

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 7 day of 8 2008.

Original Application No. 1486 of 2003

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

Munna Lal Jaiswal, S/o late Shri Ayodhya Prasad Jaiswal (presently serving as Assistant in Central Ordnance Depot, Chheoki, Allahabad), R/o 161/68A, Kashi Raj Nagar, Baluaghat, Allahabad.

. . . Applicant

By Adv: Sri R.R. Tripathi

V E R S U S

1. Union of India through Secretary to Government of India, Ministry of Defence, DHQ Post Office, New Delhi.
2. The Comptroller of Defence Accounts Central Command, Lucknow (UP).
3. Senior Area Accounts Officer, 1, Ashok Marg, Allahabad.

. . . Respondents

By Adv: Sri S. Srivastava

O R D E R

Through this OA the applicant has challenged the order dated 06.05.2003 (Annexure A-2) and order dated 21.03.2003 (Annexure A-1) passed by Senior Area Account Officer, Allahabad, disallowing the claim of the applicant for stoppage leave and hospital leave. According to the applicant, while going to the place of duty (COD Chheoki) from his residence at Baluaghat, Allahabad, a jeep hit his

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scooter from the front side causing compound fracture injuries in his right leg and his scooter was badly damaged. The case of the applicant being of serious nature was referred to SRN, Hospital, Allahabad from where he was sent to Jeevan Jyoti Hospital, 162 Bai Ka Bagh, Lowther Road, Allahabad. At this hospital the applicant was operated upon twice and he remained under regular treatment of the hospital w.e.f. 25.11.1989 to 31.12.1990. A Court of inquiry was detailed to investigate into the circumstances under which the applicant met with the accident. As per inquiry proceedings it was held that the applicant is on bona-fide Government duty at the time of accident and injuries sustained by him was not due to his negligence or fault and also the injury was attributed to the Government Service. Based on the said report of Court of Inquiry proceedings the applicant was granted accident leave w.e.f. 25.11.1989 to 31.12.1990 (Annexure A-20). As the applicant was not completely fit to resume his duties w.e.f. 01.11.1991, however, he joined the duty to attend the Court of Inquiry and he attended his duties with the great difficulties on 13.02.1991. Thereafter, he remained under medical leave for various spells upto 05.08.1994. Due to his ill-luck he again met with an accident on 19.09.1995 at about 1400 hrs in the Depot premises itself, where he was on bonafide Government duty.

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The applicant was dashed by a cyclist Jawan in front of the I.T. Office of the inside Depot premises from behind. On medical examination, fracture of left leg was detected. After taking proper sanction from CGHS authorities the applicant left for medical treatment to be carried out on Bombay Hospital on 04.10.1995. From where he was discharged on 04.01.1996. Bombay Hospital issued medical certificate to the applicant and advised rest upto 06.07.1997. The applicant was permitted to walk with the aid of a crutch or a stick and was recommended fit to resume light duty from 07.07.1997. The Commandant of Depot clearly opined that the applicant was on bonafide Government duty and injury sustained by him is not due to his negligence or fault. The injury attributed to the Government servant and his absence from duty w.e.f. 20.09.1995 to 05.07.1997 suffixing 06.07.1997 being Sunday be regularized under Rule as recommended by medical authorities (Annexure A-37).

2. Audit authority quoted various rules and tried to insist that the applicant is not entitled to this kind of leave. The competent leave sanctioning authority did not agree to the aforesaid order granting him medical leave. Ultimately the Commandant submitted a supplementary pay and allowance bill dated 03.11.1999 for a sum of Rs.

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1,05,385/- to the Senior Area Account Officer, Allahabad to audit and release of the payment. Respondent No. 3 after long correspondence finally returned the aforesaid suppl. Bill vide letter dated 21.03.2003 to the Commandant COD, Chheoki (Annexure A-1). Respondent No. 2 clearly assigned the reason that the applicant is not entitled for stoppage leave as per prevailing subject rules "leave sanctioned (Hospital leave) to the above mentioned individual for the period of his medical treatment is itself only of rules.

