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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 791 of 2006
Cuttack, this the 31st day of October, 2008

Pramod Kumar Sarangi Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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O.A.No.791 of 2006
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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Pramod Kumar Sarangi, Aged about 58 years, Son of Late Banamali Sarangi, resident of Plot No.2134, Paikanagar, Baramunda, Bhubaneswar at present working as Divisional Forest Officer, Parlakhemundi, Dist. Gajapati.

.....Applicant
Legal practitioner : M/s. K.N.Das,P.K.Rath,S.S.Senapati,
A.Nayak,B.Tarai, K.C.Tripathy,
Counsel. Counsel.

- Versus -

1. Union of India represented through Secretary, Ministry of Forest and Environment, Government of India, Paryavaran Bhawan, New Delhi.
2. Chief Secretary to Government of Orissa, State Secretariat, Bhubaneswar, Dist. Khurda.
3. Principal Secretary to Government of Orissa, Forest and Environment Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda.
4. Principal Chief Conservator of Forest, Government of Orissa, Aranya Bhawan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Principal Secretary to Government of Orissa, Finance Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda.

....Respondents

Legal Practitioner :Mr.A.K.Bose, GA (for R-2to5)
Mr.U.B.Mohapatra, SSC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

By filing this Original Application U/s.19 of the Administrative Tribunals Act, 1985, the Applicant an Orissa cadre IFS Officer has prayed to quash the impugned order under Annexure-12

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dated 16.12.2005 rejecting his prayer for sanction of Surrender Leave benefits for the block period 2000-2002 and for direction to the Respondents to grant the said benefits within a stipulated period to be fixed by this Tribunal; for the same having been granted in favour of another similarly situated employee namely Shri K.C.Das, IFS (Retd.).

2. Except Respondent No.3/Principal Secretary to Government of Orissa, Forest and Environment Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda, other Respondents have not filed their counter. Respondent No.3 by filing the counter opposed the relief claimed by the Applicant in this OA for the reasons stated herein below:

- (a) PCCF, Orissa transmitted the proposal for sanction of surrender leave benefits in favour of the Applicant for the block period 2000-2002 along with other IFS officers. Government in Forest and Environment Department could not furnish leave Account of the applicant for consideration of his case. The PCCF, Orissa was asked to submit leave account of applicant vide department letter dated 14.03.2000 under Annexure-3/1;
- (b) In response to the above letter, PCCF forwarded the relevant undertaking on leave account of applicant vide his letter dated 28.9.2002 on quantum of leave standing at the credit of applicant in his leave account. Basing on the report received in the department, the file was moved to finance department for their concurrence as the stipulated grace period of six months has already expired on 30.09.2002. But the Finance Department being the sanctioning authority of surrender leave beyond the stipulated grace period of six months, have regretted the proposal with an advice to resubmit the file in each individual case with a self contained note and relevant documents for consideration of sanction of surrender leave benefit on 06.03.2003.
- (c) The file was again sent to the Finance Department on 04.08.2004 but the Finance department regretted the proposal for the following reason:

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- (i) application have not been duly received by higher authorities;
- (ii) surrender leave application of applicant has not been diarized;
- (iii) the applicant himself has filled up the Part B of the SL benefit application;
- (iv) Part C of the application has not been filled up ;
- (v) Submission of application of applicant during the BP 2000-2002 is doubtful.

(d) By clarifying the above point, the file was again moved to Finance Department on 2.7.2005 for their concurrence for sanction of SL benefit in favour of applicant;

(e) On examination of the matter, on 28.7.2005 the Finance Department reiterated their earlier stand that since the scheme has already been suspended, sanction of fresh claim should not be entertained now; which was duly intimated to the Applicant vide letter dated 16.12.2005;

(f) As regards sanction of the said benefits in favour of K.C.Das,IFS (Retd.) it has been stated that the case of Shri Das stands in different footing for the following grounds:

- (i) Shri Das submitted his SL benefit application on 3.4.2000 and Sri Sarangi submitted on 1.5.2000;
- (ii) Due to want of up-to-date leave account of both Sri Das and applicant the proposed benefit could not be sanctioned within stipulated time for the block period 2000-2002;
- (iii) Subsequently, the leave account of Shri Das was received in the Department on 20.2.2002 whereas the undertaking on leave account of Shri Sarangi was received in Forest and Environment department only on 30.09.2002 which was diarized in the name of dealing assistant on 3.10.2002. But in the meantime the stipulated grace period of six months from 31.3.2002 expired on 30.09.2002 for the block period 2000-2002. So due to receipt of leave account of Sri Das within the stipulated grace period, the Forest and Environment department sanctioned the surrender leave in favour of Sri Das but the case of applicant was referred to Finance Department due to expiry of grace

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period. But this was later regretted by Finance Department.

