1041/85 decided on 17.9.91, granting leave encashment for a Principal Working as DDO, has attained finality. This is legally binding on respondents now. This is such a case where scrutiny of leave encashment records legally permissible on payment of requisite fees was not allowed despite the applicant depositing the necessary amount on 8.3.95 against money receipt No.539342.

11. The respondents have also relied on the decision of this Tribunal in the case of B.S. Sood (supra) decided on 17.8.98. We find that was the case where the respondents categorically denied of having directed the applicant therein to perform the duties of DDO. In the present case, the respondents have in writing on 22.9.98 admitted of having assigned the job of DDO to the applicant. On this ground, the applicant cannot be blamed of not having produced any evidence that he had been directed to attend the office. The case of Shri Sood is, therefore, distinguishable. That apart, the decision

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of the Tribunal in Sood's case was arrived at without any knowledge/reference to an earlier order dated 8.10.97 of this Tribunal in OA-905/96.

12. In view of the detailed discussions aforesaid, the O.A. succeeds on merits and is accordingly allowed with the following directions:-

(i) The order dated 29.7.97 shall stand quashed and set aside.

(ii) The applicant shall be granted the benefits of 240 days E.L. for having worked as DDO/ and attended Summer Vacations (non-vacation post/work) in the periods from 1987 to 1994.

(iii) Our directions aforesaid shall be complied with within a period of 3 months from the date of receipt of a copy of this order.

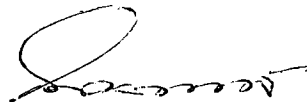
(iv) We leave it to Respondent No.1 (Principal Secretary/Deptt. of Education) to identify those officials responsible for adopting such an illegal attitude in the face of legal and admitted position as well as precedents (Agarwal's case) and initiate appropriate disciplinary actions against them.

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A compliance report shall be sent to Registrar, CAT/PB in respect of our directions in paras 12(ii) to (iv) by June 1999 in terms of Section 24 of the CAT(Procedure) Rules, 1987.

(v) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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