

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~XXXXXX XXXX XXXX XXXX~~

O.A. No.

~~XXXXXX XXXX~~

149/89

1989

DATE OF DECISION 6.12.1989.

Mr. Yogesh M. Thakker Petitioner

Mr. A.R. Thakkar. Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. Respondent

Mr. J.S. Yadav for Mr. J.D. Ajmera. Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member.

The Hon'ble Mr.

- 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?

(8) 50

Yogesh M. Thaker  
Inspector, Central Excise,  
Headquarters Office,  
Ahmedabad-380 009.

: Applicant

(Advocate-Mr. A.R. Thakkar)

V/s.

(1) Union of India,  
notice to be served  
on the Secretary to the  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

(2) Collector of Customs and  
Central Excise,  
"Customs House",  
Near All India Radio Station,  
Navrangpura, Ahmedabad.9.  
(Advocate-Mr. J.S. Yadav  
for Mr. J.D. Ajmera)

: Respondents

CORAM : Hon'ble Mr. M.M. Singh : Administrative Member.

## JUDGMENT

D.A./149/89

Date 6.12.1989

Per : Hon'ble Mr. M.M. Singh : Administrative Member.

This application filed under Section 19 of the Administrative Tribunals Act questions the decision of the respondents for deciding three spells of leave taken by the applicant way far back in the years 1975 & 1976 as extra ordinary leave without medical certificate which resulted in changing the date of annual increment of the applicant from April to November. Had the spells of leave be decided as extra ordinary leave without pay on medical certificates, according to the applicant, his date of annual increment would have remained unchanged.

2. The application was admitted subject to deciding the question of limitation after hearing the parties. The contention of the respondents is that the representation of the applicant had been decided and rejected as far back as in 1979 and that the limitation cannot be counted to run from the communication dt. 8.8.1988 from the respondents to the applicant whereby the applicant's representation on the subject of settlement of nature of leave was rejected by the Collector "after a careful consideration". The respondents' main plea thus is that the application is grossly time-barred and is otherwise also devoid of merit.

3. It is not denied by the respondents that the applicant suffers every year by the change of the date of his annual increment from April to November. With that happenings, in the light of the principle laid down by the Supreme Court in P.L. Shah V/s. Union of India & Others, AIR 1989, Supreme Court 985, the cause of action arises every year. That apart, the record also shows that, between 1979 and 1988, the applicant had, on two dates in 1979, on one date in 1980, on one date in 1987 and on one date in 1988 submitted his representations and reminders, <sup>of</sup> which only the last one elicited reply dt. 8.8.1988. The respondents' plea on ground of limitation can therefore not be accepted.

4. The applicant had remained on leave in three spells, namely from 15th August 1975 to 17th October, 1975 (64 days), from 13th November, 1975 to 4th February, 1976 (84 days), and from 3rd March, 1976 to 10th March, 1976 (8 days) on grounds of sickness in support of which he had furnished medical certificates from one Dr. Parikh, a registered medical practitioner, of Ahmedabad. The Asstt. Collector Bhavnagar under whom

the applicant was then posted had, vide his reference No. II/20-9/75-19818 dt. 22.8.1978 addressed to the Chief Accounts Officer, Central Excise, Ahmedabad with its copy to the applicant by way of reply to his application dated 18.8.1978, on the subject of difference of pay due to increment informed that the applicant had availed leave as under:

<u>No of day</u>	<u>Nature</u>	<u>From</u>	<u>To</u>
64 days	E.O.L.W.P.	15.08.75	17.10.75 Without medical Certificate
2 days	E.L.A.P.	11.11.75	12.11.75
84 days	E.O.L.W.P.	13.11.75	4.02.76 On medical Certificate
8 days	E.O.L.W.P.	3.03.76	10.03.76 - do -

It is clear from this reference that two spells of leave, namely from 13.11.1975 to 4.2.1976 (84 days) and from 3.3.1976 to 10.3.1976 (8 days), were decided as E.O.L.W.P. on medical certificate whereas the earlier spell from 15.8.1975 to 17.10.1975 (64 days) was decided as E.O.L.W.P. without medical certificate. The applicants' contention therefore also is that when the two latter spells of leave for 84 days and for 8 days respectively were, on the medical certificate from the same private registered medical practitioner, Dr. Parikh of Ahmedabad, were decided as E.O.L.W.P. on medical certificate, there was no sound reason for the Asstt. Collector to decide the earlier 64 days leave from 15.8.1975 to 17.10.1975 supported by the medical certificate from the same medical practitioner as E.O.L.W.P. without medical certificate. The applicant therefore addressed representation dt. 29.8.1978 to Shri R.H. Pradhan, Asstt. Collector, Bhavnagar, pointing this out and requesting him to reconsider the decision. To this representation, the applicant received reply No. II/3-4/78/CA/pt.II dt. 17.3.1979 to which reply was