3. It has been contended on behalf of the applicant that it is well settled law that an employee cannot be deprived of his legal privileges provided under rules and in the case of the applicant by rendering the impugned order, the respondent No. 3 has deprived the applicant of his legal privilege for which he is entitled under rules. In support of his contention learned counsel for the applicant has relied upon the decision of this Tribunal rendered in *OA 779/97 Shri Kamla Shanker Vs. Union of India and others* and *OA 405/99 Smt. Nirmal Sharma Vs. Union of India and others* and submitted that in the cases of Kamla Shanker (Supra) the applicant was working as Upper Division Clerk and he met with an accident and was granted leave by observing that "even if case of the respondent is

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taken to be correct the applicant cannot be blamed and made to suffer for the same, because he applied for the leave due to him in due course by furnishing the complete information of the genuineness of the ground for which this leave was upheld by Court of inquiry and his leave was also sanctioned by the authority in the respondents establishment. Even if the leave sanctioning authority was not competent to sanction leave to the applicant, he ought to have forwarded to the competent authority being in the office hierarchy of the same establishment."

4. The respondents have filed their reply denying the claim of the applicant and submitted that the applicant is not entitled for hospital leave under Rule 46 item 1 (b) of FRSR Part III and Article 291 of CSR Vol. I and the decision No. 2 there under, the same was erroneously sanctioned by the administrative authority under which the applicant was serving.

5. The applicant has filed their rejoinder reply denying the averments contained in the counter reply. Nothing new has been added therein.

6. Learned counsel for the applicant submits that the applicant was entitled for hospital leave and stoppage leave even though provision of Workman

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Compensation Act, 1923 were not applicable to him. The applicant was granted hospital leave and benefit arising there from under Article 291 of Civil Services Regulation. Learned counsel for the respondents on the other hand submitted that as the applicant was not a workman, he was not entitled for benefits and order passed by respondent No. 3. It does not suffer from any error of law. Learned counsel for the respondents has placed reliance on the provision contained under Section 2 (i) (n) and item No. (i) (ii) of Schedule 2 of Workman Compensation Act, 1923.

7. I have heard Shri R.R. Tripathi learned counsel for the applicant and Sri P. Srivastava brief holder of Shri S. Srivastava learned counsel for the respondents and perused the record.

8. I have carefully considered the submission of learned counsel for the parties. Central Government after considering the provisions contained in Article 281 of Civil Services Regulations, issued clarification for information and guidance in all Offices. Clarification Nos. 1 and 2 in this regard are very important which are being reproduced below:

"(i) For absence for work on account of injuries received in the course of duty, Article 291 CSR provides for grant of full pay for one month and thereafter half pay for three months subject to the conditions specified in that Article in

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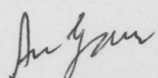
respect of men to whom the Workmen's Compensation Act 1923 applies. Combination of any other kind of leave (except casual leave) with injury leave under Article 291 CSR is also permissible.

(ii) The provisions of Article 291 CSR which cater for subordinate employees including temporary or extra employees' are applicable not only to those who may come within the purview of the Workmen's Compensation Act but also to all categories of staff other than gazetted officers, and in their cases also, combination of any other kind of leave as indicated in para (1) above with the injury leave provided for in that Article is permissible."

9. From the aforesaid, it is clear that all categories of Staff are covered under the scheme provided under Article 291 and it is not correct to say that only those who were covered for the provision of Workmen's Compensation Act 1923 only could be entitled for the benefit of hospital leave.

10. In view of the aforesaid I find force in the contention of the applicant and direct the respondents to reconsider the whole matter in the light of recommendations made by the Depot Authority and suitable orders be obtained from the Competent Authority regarding sanction of hospital leave/Stoppage leave to the applicant as per entitlement of the applicant within a period of 03 months from the date of communication of this order.

11. With the above direction the OA is disposed of.
No cost.


Member (J)

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