

(12)

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1464/89

Date of decision: 18.12.1992.

Shri C.H. Sharma

...Petitioner

Versus

Union of India through the
Secretary, Ministry of Home Affairs,
New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner In person.

For the respondents Mrs. Avnish Ahlawat, Counsel.

Judgement(Oral)

The main grievance of the petitioner is that the respondents vide order dated 26.6.1989 have treated the period of his leave as extraordinary leave, resulting in consequential recoveries from him. The main ground for assailing the said order is that the petitioner was not served any show cause notice before taking this decision. He further submits that if he had taken leave in excess of the leave due to him, the same may be treated as 'Leave Not Due'. This case had come up before a Division Bench of the Tribunal on 5.2.1990, when the respondents were directed to produce the relevant records. On 3.5.1990, the respondents produced the original service book of the petitioner, including the leave account, as is seen from the order extracted below:-

"The learned proxy counsel for the respondents has made available original service book including leave account of the applicant. The learned counsel for the applicant seeks time to inspect the relevant record to file rejoinder though as per our last order, the right to file rejoinder by the applicant had been forfeited. But, in the

interest of justice we recall our order to the extent that the learned counsel for the applicant may inspect the record produced by the learned counsel for the respondents with the help of the applicant who is present in person today itself and file his rejoinder, if any, by 14.5.1990. List before the Bench on 14.5.1990 for further directions."

Thereafter the petitioner filed the rejoinder and the case was directed to be listed for final hearing. The case was dismissed after hearing the learned counsel for the respondents on 2.6.1992 but was restored vide order dated 27.8.1992, considering the prayer in MP-2125/92. When the matter came up today, the petitioner submitted that his counsel is suffering from eye trouble and has not yet recovered full vision after the eye operation which was performed in July, 1992. It will be of interest to refer to order dated 27.8.1992 when the case was adjourned to 12.10.1992, for hearing on merits at the request of the petitioner's counsel. The said order further records that no further adjournment will be given. In this view of the circumstances the petitioner has been given full opportunity to explain his case and we are not persuaded to adjourn the matter.

2. As observed earlier, the two grounds for assailing the order of the respondents are that no show cause notice was given to him before passing the impugned order and secondly the excess period of leave has not been treated as leave due.

3. On the other hand, Mrs. Avnish Ahlawat, learned counsel for the respondents drew our attention to Annexure R-I to the counter and pointed out that for the years 1987 and 1988 the petitioner had earned 60 days earned leave, 40 days half pay leave. As against this, in the years 1987 and 1988 he had been on earned leave/absent/commuted leave for 158 days. Referring to

Annexure R-II, the learned counsel pointed out that the petitioner was working in the Government Boys Senior Secondary School, Mangol Puri and his service and leave account were in that school. According to the Principal's letter (Annexure R-2) his service book and leave account were not updated due to over-work but after updating his leave account it was found that "after exhausting the leave due he has been granted half pay medical leave w.e.f. 1.2.1986 to 20.2.1986. He has further been granted 42 days extraordinary leave without pay for the remaining period." It is further stated that these periods have been mentioned in the service book at page 11 in Part-III and that the petitioner "was having no leave due of any kind at the time of transfer." In the rejoinder filed after inspection of the leave account there is no specific repulsion of the contention of the respondents.

4. Rule 31 of Swamy's Compilation of F.R.S.R. Part-III Leave Rules, on which the claim of the petitioner is based reads as under:-

"31. Leave not due

(1) Save in the case of leave preparatory to retirement, leave not due may be granted to a Government servant in a permanent employ or quasi-permanent employ (other than a military officer) limited to a maximum of 360 days during the entire service on medical certificate subject to the following conditions:-

(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry;

(b) leave not due shall be limited to the halfpay leave he is likely to earn thereafter;

(c) leave not due shall be debited against the half-pay leave the Government servant may earn

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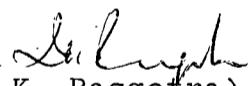
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subsequently."

5. The 'leave not due' can be availed of with proper sanction to the maximum extent of 360 days during the entire service of a Government servant on medical certificate subject further to the condition that leave not due shall be limited to half pay leave only and that leave due is to be sanctioned on authorised medical certificate. The claim of the petitioner does not fall in line with the prescribed conditions. 'Leave not Due' cannot be claimed as a matter of normal routine.

6. As far as the issue of show cause notice is concerned, the petitioner had not brought any provision in the rules which requires issuance of show cause notice for sanctioning extraordinary leave when he has availed of leave in excess of the earned leave and half pay leave.

7. After considering the matter carefully and perusing the records with the assistance of the learned counsel for the respondents and the petitioner himself who is present in person, we have come to the conclusion that the petitioner's case has no merit. The same is accordingly dismissed. No costs.


(I.K. Rasgotra)
Member (A)