

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2347/96

New Delhi this the 16th day of January, 1998.

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

Shri Nirmal Singh,
C-105, Nahakpura,
New Delhi-21. Applicant

(through Sh. G.K. Aggarwal, advocate)

versus

1. Union of India through
Secretary, Ministry for
Urban Affairs & Employment,
Nirman Bhawan, New Delhi-11.
2. The Director General(Works)
Central Public Works Department,
Nirman Bhawan, New Delhi-11.
3. The Chief Engineer(Civil),
Central Design Organisation,
Central Public Works Department,
Nirman Bhawan, New Delhi-11.
4. The Superintending Engineer(Civil),
Standards & Specifications(S&S),
Central Public Works Department,
Nirman Bhawan, New Delhi-11,
5. The Executive Engineer(Civil)(HQ),
Central Design Organisation, CPWD,
Nirman Bhawan, New Delhi-11. Respondents

(through K.C.D. Gangwani, advocate)

ORDER

The short questions that fall for
determination in this original application are:-

(i) Does the law permit cancellation of
leave (commuted/earned/half pay
leave) by an authority higher than
the competent authority that
sanctioned the said leave?

(ii) Does the law require incorporation of reasons conveying such cancellation?

The background of facts leading to the filing of this original application are, in brief, as under:-

The applicant, an Assistant Engineer (Civil) in Central Public Works Department (CPWD for short) at New Delhi is aggrieved by A-1 order dated 4.9.96 by which leave sanctioned to him by A-2 order dated 16.04.96 by the competent authority has been abruptly cancelled. The A-2 order conveys sanction of leaves in the manner mentioned below:-

<u>Kind of Leave</u>	<u>Dates(inclusive)</u>	<u>Days</u>
Commuted leave	06.05.94-26.12.94	235
Earned leave	27.12.94-25.04.95	120
Half-pay leave	26.04.95-02.08.95	099

The aforesaid order at A-2 was set at naught by A-1 order stating:

"It has been decided by the competent authority to cancell the leave notification issued vide this office No.87/114/95-810-11 dated 16.4.96 For grant of commuted leave on medical ground from 6.5.94 to 26.12.94, earned leave from 27.12.94 to 25.4.95 and half pay leave from 26.4.95 to 2.8.95 to Sh. Nirmal Singh Asstt.Engineer."

The applicant has challenged the A-1 order on the ground that it has not been issued by the competent authority and that is against the principles of natural justice.

I find CCS (Leave) Rules 1972 would govern such matters. Leave rules for officials like the applicant herein stipulate that a Superintendent Engineer (or of equivalent rank) can grant leave to Executive Engineers/Assistant Engineers upto 60 days at a time provided no substitute is required. It also mentions that Assistant Engineers and other officers of equivalent rank could be granted leave without limitation but with prior approval of the Chief Engineer (CE for short) concerned when no substitute is required. This is as per letter No.14(44)/62-EWI dt. 11.9.62 and C.O. No. 33/2/70-EC II dt. 31.1.70 issued by the competent authority. Rule 10 of the CCS (Leave) Rules 1972 lays down that the authority who is competent to sanction the leave is also competent to allow conversion of one kind of leave to another. The provisions of conversion do not mention any specific period for which conversion could be granted. Respondent No.2 vide its letter dated 10.10.90. has also delegated officials of the rank of the Executive Engineer in CPWD as competent authority to sanction earned leave to Assistant Engineers working in their respective divisions. The order conveying such delegation reads as under:-

"The undersigned is directed to say that in exercise of the powers conferred under the First Schedule in Rule 3(c) of

CCS (Leave) Rules, 1972, Director-General of Works, CPWD is pleased to delegate the powers to Executive Engineers in CPWD to sanction Earned Leave due to Assistant Engineers working under their Divisions. This power was hitherto delegated to Superintending Engineers concerned."

From the perusal of records and pleadings, it is evident that a subordinate office i.e. CE/CDO had sanctioned leave for 454 days as aforesaid vide A-2 orders. However, it was this very period for which the headquarters i.e. DG/W had issued a chargesheet to the applicant on grounds of unauthorised absence. It is admitted that "the SE/EE concerned in the office of CDO did not know the background of this particular case and sanctioned leave to the applicant. The DG(W), CPWD being the cadre controlling authority on coming to know about the improper request of leave made by Shri Nirmal Singh and subsequent sanction of the same by the office of CE (CDO) issued direction to the office of CE(CDO) to cancel the improper sanction which was complied with vide order dated 4.9.1996." The respondents have sought to justify the impugned order saying that the direction from the DGW was necessary in view of the disciplinary proceedings pending against the applicant which the office of CE/CDO did not know about.

The question then would arise is whether correcting such mistake or withdrawal of such orders of sanction are permissible under the law. Provisions under CCS (Leave) Rules 1972 do not stand in the way of justifiable cancellation either by sanctioning authority or any authority higher than that. Leave cannot be claimed as a matter of right.

The Apex Court in the case of S. Nagraj Vs. State of Karnataka (1994 SCC (L&S) 320) held that "Justice is a virtue which transcends all barriers. Neither the rules of procedure nor the technicalities of law can stand in the way. The entire concept of writ jurisdiction exercised by higher court is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised jurisdiction but for the erroneous assumption which in fact did not exist and its perpetuation shall result in miscarriage of justice, then it cannot be precluded from rectifying the error." The same rule would prevail here.

Written orders of the higher authorites i.e. CE/CDO was obtained for cancelling the leave through an appropriate note in the concerned file. The action of the respondents, therefore, cannot be faulted for cancellation of the order.

The next issue to be examined is whether the A-1 order, cancelling the leave without recording the reasons therein, could be considered valid in the eyes of law. It is very difficult to term A-1 order as a speaking order even by the most liberal standards. A decision which has civil consequences envisages pre-decisional hearing. Every authority involved in a process of adjudication is required to state the reasons for his/her conclusion. Some reasons should have been adduced in the A-1 order. Reasons for any

orders/decision/conclusions cannot remain in his anonymity of the mind of those issuing them, it is supposed to be made known to the parties affected as also to the Tribunal exercising judicial review over administrative orders. Such non-speaking, if not dumb, orders cannot do service for requirements of law. In the case of State of Orissa Vs. Dr. (Miss) Bina Pani Dei (AIR 1967 SC 1269), it has been held that:-

"If there is a power to decide and determine to the prejudice of a person, the duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is the basic concept of the rule of law and the importance thereof transends the significance of a decision in any particular case."

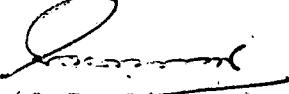
In the present case, the applicant was never asked to show cause why the leave sanctioned for the period covering unauthorised absence should not be cancelled. The order of withdrawal, without recording the reasons, therefore, violates the principles of natural justice and is a nullity in the eyes of law. Violation of natural justice is apparent on the face of the order itself since the leave was already sanctioned before.

For the reasons afore mentioned, the O.A. is

allowed with the following orders:-

- (a) The A-1 order, superseding the sanctioned leave by A-2 order, shall stand quashed.
- (b) The respondents will be at liberty to re-examine the case in terms of the law laid down on the subject and initiate fresh actions, if they so desire, but only as per rule.
- (c) There shall be no order as to costs.

/vv/



(S.P. ~~Biswas~~),
Member (A)