

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 205 OF 1986.
~~XXXAxxx~~

DATE OF DECISION 11.9.1987.

SHRI J.R. PATERIA & 4 ORS.

Petitioner s

PARTY IN PERSON, Applicant No.1 & 2

~~Advocate for the Respondent(s)~~

Versus

DIRECTORATE OF CENSUS OPERATIONS,
AHMEDABAD.

Respondent s.

P.N. AJMERA FOR J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

1. Shri J.R. Pateria,
2. Shri K.B. Bhavsar,
3. Shri M.H. Bhatt,
4. Shri B.R. Kumar,
5. Shri S.D. Pandya,
All of Ahmedabad. Petitioners.
(Party-in-person)

Versus.

Directorate of Census operations,
having its office at Kerawala
Building, Opp. V.S. Hospital,
Ellisbridge, Ahmedabad 380 006. Respondents.
(P.N. Ajmera for J.D. Ajmera)

J U D G M E N T

O.A. No. 205 OF 1986.

Date : 11.9.1987.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioners viz; (1) Shri J.R. Pateria, (2) Shri K.B. Bhavsar, (3) Shri M.H. Bhatt, (4) Shri R.B. Kumar, & (5) Shri S.D. Pandya, serving as "Computors" on adhoc basis in the Office of the Deputy Director of Census Operations, Gujarat, Ahmedabad, have challenged the validity of the order contained in letter dated 20th May, 1986, Annexure 'B' issued by the Assistant Director, in the Ministry of Home Affairs whereby it is directed that adhoc employees are not entitled to any restricted holiday. The petitioners, therefore, prayed in para 10(a) that the Respondents be restrained from implementing the said circular Annexure 'B' as it is in contravention of the service conditions prevailing on the respective dates of appointment of the petitioners. Further the petitioners also challenged the memo dated 29th May, 1986, issued by Shri J.K. Parikh, Deputy Director of Census Operations, Ahmedabad, contending inter-alia that the applicant No.2 Shri K.B. Bhavsar, was entitled to "earned leave" for five days from 26.5.1986 to 30.5.1986 and therefore

the action of the Respondents in refusing the same and deducting a sum of Rs.209/- from the salary of the applicant No.2 is bad in law. The petitioners accordingly prayed that the opponents be directed to refund the sum of Rs. 209/- to the applicant No.2 and direct the opponent to treat this period of absence as his earned leave period.

2. When the matter came up for regular hearing, applicants No. 1 & 2 were heard in person. Mr. Y.N. Oza, the learned counsel for the petitioners was not present. Both the aforesaid petitioners declared that they do not seek to pursue the relief as prayed in para 10A of the petition in respect of circular Annexure 'B'. They however restricted their claim for the refund of the amount of Rs. 209/- deducted from the salary of the applicant No.2. According to them, the action of the Respondents in this regard was malafide and discriminatory and deserves to be quashed. With regard to memo dated 29th May, 1986 (Annexure 'C'), Mr. J.K. Parikh, Deputy Director of Census Operation, in his Affidavit-in-reply, while supporting his action, has stated that the applicant No.2 Shri Bhavsar had availed the leave, during the current year 1986 with effect from 6.1.1986 to 10.1.1986 as earned leave and with effect from 15.4.86 to 17.4.1986 as commuted leave and thereafter he applied third time for leave with effect from 26.5.1986 to 30.5.1986, which was rejected vide memo dated 22.5.1986 in exigencies of public service. According to him, during the relevant period five employees were already on leave and Mr. Bhavsar was the sixth person who applied for leave and as it was dislocating the office work his leave application could not be considered in the interest of public service. In his submission even though applicant No.2 Shri Bhavsar was informed that his leave was not sanctioned, he remained absent without prior permission which amounts to disobedience/indiscipline on his part.

3. Mr. P.N. Ajmera for J.D. Ajmera, the learned counsel for the Respondents relied on Rule 7 of Chapter II of CCS (Leave) Rules, in support of Respondent's action to deduct a sum of Rs. 209/- from the salary of the applicant No.2 Shri Bhavsar. The relevant rule reads as under :

7. Right to leave

(1) Leave cannot be claimed as of right.

(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.

4. A Government servant's claim to leave is regulated by the rules in force at the time the leave is applied for and granted. It is made amply clear from the relevant rule that leave can not be claimed as of right and it can be refused when the exigencies of the public service so require. Now, the discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. The fact that the applicant No.2, Shri Bhavsar had applied for third time for leave with effect from 26.5.1986 to 30.5.1986, is not in dispute. Admittedly on two previous occasions when he had applied for the leave the same was granted. It has been stated by Mr. Parikh in his Affidavit-in-reply that out of 20 employees of the respective cell 5 employees were already on leave during the month of May and Mr. Bhavsar was the sixth person who applied for the leave. It was under these circumstances, he was constrained to refuse leave to Mr. Parmar. He was informed vide office memo dated 22.5.86 that as the exigencies of public service so require, the leave applied for is not granted. Now, despite such specific intimation Shri Bhavsar remained absent from duty. He was therefore informed that the entire period of absence will be treated as unauthorised and absence period will be governed under proviso to F.R.17(1) vide memo dated 29th May, 1986 (Annexure 'C').

5. In view of the aforesaid discussion it is possible to hold that the action of the Respondents in refusing leave and deducting a sum of Rs.209/- from the salary of the applicant No.2 was neither malafide nor discriminatory as contended. The petitioners are therefore not entitled to the relief as prayed for in para 10 (b) of the petition. The application therefore merits no consideration and the same stands dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER.