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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 59 of 1986
T.A. No.

DATE OF DECISION 26.11. '86

SHRI K. I. THAKKAR Petitioner

SHRI K. I. THAKKAR (P in P) Advocate for the Petitioner(s)

Versus

CHIEF COMM. OF INCOME TAX Respondent

SHRI R. P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI ... Vice Chairman

The Hon'ble Mr. P. M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Shri P.H.Trivedi, Vice Chairman

JUDGMENT

The applicant Shri K.I.Thakkar, voluntarily retired on 3.9.'85, 3 years before his date of superannuation of 30.9.'88. He had to his credit earned leave of 121 days and half pay leave of 621 days. He was earlier allowed encashment of this entire period by the Commissioner of Income Tax, Ahmedabad. Later, however, the Zonal Accounts Officer held this to be not in order and computed the entitlement of the applicant on a different basis by his letter of 24th December, '85, asking the Commissioner of Income Tax to recover the excess amount paid to the applicant. Accordingly, the revised order dated 1st April, '86, was issued in which half pay leave encashment at the rates indicated therein for 59 days as against 620 days granted earlier were allowed.

2. The applicant's case is that the respondent has erred in ~~fixing~~ his assumption that the ceiling of 180 days for encashment applies to half pay leave. He has cited Central Civil Services (Leave) Rules, 1972, hereafter referred to as the Rules, in which Rule 39(5) states that "the competent authority shall grant cash equivalent of leave salary in respect of earned leave at his credit subject to a maximum of 180 days and also in respect of all the half pay leave at his credit..." The applicant, seeking support from this Rule, claims that as in his case, earned leave for 121 days was clearly his entitlement, he had rightly been given cash encashment ~~thereof~~ thereof and as half pay leave of 620 days was also to his credit, this had to be ~~xxxxxxx~~ added to his encashment of earned leave entitlement. The

Rule refers to the maximum of 180 days only with reference to earned leave at his credit. For half pay leave the period is only ~~xxxxxxx~~ ^{limited} by the period which is the difference between his date of superannuation and his date of voluntary retirement - in his case three years - which is much in excess of the half pay leave to his credit. He, therefore, contends that the earlier order of Commissioner of Income Tax allowing him encashment of the entire pay of the earned leave and half pay leave at his credit, was correct and the revision made by the Zonal Accounts Officer is due to mis-reading and misinterpretation of the Rules.

3. The applicant has separately sought by his miscellaneous application of 157/86 dated 9th July, '86, to commute his half pay leave into earned leave to the extent of 118 days which, if so permitted, will make up the balance in the ceiling of 180 days for encashment of earning.

4. Before the claim for encashment of half pay leave is discussed, we may dispose off his request for commutation of half pay leave into earned leave. The relevant Rule governing commutation of leave is Rule 10 of C.C.S.(Leave) Rules. This rule clearly stipulates that the Government servant cannot claim such commutation as a matter of right. Under Rule 39(1), leave lapses as soon as the person ceases to be in service. The leave standing to the credit of the Government servant only has to be taken into account for encashment and any change in the credit account as so standing cannot be allowed after the person ceases to be in service. Besides, even during the period of service, commutation of leave is only allowed subject to the competent authority granting leave being satisfied

that there is reasonable prospect of the Government servant returning to duty on its expiry. The application for commutation of leave cannot, therefore, be considered as this condition cannot be satisfied in the case of the applicant. The question of commutation of half pay leave to earned leave to make up the difference up to the ceiling allowed for encashment of earned leave, therefore, cannot be resorted to at this stage and it cannot be allowed.

5. The contention of the applicant that the ceiling of 180 days applies to earned leave and not to half pay leave is in principle correct. The Rules prescribe that earned leave is subject to a limit of 180 days for encashment and half pay leave and earned leave both are subject to ^{the limit of} being less than the period between the date of actual retirement and date of superannuation. If the earned leave is less than 180 days, to the extent of the difference, the half pay leave can be reckoned for encashment on the same basis as the encashment of the earned leave. However, there is a condition for encashment of half pay leave. It is subject to pension and pension equivalent and all other retirement benefits and adhoc relief/grade relief on pension to be deducted from the leave salary paid for the period of half pay leave for which the cash equivalent is paid. The dearness allowance admissible on half pay leave is only allowed for encashment purposes within the limit of 180 days. In the case of the applicant, his pay and special pay are reckoned at Rs. 950/- and Rs. 100/- respy. While the dearness allowance pay is Rs. 370/-, the additional dearness allowance is Rs. 990/- and interim relief is Rs. 175/-. Payment on account of these items would be available to him for a period of 59 days, which is

the deficit in the ceiling of 180 days. For this period of 59 days and additional period of 561 days, if half is pay leave ~~xxxxxxx~~ allowed to be encashed, ~~xxxxxxx~~, there will have to be a deduction for the entire period of half pay leave of Rs. 1,630/-, on account of pension and of Rs. 355.21 for pension equivalent of gratuity. It would appear that the deduction would amount to considerably more than the entitlement of the half pay leave. For this reason, under the proviso Rule 39(5), the half pay leave in excess of 180 days ceiling has not been allowed to be encashed. After examination, therefore, we agree with the respondent that the earlier order of Commissioner of Income Tax allowing him encashment of entire period of half pay leave including dearness allowance was erroneous as dearness allowance etc. can be allowed only for a period of 180 days and not more and the revised order of the Zonal Accounts Officer is in order. The application has no merit and fails. No order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
Vice Chairman

P. M. Joshi
(P. M. JOSHI)
Judicial Member