

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 19th day of December 2002.

Original Application no. 867 of 1999.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J).

Anand Mohan Srivastava, A/a 59 Years,
S/o Late Shri R.M. Srivastava,
39 George Town,
ALLAHABAD.

... Applicant

By Adv : Sri S. Agarwal, Sri S.K. Mishra &
Shri O.P. Agarwal

Versus

1. Union of India through the Secretary,
Ministry of Defence,
NEW DELHI.
2. The Controller General of Defence Accounts,
West Block-V, R.K. Puram,
NEW DELHI.
3. The Controller, Defence Accounts (Air Force),
Rajkot Road,
DEHRADUN.

.... Respondents

By Adv : Sri D.K. Dwivedi

ORDER

Hon'ble Mr. A.K. Bhatnagar, Member (J).

In this, O.A., filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 28.10.1997 sanctioning Earned Leave (in short EL) for 158 days from 10.2.1997 to 18.7.1997 (Ann A1). The applicant has prayed for quashing the order dated 28.10.1997 to the extent it treats the leave sanctioned to the applicant as EL. He

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has also challenged the orders dated 3.5.1999 (Ann A2) rejecting the request of the applicant and also letter dated 2.5.1999 (Ann A3). The applicant has prayed for quashing these orders too and has sought for direction to the respondents to treat the leave period between 11.2.1997 to 18.7.1997 as commuted leave and give all consequential benefits.

2. The facts, in brief, are that the applicant joined the Indian Defence Accounts Service (in short IDAS) in 1964. In due course he was promoted to the post of Controller Defence Accounts (in short CDA) in 1989. He was posted as CDA, Central Command in 1996. The applicant was posted as CDA, PAO (OR) AMC and 11 GRRC, Lucknow. In December 1996 he was transferred as CDA (Air Force) Dehradun. The applicant was relieved by order of respondent no. 2 directly and the applicant deposited his CGHS card alongwith other items in the office. As per applicant, before the applicant could join at Dehradun, he fell ill and underwent treatment by a registered medical practitioner at Lucknow and Rishikesh. A medical certificate was issued for the period from 11.2.1997 to 18.7.1997 (Ann A4, A5 & A6). Initially respondent no. 2 i.e. Controller General Defence Account (in short CGDA) refused to accept the medical certificate submitted by the applicant and treated the applicant ^{on} as unauthorised absence from duty. The applicant represented on 7.10.1997. The respondent no. 2, thereafter, passed an order dated 28.10.1997 treating the said period of absence as EL. Another letter was sent from the office of respondent no.3 on 3.12.1997 informing respondent no. 2 that the case of one Smt. Bulbul Ghosh was the same and she was sanctioned commuted leave. Number of letters were exchanged between respondents no. 2 and 3 and it was requested to send photocopy of medical certificates submitted by the applicant to Chief Medical Officer (in short CMD) Dehradun for issuing reasonability certificate.

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The CMO Dehradun vide his letter dated 22.1.1998 verified the treatment period of duration of sickness after going through the medical certificates submitted by the applicant. The certificate dated 22.1.1998 issued by CMO, Dehradun was forwarded to respondent no. 2 on 24.1.1998. Respondent no. 2 required the office of respondent no. 3 to send the reasonability certificate issued by the CMO in original which was sent on 29.1.1998. The applicant retired from service on 31.1.1998 Respondent no. 2 ultimately by order dated 3.5.1999 rejected the proposal for treating the period from 11.2.1997 as commuted leave. The decision of the respondent no.2 was communicated to the applicant by letter dated 12.5.1999. Aggrieved by this the applicant has filed this O.A. which has been contested by the respondents.

3. Shri O.P. Agarwal with Shri Sudhir Agarwal, learned counsel for the applicant submitted that as per rule the nature of leave cannot be changed. Therefore, the action of the respondent no. 2 passing the order dated 28.10.1997 is illegal.

4. The second submission of the applicant's counsel is that the applicant had to consult one Dr. Janardan Shukla at Lucknow and Dr. Kohli at Rishikesh under extenuating circumstances as the applicant fell sick and he could not be treated by Authorised Medical Attendant because the applicant had already surrendered his CGHS Card. Besides, the treatment at Lucknow and Rishikesh has been taken from the doctors who are experts of diabetes.

5. The learned counsel for the applicant submitted that in similar circumstances one Smt. Bulbul Ghosh was4/-

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committed leave though she had also submitted^K sanctioned/medical certificate issued by a registered medical practitioner. However, when the respondents pointed out that the certificate submitted by Smt. Bulbul Ghosh was duly counter signed by CMO, the respondent no. 3 sent the Photo Copy of the medical certificate to the Chief Medical Officer of Dehradun for issuing reasonability certificate regarding duration of treatment. The C.M.O. Dehradun vide his letter dated 22.1.1998 **verified** the treatment and the period of duration. The respondents even then did not consider the request of applicant and incorrectly treated the period from 11.2.1997 to 18.7.1997 as earned leave. The applicant had more than 333 days commuted leave in his ^{leave} account. The respondents could have granted the commuted leave to the commuted leave to the applicant, which they choose not to do and have thus inflicted financial **injury** on the applicant as the period of 158 days was not available to the applicant for encashment of leave at the time of superannuation .

6. Resisting the claim of the applicant Shri D.K. Dwivedi, the learned counsel submitted that the action of the respondents is legal and according to rules. The learned counsel for the respondents submitted that the applicant was transferred from Lucknow to Allahabad by order dated 24.3.1995. The applicant represented to Raksha Mantri on 29.3.1995 and requested to continue at Lucknow for some more time. His request was considered and he was posted as CDA I/C AMC and GRRC Lucknow till further orders by order dated 9.5.1995 of respondent no. 2. The applicant was transferred as CDA Air force by order dated 23.12.1996 against which he preferred representation dated 30.12.1996 to Raksha Mantri. The applicant was informed by respondent no. 2 through his letter dated

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10.1.1997 that he would be relieved on 15.1.1997 to join as CDA Air Force Dehradun after being relieved on 15.1.1997. The applicant neither reported for the duty at Dehradun nor did he ~~send~~ ^{✓ for A} any application for leave. On 7.2.1997 he sent a note and asked [✓] 15 days EL to be sanctioned in conjunction with the journey time. 15 days EL from the period from 27.1.1997 to 10.2.1997 was sanctioned. The applicant did not report at Dehradun on 11.2.1997 and after more than one month he sent another undated note stating that he was not well and required some leave which may be sanctioned. The applicant alongwith undated note enclosed medical certificate dated 11.3.1997 from Dr. Janardan Shukla, Shamim Clinic [✓] Lucknow [✓] who was not ^{✓ an} authorised medical attendant. The medical certificate was returned to the applicant on 28.4.1997 intimating [✓] that the period from 25.3.1997 has been treated as unauthorised absence from duty. Meanwhile, the applicant sent another application dated 12.5.1999 enclosing a copy of notification dated 24.4.1997 with medical certificate dated 23.4.1997 requesting for more leave. While no leave was sanctioned the applicant continued to remain unauthorisely absent from duty without submission of fresh leave application on medical certificate from A.M.A. Ultimately the applicant joined at Dehradun on 19.7.1997. He submitted another application on 22.7.1997 with fresh medical certificate for fresh spells. The applicant submitted the fitness certificate dated 18.7.1997 from Dr. Janardan Shukla, Lucknow. It is clear from the above facts that the applicant has taken medical treatment at two different places viz Lucknow and Rishikesh. Since, the doctors are not AMAS but private doctors, the respondents very correctly did not grant the leave on medical certificate, as per rule 19(1)(i) of CCS(Leave) rules 1975. The applicant did not even

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consult Principal Medical Officers of Lucknow as well as Rishikesh. He also did not take the treatment at Vivekanand Poly Clinic, Lucknow, the only listed recognised hospital Lucknow for treatment of Central Government Servants and their families. However the respondents instead of treating the period as unauthorised absence resulting in break in service took a lenient view and sanctioned 158 days as EL vide order dated 28.10.1997. The learned counsel for the respondents also submitted that the applicant never submitted his CGHS Card. However, being a senior Officer he knew fully well that in absence of CGHS Card he could go to a Govt. Hospital which he conveniently avoided. The applicant is thus deliberately concealing the facts to gain sympathy of the Tribunal.

7. The learned counsel for the respondents also submitted that the OA is barred by period of limitation as prescribed under section 21 of the A.T. Act, 1985, because the final decision was given by respondent no. 2 on 28.10.1997 and the O.A. has been filed on 30.7.1999. The OA deserves to be dismissed not only on the ground of lacking merits but also on the ground of limitation.

8. We have heard counsel for the parties, carefully considered their submissions and perused records as well as the pleadings. After perusal of records we find that the applicant has challenged the action of the respondents mainly on three grounds. Firstly, that the nature of leave could not be changed by the respondents, secondly, the case of the applicant was dealt with differently than that of Smt. Bulbul Ghosh another officer of IDAS and thirdly on the ground that

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respondents should have considered the case of the applicant after C.M.O. Dehradun gave his opinion about the reasonability of duration for which the applicant underwent treatment at Lucknow, and Rishikesh. The respondents have contested the case mainly on two grounds viz, the O.A. is timebarred and secondly, the case of the applicant is not covered by leave rules. Before we discuss the other aspects of the case we would like to deal with question of limitation in this case. The respondent's counsel has pleaded that the final decision was taken and the same was communicated by order dated 28.10.1997. Therefore, the cause of action arose on 28.10.1997 and the OA has been filed on 30.7.1999. We do not agree with this. From perusal of records there is no doubt that the issue was alive between the applicant and the respondents on same or the other ground taken by each and the matter was finally closed by issuance of letter dated 12.5.1999. In our opinion the cause of action arose on 12.5.1999 and this OA has been filed on 30.7.1999 well within the period of limitation. The provision of Section 21 of the A.T. Act, 1985 will not be attracted in this case.

