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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

Original Application No.416 of 1988

Date of decision : January 4,1990.

Shri Phagu Behera, son of late Narahari Behera,
Seaman, False Point Light House, Retd. False Point
Light House Paradeep, Dist-Cuttack, at village-
Bahakuda, P.O.Ramanagar, Via-Mahakalpara,
Dist-Cuttack.

...

Applicant.

Versus

1. Union of India, represented by Secretary to Government of India, Ministry of Shipping and Transport, Department of Light Houses and Lightships, East Block, 10 Level 4-5 R.K.Puram, New Delhi-110066.
2. Director of Light Houses and Lightships 6, Chapel Road, Hastings, Calcutta-22.
3. Head Light Keeper, False Point Light House, Paradeep, Dist-Cuttack.
4. The Director General, Ministry of Shipping and Transport, Department of Surface Transport, Light Houses & Light Ships, East Block, 10 Level, 4-5 R.K.Puram, New Delhi-110066.

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Respondents.

For the applicant ... Mr.Antaryami Rath, Advocate.

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

C O R A M:

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 His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant has asked for the relief for grant of special disability leave and allowance for such leave under the Central Civil Services (Leave) Rules, 1972 and for recasting his leave account. He has also asked for a direction to the respondents to treat the period for which he has asked for leave salary as due for the purpose of pension and other service benefits.

2. The facts material, shorn of unnecessary details, for this case may be stated thus. Undisputedly the applicant was appointed as a Seaman or Boatdandy ~~at~~ False Point i.e. Estuary of the Mahanadi where there is a Light House. The applicant's duty was to row boats for ferrying the Government personnel connected with the said Light House at False Point. On 3.12.1982 he was rowing the boat as usual and in the boat cash was being carried for payment to different employees onshore. In the evening some river pirates came and attacked the boat and, according to the applicant, as a faithful seaman he resisted the onslaught of the pirates as a result of which he sustained multiple injuries which subsequently incapacitated him from discharging his duties as a Seaman. The injuries necessitated his hospitalisation and as he sustained injuries while discharging his duties and for such discharge he had to resist the pirates, he applied for disability leave but that was refused and the period from 4.12.1982 to 25.10.1983 was ^{not counted as duty} ~~disallowed~~. It is also averred by the applicant that this period has not been taken into account towards the qualifying service for the purpose of pension. Making these allegations the applicant has prayed for the

*Memorandum
4.1.90*

reliefs above said.

3. In the counter it has been stated that no doubt the applicant was injured in an incident which occurred on 3.12.1982 but he first applied for 10 days and then extended the said leave for 16 days i.e. till upto 29.12.1982. As the applicant had no medical leave at his credit, the first 10 days were treated as commuted leave and the 16 days as earned leave. With regard to other allegations the counter does not really controvert.

4. Mr. Antaryami Rath, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) have been heard. Admittedly the applicant was a Seaman and he was on duty at the time when he sustained injuries and from the pleadings it would also be manifest that the injuries were caused to him in due discharge of his duties as Seaman. That being the admitted position, it is now to be found whether the applicant was entitled to any other kind of leave than the ones sanctioned to him and whether he was entitled to have the period of his absence counted as duty towards his pension. In this regard, Mr. Rath has drawn my attention to the Central Civil Services (Leave) Rules, 1972.

(1) Rule 44 provides that the authority competent to grant leave may grant special disability leave to a Government servant (whether permanent or temporary) who is disabled by injury intentionally inflicted or caused in, or in consequence of the due performance on his official duties or in consequence of his official position. The injuries

Mr. E. S. S. 1.1.90.

that the applicant sustained were inflicted by the pirates who attacked the boat that the applicant was rowing. Therefore, there could hardly be any doubt that the injuries were caused intentionally by the pirates on the applicant while he was performing his official duties, hence Sub-rule(1) of Rule 44 of the Central Civil Services (Leave) Rules applies. Sub-rule(2) states that such leave shall not be granted unless the disability manifested itself within three months of the occurrence to which it is attributed and the person disabled acted with due promptitude in bringing it to notice. In the instant case, the report was submitted about the injuries immediately after the occurrence. No doubt the certificate of disability was issued in October, 1983 but infact disability manifested itself long ago ^{"u.sure"} because of the time the applicant had been hospitalised. The certificate was issued only on a reference by the Department made on 25.10.1983. Thus, the provisions of Sub-rule(2) of Rule 44 are also satisfied. The word 'may' used in Sub-rule(1) of Rule 44, in my considered opinion, shall be read as 'shall' having regard to the purpose for which rule has been framed. Having come to this conclusion, I would further say that the applicant was entitled to have the entire period of his absence from duty from 4.12.1982 till the date of his retirement i.e. 25.10.1983 treated as special disability leave. According to sub-rule(6) of Rule 44 special disability leave shall be counted as duty in calculating service for pension. Under the provisions of the Leave rules a Government servant may on his option be allowed leave salary for the first 120 days and for the rest period exceeding those 120 days of

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half pay leave and in that eventuality the periods of such leave shall be debited against the leave account of the Government servant.

5. In view of what has been stated above, the respondents are directed to treat the period of applicant's absence from 4.12.1982 till the date of his retirement as on duty for the purpose of pension and if the leave salary ~~for~~ which the applicant prayed, has not yet been paid on his retirement, the same be paid to him in terms of Rule 44(6)&(7) read with proviso to Sub-rule (7) of that Rule. Consequential modifications in the matter of sanction of pension and other benefits be done by the respondents within three months from the date of receipt of a copy of this judgment.

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



Neerupam 4.1.90
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 4, 1990/Sarangi.