

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the ³⁰ 29 day of July 1996.

Original Application No. 1641 of 1994.

Hon'ble Mr. D.S. Baweja, AM

Bali Ram Chaubey (Retired Senior Account Officer) 2/115 M.I.G. Sector-III, Avash Vikas Colony Jhunsi, Allahabad.

..... Applicant.

C/A Sri B.N. Chaturvedi

Versus

1. Union of India through Secretary Ministry of Finance, Defence, New Delhi.
2. Controller of Defence Account, Lucknow.
3. Controller General of Defence Account, West Block-V, R.K. Puram, New Delhi.

..... Respondents.

C/R Km. S. Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

(a) Issue an order to quash the impugned order dated 27.6.94 alongwith 25.2.94 (Annexure No. 11&7).

(b) Issue an order or direction commanding the respondents to regularise the 81 days EOL Leave of the applicant as commuted leave as prayed in the application and the sufficient leave was available to the credit of the applicant.

(i)
Contd...2....

(c) Issue an order or direction commanding the respondents to pay the total payable amount of the 81 days commuted leave + 180 days T.A./D.A. alongwith interest of the Bank rate.

The above reliefs are plural in nature as they do not flow out of common cause of action. During the hearing the learned counsel for the applicant made a statement at Bar that he does not press for the relief (a) above. Therefore the reliefs (b) and (c) are only considered for this application. *pertaining to non sanction of the commuted leave*

2. The applicant's case with regard to reliefs (b) and (c) is as follows. The applicant while working as Senior Accounts Officer, ^{L.A.O. Chheoki} C.O.D., Allahabad, applied for commuted leave on the medical certificate with recommendation of the Medical Officer of C.G.H.S.. However instead of sanctioning commuted leave, respondents have granted extraordinary leave for the period of 81 days of different spells from Jan'93 to Jan'94 and thereby causing financial loss of Rs. 16000/-. This sanction was conveyed to the applicant vide letter dated 25.2.94 just two day before retirement (Annexure-VII). The applicant made an appeal against the same dated 26.2.94 to respondent No. 3 (Annexure-IX). However the appeal was rejected by an order dated 27.6.94 (Annexure-XI) which is impugned. The main argument of the applicant is that as per CCS (Leave) Rules 1972, the extraordinary leave is admissible to the Government Servant when no other leave is available or the other leave is available ^{but} by the Government servant applied in writing for the grant of the extraordinary leave. The applicant never applied for the extraordinary leave and sufficient half pay leave ^{as} due to the

applicant. This action of the respondents is contrary to the rules and arbitrary. Neither the reasons for rejection of the appeal have been conveyed nor any opportunity for hearing was afforded. The applicant also contends that gazetted government servant can be granted leave on the medical certificate from the authorised medical attendant. He sent leave applications according to the provisions contained in para 254 OM P & I. If the competent authority was not satisfied about the genuineness, it was open to the authority to refer the case to Chief Medical Officer.

3. The respondents in the written reply have refuted the contentions of the applicant. It is submitted that the applicant has been frequently absenting himself on medical grounds without any intimation or timely submission of the medical certificate as required under rules. He has been submitting sick report and medical certificate only on resumption of duty violating the procedure laid down in para 254 OM Pt 1. He even did not pay any attention to the direction of higher authorities. The applicant has concealed the facts and has submitted certificates only on resumption of duty after sickness. In view of these facts in order to regularise his absence, the period has been covered by sanctioning as Extra Ordinary Leave instead of commuted leave as no other leave was admissible under rules. Further it is also denied that the representation of the applicant has been rejected arbitrarily. The detailed reasons have been conveyed in the letter dated 27.6.94. The question of personal hearing did not arise as no action was being taken under disciplinary proceedings as per CCS (CCA)

Rules 1968. In view of these facts, the ground taken by the applicant are misconceived and the application deserves to be rejected.

4. Heard the learned counsel for the parties. The applicant has filed the rejoinder to the counter affidavit. We have given careful thought to the material placed on the record and the pleadings made during the hearing.

5. From the rival contentions, the matter involves a short question to be answered whether extraordinary leave could be sanctioned when the applicant applied for sanction of commuted leave on medical certificate. The details of the period of 81 days under reference are given in the letter dated 25.2.94 (Annexure-7). On perusal it is noted that it covers 8 spells of leave of varying periods starting from 4.1.93 till 22.1.94. This confirms the contention of the respondents to the extent that the applicant had been frequently absenting himself. However in addition it is averred by the respondents that the applicant has been absenting himself on the medical certificate violating the laid down rules and inspite of caustioning by the higher authority, he did not desist from the same. The applicant however has denied this that the rules as laid down were followed but no material on record to support this contention. The respondents have also not brought any material on record to substantiate their submission regarding violating of the rules and warning having been issued to the applicant. If the contention of the respondents is accepted, then the applicant was on unauthorised absence. In that case, action should have been

taken as per the provision of fundamental Rule 17 and as also indicated by the respondents themselves in para 21 of the counter. It is not clear whey the respondents did not taken action as per FR-17 and instead resorted to treating the period as an extra ordinary leave. As per Rule 32 of Central Services Leave Rules 1972, extraordinary leave can be sanctioned when:-

- (a) No other leave is admissible.
- (b) When other leave is admissible by the Government servant applies in writing for grant of extraordinary leave.

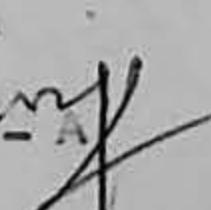
None of the circumstance existed in the present case. This Rule does not provide that when the sanction of the commuted lave on medical certificate is refused by the competent authority on the ground that rule for leave on medical certificate have not been followed by the employee and thus being on unauthorised leave, extraordinary leave can be sanctioned for the period. The contention of the respondents that since no other leave is admissible under such a situation extraordinary leave has been sanctioned is not tenable as per the rule 32.

6. As brought out above, apart from the sanction of the extraordinary leave in violation of the rules, the facts and circumstances also lead to infer that the action of the respondents was arbitrary. The leave period covers 8 spells from Jan'93 to Jan'94. The decision of sanction of leave for all the periods has been taken only in June 94, just two days before the retirement. It is not understood as to why the matter was kept pending. If the rules were not followed, then the action should have been taken for each period instead keeping the matter pending

till the end. Further in case the applicant was frequently reporting sick, the competent authority could have exercised discretion to refer the matter to Chief Medical Officer to seek second opinion to get the officer examined as laid down in Rule 32 Leave Rules. It could be taken that the genuineness of the sickness was not in doubt but the only ^{such that} objection, the procedure was not followed in respect of which there are opposing submissions, as indicated earlier

7. It is agreed that the leave cannot be claimed as a matter of right. The authority competent to sanction leave may refuse or ~~revok~~ leave of any discretion ^{if} when the exigencies of public service so demands. The competent authority however has to gaurd against the arbitrary use of this discretionary power. Instead of taking direct action against the applicant as per provisions of fundamental Rule 17 treating the period as unauthorised absence, ~~but~~ circumventing this course of action the applicant has been inflicted financial loss by sanctioning extraordinary leave instead of commuted leave which was due to the applicant and that so in the last year of the retirement of the applicant.

8. In consideration of the above facts, ~~we~~ allow the application with the direction that the entire period of 81 days will be treated as commuted leave as due and the applicant will be paid pay and allowances for the period as per the rules. The compliance will be ~~done~~ within five months from the date of the judgement. No order as to costs.


Member - A