

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(S)

O.A. No. 335
T.A. No.

1986

DATE OF DECISION 25.6.1987

Shri Balasubramaniam

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

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

Ch. Ramakrishna Rao

(CH. RAMAKRISHNA RAO)
Judicial Member

S.P. Mukerji

(S. P. MUKERJI)
Administrative Member

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. OA-335/86

Date: 25.6.87

Shri Balasubramaniam

.... Petitioner.

Versus

Union of India

.... Respondents

For Petitioner

.... In person.

For Respondents

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

CORAM : Hon'ble Shri S.P. Mukerji, Administrative Member
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

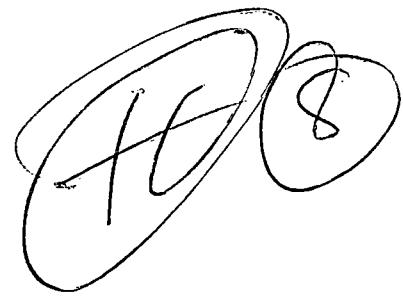
JUDGEMENT

(Delivered by Shri S.P. Mukerji)

Shri Balasubramaniam, a retired Junior Accounts Officer, in the Dandakaranya Project has moved this application dated 9.4.86 under Section 19 of the Administrative Tribunals Act against the impugned order of the Ministry of Home Affairs dated 19.8.85 rejecting his representation for payment of cash equivalent of half pay leave salary on his voluntary retirement with effect from 1.8.1980. Since the applicant did not appear in the court despite service but elected to contest his case through written rejoinder, the case is decided on the basis of the written submissions of the parties and the arguments of the learned Counsel for the respondents.

2. The applicant retired w.e.f. 1.8.80 voluntarily and was sanctioned 418 days of half pay leave as admissible to him on 1.8.80. While he was granted encashment of leave for 117 days earned leave due to him, he could not be granted encashment of half pay

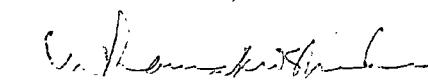
leave as in accordance with the relevant leave rules in Fundamental Rules and the Supplementary Rules. The leave salary on half pay leave will have to be reduced by the amount of pension and pension equivalent of other retirement benefits. The applicant is basing his claim on the assumption that his leave had been refused which is not factually correct. The applicant has also related the impugned order to the adverse remarks which the Financial Advisor has given to him in the year 1978-79. But since the impugned order has been passed by the Government of India, the imputation of mala fide cannot be sustained. In accordance with Rule 40(7)(a), "A Government servant who is granted leave beyond the date of retirement or quitting of service, as the case may be, as provided under rule 39, shall be entitled during such leave to salary as admissible under this rule, reduced by the amount of pension equivalent of other retirement benefits." The applicant was not entitled to grant of earned leave on the date of his retirement as he had not applied sufficiently in advance of his retirement. However on ^{compassionate} ~~compensate~~ ground he was allowed encashment of his earned leave as a special case. So far as the half pay leave is concerned, nothing could be given to him as the pension and pension equivalent of gratuity and relief of pension in his case came to Rs.705.65 whereas his leave salary during half pay leave including Dearness Allowance and Additional Dearness Allowance came to Rs.645.85. The applicant is under the impression that he should get the leave salary under Rule 40(7)(a) as quoted above at the rate of Rs.1,231.60p. which is the average of the leave salary during earned leave which has been allowed to encash in his favour as a special case. The applicant forgets



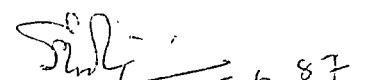
that during half pay leave the leave salary is half of what one is entitled to during earned leave. Thus according to his own calculation as given on page 2 of his rejoinder dated 23.11.86 his leave salary during half pay leave would be about Rs.615/-, whereas his pension and pension equivalent etc. according to him comes to Rs.705.65p. Thus, he will not be entitled to any benefit of leave salary against his half pay leave which extends beyond his date of voluntary retirement. Any assurance and commitment made by an officer of the Government cannot supervene the provisions of statutory rules and instructions and orders issued thereunder. Thus the applicant cannot get any benefit by the letter of 8.12.1981 which had been issued inadvertently.

3. The provision of encashment of earned leave was introduced w.e.f. October 1981 and therefore, the question of relaxing any provision for encashment of half pay leave due to the applicant on 1.8.80 does not arise. The applicant gave notice of voluntary retirement and simultaneously applied for total half pay leave of 510 days w.e.f. 1.5.1980. This was sanctioned but 92 days were to run concurrently with the notice period and the remaining 418 days was to run beyond his date of retirement and thus he cannot claim any leave salary for these 418 days as the same should be less than the amount of pension etc. which he is getting.

4. In the facts and circumstances, we see no merit in and the application/reject the same. There will be no order as to costs.


(CH. RAMAKRISHNA RAO)

JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER

25.6.87