(61)

enclosed copy of Asstt. Collector of Customs, Bhavnagar letter No. II/20-9/75 dt. 15.2.1979 addressed to the Chief Accounts Officer, Central Excise, Ahmedabad. As this reply upset the earlier decision about the nature of leave even with regard to the last two spells from 13.11.1975 to 4.02.1976 (64 days) and from 3.3.1976 to 10.3.1976 (8 days) contained in letter No. II/20-9/75-19818 dt. 22.8.1978, the applicant submitted representation dt. 23rd March, 1979, to the Asstt. Collector of Customs, Bhavnagar requesting that in case the medical certificates issued by the Dr. Parikh were required to be countersigned by the authorised medical officer to enable the Department to treat the spells of leave as on medical grounds, the certificates already submitted should be returned to him for the purpose. This representation was followed by several reminders on various dates in different years and it was only the last one of 10.6.1988 which brought reply dt. 8.8.1988. The respondents did not even reply to the applicant that the contents of their letter dt. 22.8.1978 addressed to the Chief Accounts Officer, Central Excise, Ahmedabad, were erroneous and it was only in their reply to the application filed in this Tribunal that it has been, for the first time, said that the Asstt. Collector, Bhavnagar letter dt. 22.8.1978 suffered from oversight in mentioning that the last two spells of leave were E.O.L.W.P. on medical certificate and that leave entries in the service record did not so speak. This highly belated clarification cannot be accepted especially when the respondents ought to have clarified accordingly to the applicant at least by way of reply to his representation dt. 23rd March, 1979. Again, entries in service record have to be made from the orders and not the other way round. In such matters, the order necessarily precedes the entry in the record.

The entry therefore has to stand or fall with reference to the order and not the order with reference to the entry.

5. The respondents' contention that the spells of leave were required to be decided as E.O.L.W.P. without medical certificate is not supported by the rules also. Sub clause (ii) of Clause (1) of Rule 19 of C.C.S. (Leave) Rules 1972 lays down that application for leave on medical certificate made by a non-gazetted government servant shall be accompanied by the medical certificate in form 4 from an authorised medical attendant OR a registered medical practitioner. Thus certificate from registered medical practitioner is provided for in the rules. Inconsistently with this provision in the statutory rules, it appears that the Department of Health Government of India, in their O.M.Nos (i) A 17011/1/75-MC, dated 14.7.1975, (ii) A 17011/1/75-MC, dated 16.8.1976 and (iii) A 17011/1/75-MS, dated 14.11.1977 had laid down that certificates in support of applications for leave on medical grounds should be from authorised medical attendants only. This led to representations from staff side in the National Council of the Joint Consultative Machinery. Decision No. G.I., M.F., O.A. No. P-13015/1/79-E.IV(A), dated the 8th January, 1979 was issued as a result withdrawing such orders of the Department of Health. Status quo ante which implied implementation of the statutory rule on the subject, was restored. These instructions were made applicable from the date of their issue, namely 8th January 1979. The instructions, however, stipulated that cases which <sup>have</sup> still to be decided may also be settled in accordance with the decision of 8th January, 1979. Irrespective of the view whether the statutory rules can be validly amended by office orders, the applicant's representation dt. 23rd March, 1979 was

before the respondents for decision. With the status quo ante restored with the stipulation that cases which have still to be decided may also be settled in accordance with the statutory rule, the respondents were required to decide the representation in favour of the applicant at least in view of the O.M. dt.

8.1.1979.

6. In view of the above, the application succeeds.

7. The respondents are hereby directed to treat the spells of leave of the applicant from 15.8.1975 to 17.10.1975 (64 days), from 13.11.1975 to 4.2.1976 (84 days) and from 3.3.1976 to 10.3.1976 (8 days) covered by the certificates of Dr. Parikh, <sup>a</sup> registered medical practitioner of Ahmedabad, as E.O.L.W.P. on medical certificate and take all consequential actions accordingly within three months from the date of issue of this order.

8. The parties to bear their own costs.

M. M. Singh  
9/4/85  
( M.M. Singh )  
Administrative Member.

14

M.A./82/90

in 149 h  
D.A./109/89

CORAM : Hon'ble Mr. A.V. Haridasan .. Judicial Member

Hon'ble Mr. M.M. Singh .. Administrative Member

5.4.1990

Learned counsel Mr. J.D. Ajmera and Mr. A.R. Thakkar on either side present and heard. Learned counsel for the respondent has no objection, hence time for implementation of the order <sup>~</sup>extended upto 30th June, 1990, allowed. M.A./82/90 stands disposed of. *thus*

M M L

*A. V. Haridasan*

( M M Singh )  
Administrative Member

( A V Haridasan )  
Judicial Member

\*Mogera