3. Learned Counsel appearing for the respective parties have reiterated their stand during the hearing and having heard them we have perused the materials placed on record.

4. It is seen that the right to get the benefits claimed by the Applicant accrues by virtue of the provisions made by the Government of Orissa under Annexure-13. Credit of leave in the leave account of applicant for the block period of 2000-2002 is not in dispute. The only reason for denying the benefit to the Applicant for the suspension of the encashment of surrender leave is revealed from Annexure-14 and non-submission of the detailed information within the relaxed period of 30.09.2002. In this connection it is worthwhile to state that under Annexure-1 letter dated 11.5.2000 the Divisional Forest Officer, Rairakhol Division forwarded the application of Applicant dated 11.5.2000 for encashment of surrender leave for the period 2000-2002, to the Conservator of Forest, Sambalpur who in turn, under Annexure-2 dated 12.9.2000 requested the PCCF, Orissa, Bhubaneswar for verification of service book. The PCCF, Orissa after lapse of nearly six months in letter under Annexure-3 dated 10.04.2001 sent the service book and pay fixation statement of the Applicant to the Conservator of Forests, Sambalpur. As the leave account of applicant was not available, the undertaking furnished by the Applicant certifying that he had got 240 + 15 days EL at his credit for the period in question, was forwarded to the Government under Annexure-4 dated 28.09.2002. However, it is revealed from the

counter filed by Respondent No. 3 that as the relaxed period for sanction of encashment of surrender leave was up to 30.09.2002 the file was submitted to the Finance Department for sanction. But the Finance Department returned the file to submit the same on 06.03.2003 with certain clarification. After lapse of more than one year the file was resubmitted to the Finance Department on 04.08.2004. Again the finance Department returned the file seeking some clarification which was furnished and submitted on 02.07.2005. Finally, the Finance Department regretted the matter for sanctioning the encashment of surrender leave on the ground that as the scheme has already been suspended, sanction of fresh claim should not be entertained now which in our opinion is not at all correct; because as stated above, the application for sanction of encashment of surrender leave for the above period was submitted within the time during which the order under Annexure-13 allowing such benefits to the employees was in force.

5. Besides the above, it is noticed that the Applicant has submitted his claim before the authority well within the period and the delay in submission of final sanction cannot be attributed to the Applicant. The maintenance of Service Book and updation of the Leave Account is the responsibility of the Respondents and not of the Applicant. Hence the Applicant should not be made to suffer due to laxity of the administration. From the counter it is also manifest that Shri K.C. Das was granted the benefits as his leave account was received in the Deptt. on 20.02.2002 but it is not clear as to why the

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case of the applicant was not considered when his undertaking reached the office on 30.09.2002 which was within the extended period of time/last date of the extended period of getting the benefits of surrender leave. It is trite law that Rules in force at the time of making application shall be the governing factor so far as entitlement of an employee is concerned. In view of the above, non-sanction/denial for the encashment of surrender leave for the period in question was not justified. But from the records it is not known whether the Applicant, subsequently, availed the leave. It is also not known as to whether the Applicant in the meantime has retired and in the event of his retirement, what was the leave at his credit for which he has been sanctioned the leave encashment dues. This aspect of the matter may be looked into by the Department while releasing the payment on account of surrender leave.

6. In view of the above, the Respondents are hereby directed to allow the Applicant his claim made on account of surrender leave for 2000-2002 and the amount due and admissible (taking into account his leave salary drawn in case of his retirement in the meantime) within a period of thirty days from the date of receipt of a copy of this order.

7. In the result, this OA is allowed to the extent directed above. There shall be no order as to costs.

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 (JUSTICE K. THANKAPPAN)
 MEMBER (JUDICIAL)

C.R.MOHAPATRA
 (C.R.MOHAPATRA)
 MEMBER (ADMN.)