

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.410 of 1988.

Date of decision : November 2,1989.

J.K.Guru, son of late B.Guru,
of Budharaja, At/P.O./Dist-Sambalpur.

...

Applicant.

Versus

1. Union of India represented by the Director General of Quality Assurance Department of Defence Production, Ministry of Defence, Government of India, New Delhi.
2. Quality Assurance Officer, Hot-mills Road, SAIL Rourkela, P.O.Tangarapalli, Munsifi Panposh, District-Sundargarh.
3. Quality Assurance Officer, Special Plate Plant, SAIL, Rourkela, Dist-Sundargarh. Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
A.Deo, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel(Central)

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN, This is a sequel to the case registered as Original Application No.172 of 1986 in which judgment was delivered on 20.11.1987. In that judgment a direction was issued that from 23.4.1984 till the date of delivery of the judgment the competent authority should calculate all types of leave which may be due to the applicant and if applied for, such leave should be granted in favour of the applicant and due to such grant of leave, amount due to the applicant towards his emoluments should be paid to the applicant within six weeks from the date of receipt of the application to be filed by the applicant. For the remaining days, for which no leave of any nature is due to the applicant, the applicant will not be entitled to any remuneration. Furthermore, the period of absence of the applicant from duty should not be treated as break in service. It was further directed that the case of the applicant should be considered in the next meeting of the Departmental Promotion Committee to be held for the purpose. In the present application, the grievance of the applicant is that his leave has not been properly calculated and that the remuneration due to him has not also been properly calculated, and given to him. Another relief sought by the applicant is that during the period covered by Extraordinary leave, he should be given increments. It is further contended that the case of the applicant for promotion has not been considered even though some of his juniors have been considered and given promotion in the meantime.

2. The respondents in their counter have maintained that both leave as directed by the Tribunal in the aforesaid case and the amount due to the applicant have been properly calculated



keeping in view the scale of pay prescribed by the Third and Fourth Central Pay Commission, and they propose to adjust the advance taken by the applicant towards Leave Travel Concession against the amount so calculated. In regard to promotion, they have stated in the counter that the applicant's case has been duly considered by the Departmental Promotion Committee (D.P.C.) but his case has not been recommended for promotion.

3. We have heard learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents and carefully went through the papers. Learned counsel for the applicant drew our attention to Annexure-2. His objection is to Item No.3 against which it has been mentioned that no casual leave is allowed since the same is not a recognised kind of leave. In regard to other kinds of leave, he does not seriously urge against it. Considering the nature of leave so far as casual leave is concerned we agree with the Department that this leave cannot be added to the leave account of the applicant, to be given to the applicant as a result of our judgment in the aforesaid case. In regard to the calculation of the amount due learned counsel for the applicant submitted that the applicant has not been given the revised salary and the amount due has been calculated according to the pre-revised scale of pay. On a perusal of the papers (Annexure-R/5) we find that prior to 1.1.1986 the amount has been calculated according to the pre-revised scale of pay. The pay scale was revised according to the recommendation of the Fourth Central Pay Commission and accepted by the Central Government with effect from 1.1.1986 and the amount due from 30.7.1986 to 18.8.1986 has been calculated keeping in view the



revised scale of pay. We therefore hold that there is no substance in the allegation of learned counsel for the applicant that the amount due has been calculated with sole reference to the pre-revised scale of pay. In this regard it is submitted on behalf of the applicant that the amount due to the applicant has not been paid to him, instead the advance taken towards the Leave Travel Concession has been adjusted and the balance amount is also still lying with the departmental authorities. It is therefore prayed that pending final decision in the matter by the competent authority, the advance should not be deducted from the amount due to the applicant. We feel that to recover the whole amount said to have been taken as L.T.C.advance in a lump sum from the arrear dues which amounts only Rs.2043/- will cause hardship. We would direct that on an application made by the applicant, the departmental authorities would consider recovering the amount of L.T.C.advance by suitable monthly instalments from the salary of the applicant. In view of this, amount already due to the applicant at Annexure- 5 i.e. Rs.2043/- should be paid to him within two months.

4. The next point urged by Mr.Naik is that the applicant should be allowed increments during the period covered by extraordinary leave. This was stoutly objected to by Mr.Dalai who drew our attention to the provisions of Fundamental Rules 26(b)(ii) which reads as follows :

" All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India : "

B.M.

In view of the rule quoted above and our observation in the judgment, we are of the view that the applicant will not get any increment during the period covered by the extraordinary leave.

5. In regard to the applicant's claim for promotion to the next higher post, on the ground that some juniors of him have been promoted we wanted to see the concerned file to ascertain correct position as to if and when the applicant's case was considered by the Departmental Promotion Committee for promotion. The Departmental authorities have produced the papers. On going through the minutes of the D.P.C. for the years 1986, 1987 and 1988 we have found that the case of the applicant was duly considered by the D.P.C. in each year. In 1986 his performance was rated as 'good' whereas performances of those who are juniors to him were rated as 'very good'. As Chargeman Grade I is a selection post, assessment of performance has to be comparative assessment of performance of all those officers who are in the zone of consideration. In the year 1987 and 1988 as we have found from the minutes of the D.P.C. the applicant was not found fit for promotion, and as such we do not accept the contention of Mr. Naik that the case of the applicant was not considered.

6. This application is accordingly disposed of leaving the parties to bear their own costs.

B.M. Patel
Vice-Chairman

N. SENGUPTA, MEMBER (J),

I agree.

Central Admin. Tribunal,
Cuttack Bench, Cuttack.
November 2, 1989/Sarangi.



N. Sarangi
2.11.89
Member (Judicial)