

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.65/91

DATE OF DECISION: 22.05.1992.

SHRI P.S. JAIN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI T.C. AGGARWAL, COUNSEL.

FOR THE RESPONDENTS

SHRI N.S. MEHTA, SENIOR  
STANDING COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

The applicant Shri P.S. Jain, in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 has assailed the following orders of the respondents:-

- i) No.PA.II/6610/76/85 dated the 26th November, 1990.
- ii) Order No. Tech/Chy/586/24/85 dated 23 May, 1989.
- iii) Read with respondents Order No.Q/PA.II/6610/76/85 dated 8 May, 1989.

He has further sought for a direction to the respondents to modify Central Civil Services Leave Rules, 1972 to grant benefit of half pay leave at the time of superannuation in the form of encashment.

The necessary facts of the case are that the applicant applied for Commuted Leave in two spells viz. 14.4.1988 to 12.5.1988 (29 days) and 3.9.1988 to 19.10.1988 (17 days) on medical grounds when the applicant was posted abroad as Second Secretary, Embassy of India, Tehran. The first spell of leave was

11

sanctioned by the competent authority vide 26 June, 1988. The said order was, however, revoked vide order No.Teh/586/85 dated May, 1989. The second spell of Commuted Leave applied for, was sanctioned by the Respondent vide Order dated 23rd May 1989 read with order dated 8.5.1989 as Earned Leave. The applicant contends that in both cases he had submitted Medical Certificate by his Authorised Medical Attendant and therefore the action of the respondents in denying him Commuted Leave was in contravention of the Rule 7(2) of the Central Civil Services Leave Rules 1972 which reads as under :-

"7. Right to Leave"

- (i) Leave cannot be claimed as of right.
- (ii) When the exigency of public service so requires leave of any kind may be allowed or revoked by the Authority competent to grant it, but it shall not be open to that authority to **alter the kind of leave due and applied for** except at the written request of the Government servant." (Emphasis supplied)

2. The Learned Counsel for the applicant Shri T.C. Aggarwal contends that the revocation of the sanction of Commuted Leave applied for by the applicant was in contravention of the Rule 7(2) of CCS Leave Rules and therefore illegal. He further stressed that the applicant was not given any 'Show-Cause Notice' before revocation of the sanction of <sup>leave</sup> Commuted/and urged that the respondents' order dated 23rd May, 1989 be directed to be quashed. Further this Order for the grant of Earned Leave from 3.10.1988 to 19.10.1988 <sup>be</sup> / modified so as to ~~sanction~~ <sup>be</sup> it as Commuted.

2

Certificate for the period from 14.4.1988 to 12.5.1988 from Shyam Lal Nursing Home, Darya Ganj, New Delhi. This is a private Hospital and not recognised as AMA under the Central Services (Medical Attendance) (CSMA) Rules, 1944. Accordingly, the earlier sanction was revoked in December 1988 and in lieu thereof Earned Leave sanctioned to the applicant for the said period. There is, therefore, no illegality involved in the revocation of the said order as the leave applied for by the applicant was not due. Thereafter the applicant furnished another Certificate in January, 1989 from a Doctor on the Medical panel of Embassy of India, Tehran, recommending Medical Leave for the period in question. This was not acceptable as this Doctor was not a recognised AMA under the CSMA Rules in India. He was a recognised AMA for the Medical scheme applicable to our Officers in Embassy of India, Tehran for medical treatment to be taken in Tehran.

3. For the second spell of leave from 3.10.1988 to 19.10.1988 the applicant applied for Commuted Leave initially with a Medical Certificate from one Dr S.S. Soni, a private practitioner from Adarsh Nagar, New Delhi. For the reasons as stated above, this Certificate was too not acceptable in the circumstances of the case.

Thereafter, the applicant submitted a Certificate from AMA, Embassy of India, Tehran which too was not a requisite Certificate from the AMA under the Rules. Accordingly, he was sanctioned the Earned Leave.

(14)

4. We have heard the learned counsel for both parties and perused the record carefully. We are of the opinion that the leave applications for the said spells, applying for Commuted Leave were not accompanied with a requisite Medical Certificate from AMA and as such the Commuted Leave was not due to the applicant under Rule 30 of the CCS Leave Rules, 1972. The furnishing of the Medical Certificate from the AMA of the Indian Embassy in Tehran is not relevant, as the Doctors on the panel of the Embassy are AMA for the Medical Scheme, applicable to Foreign Service Officers posted in the Indian Embassies abroad. The Commuted Leave applied for and availed of in India has to be accompanied with a Certificate from AMA under Central Services (Medical Attendants) Rules, 1944. This essential requirement the applicant had failed to comply with.

5. In our opinion, the Tribunal cannot give any direction to the respondents to modify Rule 39 (5) of the Rules, as prayed for by the applicant. The said rule applies to an entirely different category of Government servants.

6. In the above facts and circumstances of the case, we do not find any merit in the Application and the same is dismissed.

There will be no order as to costs.


*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)

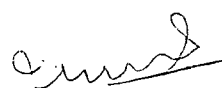
*P.K. Kartha*  
22/5/92  
(P.K. KARTHA)  
VICE-CHAIRMAN

May 22, 1992.

is not such as was not within the knowledge of the applicant, as it is contained in the D.O. letter dated 20.3.1991, addressed to the applicant. The scope of the review petition is very restricted in terms of Order XLVII of the Code of Civil Procedure. The review can be sought only if there is an error apparent on the face of record or some new evidence has come to the notice of the applicant, which was not available or in the knowledge of the applicant, after exercise of due diligence.

3. In the circumstances, as stated above, we are not persuaded to accept that the new material was not within the knowledge of the applicant. Accordingly, the R.A. is rejected by circulation, in terms of Rule 17 (iii) of the Central Administrative Tribunal (Procedure) Rules, 1987.

  
(I.K. Rasgotra)  
Member(A)

  
(P.K. Kartha)  
Vice-Chairman

skk