

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2776/2004

New Delhi this the 7th day of March, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Sunil Kumar Sinha,
S/o late Shri M.P. Sinha,
R/o WZ-745-E, Dada Dev Road,
Palam Village, New Delhi.

-Applicant

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi.
2. Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block, New Delhi.

Respondents

(By Advocate Shri Nasir Ahmed)

ORDER (ORAL)

Heard the learned counsel.

2. This OA is directed against orders dated 5.1.2004 as well as 11.5.2004 whereby applicant has been denied encashment of 120 days earned leave (EL, for short).
3. Applicant undisputedly remained out of service from 29.4.1983 to 16.11.1988 and the period has been treated as dies non having retired voluntarily w.e.f. 30.9.1983. Applicant has been paid only 120 days EL on the ground that as per Rule 27 (3) of CCS (Leave) Rules, 1972 1/10th of the dies non period (subject to a maximum of 15 days) is to be debited for the credit of 15 days for the next half year.

4. Learned counsel of applicant Shri B.B. Raval states that the interpretation of Rule 27 (3) of the Rules has been wrongly done by respondents and in case a period is treated as dies non the next half year shall be reduced by $1/10^{\text{th}}$ of the period of maximum 15 days and the EL would have to be debited is one time exercise and applies only to the date when period has been treated as dies non and other half thereof would not exceed to each year of the service which has been treated as dies non.

5. On the other hand, respondents' counsel vehemently opposed the contentions and stated that while calculating EL it was found that the period of dies non was not reduced at an earlier stage. Accordingly, as per decision No.2 under Rule 27 of the Rules the action is in accordance with rules.

6. On careful consideration of the rival contentions, it is no more res integra that as on 30.6.1999 applicant had EL to the extent of 304 days to his credit and at the time of retirement it is more than the aforesaid period. The period from 1983 to 1988 which has been treated as dies non respondents, while deciding the aforesaid as per Rule 27, are authorized to deduct 15 days EL maximum for the next half year reducing it by $1/10^{\text{th}}$ of the period of leave and that applies only to the next half year when a decision of treating the absence period as dies non has been taken. Instruction No.2 dated 22.3.1980 pertains to Postal Accounts Wing and the example cited pertained to an official who was on extraordinary leave continuously from 23.9.78 and died on 19.1.79 in that event what has been decided is that since the leave is to be credited which is nil $1/10^{\text{th}}$ can only be made following the half year. The aforesaid interpretation and tenor of the rule leaves no doubt that every year the deduction of 15 days is not permissible and it is only after the period of dies non is over next following year to the maximum of 15 days

1/10th of the leave is to be debited. In this view of the matter the decision taken by the respondents is contrary to the rules.

7. Accordingly, I hold that applicant who has more than 300 days to his credit on deducting 15 days under Rule 27 is entitled for payment of balance amount of encashment of EL of 180 days. In the above view of the matter the OA is allowed. Impugned orders are set aside. Respondents are directed as per the last pay slip of applicant to pay leave encashment to him of Rs.76,368 along with 10% simple interest, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'