

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2422 of 1991
New Delhi, dated the 6th January, 1997.

(17)

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Central Provident Fund Employees' Union,
9th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110001
through its General Secretary, Shri M.S.Verma
2. Shri Raj Kumar S/o Shri Ram Chander,
Asstt., O/o the Central Provident Fund
Commissioner, 9th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi-110001. APPLICANTS
(None appeared)

VERSUS

1. U.O.I. through its Secretary,
M/o Labour, Shram Shakti Bhawan,
New Delhi-110001.
2. Central Provident Fund Commissioner,
9th Floor, Mayur Bhawan, Connaught Circus,
New Delhi.
(By Advocate: Shri K.C.Sharma) .. RESPONDENTS

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicants seek quashing of Respondents' letter dated 26.7.91 (Ann. A-1) and dated 9.9.91 (Ann. A-2) being repugnant to the spirit of Rule 39 CCS (Leave) Rules, 1972 and direct the Respondents to restore the contents of Respondents' letter dated 1.7.80 (Ann.A-3) and to amend it further in such a way that the permission for encashment of leave to an employee is accorded without insisting to avail any kind of leave.

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2. The Employees Provident Fund Organisation was created under the Employees Provident Fund & Misc. Provisions Act, 1952 as an autonomous body and the conditions of service of the staff of the organisation are governed under Sec. 5D(7) of the said Act, according to which the leave facilities of organisation are to be governed by the the staff of the corresponding facility and the rules in that regard pertaining to the leave available for the corresponding categories of the Central Govt. servants. Under the circumstances the number of ^{days of} leave for the employees of the EPF organisation are governed by the provisions of the CCS (Leave) Rules, 1972.

3. By Respondents' letter dated 1.7.80 the Central Government's approval was conveyed under Section 5D(7) of the said Act to encashment of leave upto one month in two calendar years of the employees of the EPF Organisation subject to 50% of reduction in leave reserves simultaneously.

4. Further thereafter, in exercise of the proviso 5D7(a) of the Act that where the Central Board was of the opinion that it was necessary to make departure from the above orders or rules in respect of any of the matters aforesaid, it was to obtain the approval of the Central Govt., the Board after obtaining the approval of the Central Govt. had modified the provision for leave encashment by impugned orders dated 26.7.1991 and 9.9.1991 such that the leave

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actually encashed will not exceed 14 days in the first year and 16 days in the second year and will be subject to actual availing of leave equivalent to half of the period of leave encashment. The number of days availed will have to be debited under separate heads and the balance remaining unutilised whether in the encashable account and non-encashable account will ^{not} be encashable at the time of retirement and would thus lapse.

5. None appeared for the applicant even on the second call when this case was called out, although this is an old and part-heard case in which applicant's counsel Shri D.R.Gupta had made some preliminary submissions when arguments opened on 5.12.96. We notice that none had appeared for the applicant even on the last date also i.e. 9.12.1996. Shri K.C. Sharma, counsel for the respondents appeared and was heard. We are therefore proceeding to judgment.

6. Shri Sharma has invited our attention to the fact that the impugned orders are in the nature of a policy decision which Courts/Tribunals are barred from interfering with, unless it is established to be malafide or is bereft of any discernible principle. He has emphasised [^]that there is no allegation that this policy decision is malafide, and ^{the fact} that it is not bereft of any discernible principle is manifest in the contents of the impugned

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orders themselves. Under the circumstances and in the light of the Hon'ble Supreme Court's judgment in Director, Lift Irrigation Corporation Ltd. Vs. P.K.Mohanty JT 1991 (1) SC 430 he has contended that it is not open to the Tribunal to intervene in the same.

7. Secondly, he has emphasised that the relief sought for by the applicants, has important financial implications, and the Hon'ble Supreme Court in U.O.I. Vs. T.R. Bombate JT 1991 (2) SC 572 has laid down that Courts/Tribunals cannot compel Govt. to change their policy which involves financial repercussions.

8. Thirdly Shri Sharma has emphasised that the Respondents have acted strictly in accordance with the Act and the rules framed thereunder, and in the light of Hon'ble Supreme Court's ruling in State of Jammu & Kashmir Vs. A.K.Zaki JT 1991 (1) SC 59 it is not open to the Tribunal to interfere in the matter.

9. These arguments advanced by Shri Sharma are, in our opinion, unassailable, and are sufficient to warrant dismissal of the O.A. We do so accordingly. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)
/GK/

S.R. Adige
(S.R. Adige)
Member (A)