

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 218/89  
T.A. No.

198

DATE OF DECISION 9.8.1990.

Shri Maman Singh

Petitioner

Shri B.B.Sawhney,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L.Verma,

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. D.K.Agrawal, Member (Judicial)

The Hon'ble Mr.P.C.Jain, Member (Administrative)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes .
2. To be referred to the Reporter or not? Yes .
3. Whether their Lordships wish to see the fair copy of the Judgement? No .
4. Whether it needs to be circulated to other Benches of the Tribunal? No .

MGIPRRND-12 CAT/86-3-12-86-15,000

( P.C. Jain )  
Member (A)

( D.K.Agrawal )  
Member (J)

9.8.90

Central Administrative Tribunal  
Principal Bench: New Delhi  
.....

Regn. No. OA-218/89

Date of Decisions August 9, 1990

Shri Maman Singh

... Applicant.

vs.  
v

Union of India & Ors.

... Respondents.

For the applicant:

... Shri B.B.Sawney,  
Advocate.

For the respondents

... Shri M.L.Verma,  
Advocate.

CORAM: Hon'ble Mr. Shri D.K.Agrawal, Member(Judl.)  
Hon'ble Shri P.C.Jain, Member(Administrative).

JUDGEMENT  
(Delivered by Hon'ble Mr.D.K.Agrawal)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant aggrieved with the order of the competent authority dated 3.8.1988 contained in Annexure I to the application rejecting his application for grant of special disability leave for the period from 23.7.1987 to 18.8.1987.

2. Briefly, the facts are that the applicant is employed as semi-skilled Operator in Delhi Milk Scheme. He was <sup>to</sup> assaulted/while sitting in the room of the Staff Welfare Officer by one Madan Lal Security Officer. However, the matter was compromised as a result of intervention of senior persons in the organisation. Thus, the incident did not leave any illwill between the parties. However, the applicant is said to have been advised by his private medical attendant to take four weeks rest. Therefore, he applied for Special disability leave for the period from 23.6.87 to 18.8.87 which was refused by order dated 3.8.1988 assailed as impugned order.

3. The opposite party in their counter affidavit inter alia pleaded that special disability leave was not admissible under the rules to the applicant.

4. We have heard the learned counsel for the parties and perused the records. The provisions of Special disability

*D.K.Agrawal*

1

leave is contained in Rule 44 and 45 of the CCS(Leave) Rules. Rule 44 deals with special disability leave in the event of injury ~~is~~ inflicted intentionally on a person while performing his official duty or in consequence of the performance of official duties. Rule 45 deals with special disability leave in the event of injury caused by accident. We are concerned with the provision of Rule 44 in the instant case. The applicant's contention is that he had gone to the room of Staff Welfare Officer to discuss about the matter relating to washing allowance and, therefore, it was a matter concerning his official duties. We are of the opinion that it is not very relevant to the issue. The important feature of the case is as to how and when special disability leave accrues to the person as the very term 'disability' indicates the leave become due to a person only if a disability occurs. In the instant case, the medical certificate issued by Suni Memorial Nursing Home Annexure-III to the application does not indicate the injury and in any case it does not indicate that the applicant suffered any disability on account of the assault made on him. We are of the opinion that unless the applicant suffers a disability on account of the injury inflicted on him, the provisions of Rule 44 will not be attracted. The fact that the applicant's medical attendant advised him four weeks rest does not make him entitled to special disability leave. He may be entitled to leave of the kind due to him but in order to be entitled to special disability leave, one has to bring cogent matter on record to indicate that he suffered a disability while performing his duty on account of infliction of injury <sup>a</sup> by ~~person~~ with the intention to inflict the same. Unless it is so proved or shown on record, the Government servant will not be entitled to special disability leave. We are not very much influenced by the argument on either side on the issue as to whether or not the applicant was

*De Gaudia*

8

performing his official duty at the time he was assaulted. It is highly doubtful if the person in the lunch period moves about in the office meeting his colleagues or meeting an officer in regard to his TA Bills or any other dues or goes to the canteen etc. etc. and an assault is made on him, he will be still deemed to be performing his official duty. The purpose of Rule 44 of the CCS(Leave) Rules is altogether different. It seeks to afford protection to a Government servant when he is actually performing his official duty or an act which is a necessary consequence of official duty and not an act incidental to his official duty. Thus, taking into account all the circumstances, in the instant case, we are of the opinion that the special disability leave was rightly refused to the applicant. Further, before we part, we would like to observe that it is a fit case where the applicant should be granted leave of any kind due to him. We are, however, of the opinion that even if the applicant applied for medical leave, the same be granted to him notwithstanding the fact that he has not obtained a certificate from his authorised medical attendant.

5. In the result, the application is disposed of with the above observation with no order as to costs.

( C. and 9/8/90.  
( P.C. Jain )  
Member (A)

D.K. Agrawal  
( D.K. Agrawal ) 9.8.90.  
Member (J)