9. In para 07 of their counter reply they have given additional facts about applicant's transfer to Allahabad, his representation to Raksha Mantri etc. In our opinion these facts, which as per respondents have been concealed by the applicant, have no relevance to the present controversy. The respondents have also stated that the applicant did not submit his CGHS Card. In absence of any proof of inquiry we find no substance in this submission. We also find no reason to disbelieve the applicant. In absence of CGHS Card the applicant had no choice but to take the treatment from outside. In the beginning applicant was under the treatment of Dr. Janardan Shukla of Lucknow who was the Chief consultant Physician Balrampur Hospital

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Lucknow and also former Additional Director Health & Training Medical and Health Services UP as is evident from Ann RA10 (Medical Certificate). In between the applicant took treatment at Rishikesh from Dr. Kohli, who as per applicant, are experienced and expert doctors for treatment of diabetes. We find nothing wrong in it. We also would have agreed with the respondents if they had followed a uniform policy. In case of Mrs. Bulbul Ghosh, the respondents sanctioned her commuted leave on medical grounds though she also filed a Medical Certificate from a registered Medical Practitioner. The respondents have tried to distinguish the case of the applicant from that of Smt. Bulbul Ghosh stating that she submitted the medical certificate from a registered Medical Practitioner duly countersigned by C.M.O., whereas the applicant submitted a reasonability certificate from C.M.O. Dehradun. In para 17 of O.A. it has been averred by the applicant that respondent no. 2 required the office of respondent no. 3 to send reasonability certificate issued by the C.M.O. in original which was also sent along with letter dated 29.1.1998 (Ann A16). Although this has been denied by the respondents in para 20 of their counter but it appears from the perusal of Ann A16 that there was a telephonic conversation between the applicant and Shree Amar Chand, Joint A, CGDA and in pursuance to that the reasonability certificate in original issued by C.M.O. Dehradun was sent to respondent no. 2. We have no reason to disbelieve the statement of the applicant given in para 17 of O.A. The respondents have, in para 7 of their counter affidavit, have stated that as per rule 19(1)(i) of CCS (Leave) Rules 1972 an application for grant of leave on Medical certificate made by a Gazetted Govt. servant shall be accompanied by a medical certificate in Form 3 given by an Authorised Medical Attendant (AMA) and it is on this plea the applicant's case has been rejected for grant of

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commuted leave on medical grounds. We put a question to ourselves whether the case of Mrs. Bulbul Ghosh is covered under rule 19(1) (i) of CCS (Leave) Rules 1972 or not. On due consideration our answer to the above question is categorical 'No'. Equity demands that every one is treated equally which is not so in the present case. There is no difference between the two cases as both i.e. Mrs. Bulbul Ghosh and applicant have undergone treatment from Private Doctors and have submitted certificates from private Doctors. If the case of Mrs. Bulbul Ghosh could be decided in her favour, there is no reason, that the applicant's case could not be decided likewise. However, it was not done for the reasons best known to the respondents. In our opinion the action of the respondents in treating the applicant differently is discriminatory, besides being violative of Article 14 and 16 of the Constitution of India. The impugned orders are liable to be quashed on this ground alone.

10. We find substance in the submission of applicant that the nature of leave cannot be changed by respondents. Rule 7(2) of Leave Rules reads as under :-

"(2)When the exigencies of public service so require, leave of any kind may be refused 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."

The applicant submitted his application alongwith medical certificate and, therefore, the respondents had no authority to alter the kind of leave due. The applicant had more than 333 days half pay leave and the respondents could not have any problem to sanction commuted leave on medical grounds specially when the C.M.O. had given the reasonability certificate. We would like to observe here that the respondents never doubted the fact that the applicant was ill. The respondents have also

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pleaded that they could have treated the applicant absent unauthorisedly but they took a lenient view. They sanctioned 158 days EL. We do not agree with this submission. In case the applicant had committed ^{by} misconduct ^{by} remaining absent unauthorisedly the proper course would have been to take disciplinary action against the applicant and then regularised the period of absence. No such action was ever initiated by respondents and, therefore, the respondents cannot ^{take this plea to} justify their action.

11. The applicant's counsel has relied upon number of judgments of superior courts on the point of equity and ^{that} submitted/ the equals cannot be treated unequals. Since the legal position is well settled in this regard, ^{do} we ^{do} not consider it necessary to reiterate the same by quoting the various judgments of Superior Courts.

12. In the facts and circumstances and for the reasons recorded above the OA is allowed. Impugned orders dated 28.10.1997 (Ann A1), 3.5.1997 (Ann A2) and 12.5.1999 (Ann A3) are quashed. The disputed period from 11.2.1997 to 18.7.1997 shall be treated as commuted leave on medical grounds. The applicant shall be entitled for 158 days as EL available for encashment ^{Subject} to the maximum limit. Respondent no. 2 is directed to settle the claim of the applicant regarding leave encashment within a period of three months from the date of communication of this order. The applicant shall also be entitled for interest @ 10% on the due amount on account of leave encashment with effect from 30.7.1999 ^{ie} the date of filing of this O.A. to the date of payment. ^{in payment} In case of delay ⁱⁿ beyond three months on the

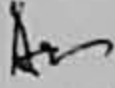
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part of respondents the applicant shall be entitled for 12% of interest.

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There shall be no order as to costs.


Member (J)


Member (A)

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