

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

original Application no. 680 of 2004.

this the 10th day of November, 2004.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.
HON'BLE MRS. ROLI SRIVASTAVA, MEMBER(A)

K.N. Singh, S/o late R.L. Singh, Junior Intelligence Officer Gr.I, Subsidiary Intelligence Bureau, Varanasi, R/o Village Babura, P.O. Bahariabad, District Ghazipur.

Applicant.

By Advocate : Sri A. Shanker.

Versus.

1. Union of India through Secretary, Ministry of Home Affairs, Government of India.
2. Director, Intelligence Bureau (MHA), Govt. of India, ASC Building New Delhi.
3. Joint Director, Subsidiary Intelligence Bureau (Home Ministry), Union of India, 6 Serpentine Road, Patna.
4. Central Intelligence Officer, Subsidiary Intelligence Bureau (Home Ministry) U.O.I. 6 Serpentine Road, Patna.
5. Deputy Director, Subsidiary Intelligence Bureau (Home Ministry), U.O.I. 6, Serpentine Road, Patna.
6. Asstt. Director (Technical), Subsidiary Intelligence Bureau (Home Ministry) U.O.I. 6, Serpentine Road, Patna.
7. Deputy Director, Subsidiary Intelligence Bureau (Home Ministry), U.O.I., Mehmoodganj, Varanasi.

By Advocate : Sri Saumitra Singh

Respondents.

(Signature)

PER JUSTICE S.R. SINGH, V.C.

While the applicant was posted as Junior Intelligence Officer under Subsidiary Intelligence Bureau (in short S.I.B.), Patna, he had applied for 61 days commuted leave on medical grounds from 23.4.2001 to 22.6.2001 and again for 67 days from 8.2.2002 to 15.4.2002. The commuted leave applied for was, however, granted as Earned Leave (in short E.L.) vide office order no. 563 dated 12.4.2001 and order dated 31.5.2002. It cannot be gainsaid that grant of E.L. instead of commuted leave on medical grounds, which may be due to a Government servant may cause monetary loss to him. The applicant moved a representation for conversion of E.L. into commuted leave on medical grounds for the period as mentioned above. By the impugned memo dated 7.6.2004, the request of the applicant has been turned-down and hence this O.A. under Section 19 of the A.T. Act, 1985/for issuance of a direction to the respondents to convert E.L. into commuted leave on medical grounds for the periods aforesaid and for modifying the service book accordingly. The relevant portion of the order reads as under :

“श्री के०एन०सिंह, कर्नीय अधिसचना अधिकारी/वेतार के क्रमांक: 61 और 67 दिनों के अर्जित अवकाश को नियन्त्रानुसार स्थान अधिकारी द्वारा स्वीकृत किया गया था पुनः एस०आई०बी० कार्यालय बाराणसी के उपरोक्त ज्ञापन के आलोक में उक्त स्वीकृत अवकाशों को परिवर्तित अवकाश में रूपान्तरित किये जाने के सम्बन्ध में हमारी तरफ से जांच की गयी किन्तु दोनों अर्जित अवकाश को परिवर्तित अवकाश में रूपान्तरित करना सम्भव नहीं पाया गया । उक्त दोनों अवसरों पर उनके प्रथक-प्रथक अर्जित अवकाशों के कार्यालय आदेशी को श्री के०एन०सिंह, क०आ०आ० । वेतार को भी सम्बोधित करते हुए प्रेषित किया जा चुका है ।”

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2. A perusal of the impugned memo herein would make it abundantly clear that it contains no reason for it was not found possible to convert the E.L. into the commuted leave on medical grounds. Though, the validity of the order is to be tested on the touch stone of the reasons given therein and not on the reasons supplied in the form of the affidavit. But, we have perused the Counter affidavit in order to find-out any valid reason for granting E.L. instead of commuted leave on medical grounds as prayed for and for denying the conversion of the E.L. granted into the commuted leave. In para 22 of the Counter affidavit filed by Sri P. Dwivedi, Asstt. Director/Tech. SIB (MHA), Govt. of India, Patna, it has been stated that the applicant was asked to submit a medical certificate vide SIB Patna memo dated 3.5.2001, but he failed to submit any medical certificate and " all his prescriptions were issued by a Private Medical Practitioner making him (Sri Singh, JIO-I/WT a CGHS beneficiary) ineligible for the grant of commuted leave. On the second occasion too, he should have obtained medical advice and treatment from a Govt. Doctor to be eligible for the grant of commuted leave as per CCS (Leave) Rules."

3. Thus, the reasons given in the Counter affidavit is that the prescriptions relied-upon by the applicant in support of his claim for grant of commuted leave on medical grounds, were issued by the Private Medical practitioner and the applicant had failed to obtain the medical advice and treatment from a Government Doctor to be eligible for the grant of commuted leave on medical grounds as per CCS (Leave) Rules.

4. Rule 10 of the CCS (Leave) Rules, 1972 provides that on the request of a Government servant, the authority which granted him leave may commute it retrospectively.

-ively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the Government servant cannot claim such commutation as a matter of right. Thus, the discretion is vested with the competent authority to convert the E.L. into the commuted leave on medical grounds and the Government servant cannot claim such commutation as a matter of right. However, the legal position is well settled that ^{no} the discretion is absolute and authority vested with the discretionary power is supposed to exercise the power reasonably and not in an arbitrary manner. The rule afore-stated, however, provided that an application for leave on medical certificate made by ~~(i)~~ a Gazetted Government servant, shall be accompanied by a Medical certificate in Form no.3 given by ^{and by} an Authorised Medical Attendant, ~~(ii)~~ a non-gazetted Government servant, shall be accompanied by Medical certificate in Form no. 4 by an Authorised Medical Attendant or a Registered Medical Practitioner defining as clearly as possible the nature and probable duration of illness. The applicant being non-gazetted Government servant, medical certificate issued by a Registered Medical Practitioner could be made basis for grant of commuted leave on medical grounds, if due to the applicant. It is not stated in the Counter affidavit that the medical certificate relied upon by the applicant were not issued by the Registered Medical Practitioner. ^{✓ Paller it is stated that in AM} as the applicant was not treated by a Government Doctor, hence ^{he} was not eligible for grant of commuted leave on medical grounds as per CCS (Leave) Rules. In our opinion, the applicant's request for commutation of Earned Leave into commuted leave on medical grounds has not been considered on proper self directions to the relevant statutory rules and therefore, the matter needs to be examined afresh in accordance with law and proper self directions to the statutory rules referred to hereinabove.

(P.S.J)

5. Accordingly, O.A. succeeds and is allowed. The competent authority is directed to pass fresh order with respect to the claim of the applicant for grant of conversion of E.L. into commuted leave on medical grounds in accordance with the statutory rules and the observations made hereinabove within a period of three months from the date of receipt of copy of this order. It goes without saying that the decision shall be a reasoned one. NO costs.

lsmw
MEMBER(A)

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VICE CHAIRMAN

GIRISH/-