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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

O. A. No. 436 of 2011

Cuttack this the **24th** day of June, 2014

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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Sri Parasmananda Nanda, aged about 59 years, Ex-PA, Bolangir HO (On leave), At-Rajendrapara, Po/Dist. Bolangir-767001 SUBSTITUED (vide order dated 26.12.2013) by Smt. Manjushree Nanda, aged about 61 years, W/o. Late Paramananda Nanda, At-Rajendrapara, Po/Dist. Bolangir.

...Applicant

(Advocates: M/s.D.P.Dhalsamant, N.M.Rout)

VERSUS

Union of India represented through -

1. Its Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. Khurda-751 001.
3. Postmaster General, Sambalpur Region, Dist. Sambalpur-768 001.
4. Director Postal Services, Office of the Post Master General, Sambalpur Region, Sambalpur-768 001.
5. Superintendent of Post Offices, Bolangir Division, Bolangir-767 001.

... Respondents

(Advocate: Mr. L.Jena)



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ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

This OA was initially filed by Paramananda Nanda, an employee of the Postal Department. During the pendency of this OA he attained the age of superannuation and subsequently also died. After death his wife (Smt. Manjushree Nanda) substituted as the Applicant which was allowed vide order dated 26.12.2013.

2. The case of the applicant, in nut shell, is that her husband while representing for Odisha Circle P&T Team in All India P&T Foot Ball Tournament held at Jammu during 1971 sustained spinal injury which was subsequently led to polarization for which he had undergone spinal cord operation and was issued Disability Certificate by the chief District Medical Officer, Bolangir. At the initial stage he was shown to have been suffering 40% Disability which was subsequently increased to 52% as per the certificate issued by the Chairman District Medical Board Cum CDMO, Bolangir. While working as Business Executive at Bolangir Head Post Office, he applied for leave on medical ground from 24.4.2009. Respondent No.5 directed the Applicant to appear before the Medical Board and accordingly, he appeared before the



Medical Board on 04.02.2010. The Medical Board certified the continuance of the applicant on illness is to be genuine. Thereafter also on the advice of the treating physician he continued on leave for which by application dated 29.11.2011 the applicant requested Respondent No.5 to grant him Special Disability Leave instead of EHPL and XOL as per Rule 44 & 45 of the CCS (Leave) Rules. The said request of the applicant was rejected by the Respondent No.5 vide letter dated 09. 12.2010. He preferred appeal against the order of the Respondent No.5 to Respondent No.4 which was rejected vide letter dated 15.4.2011. However, while continuing on leave, due to illness w.e.f. 24.4.2009, he attained the age of superannuation w.e.f. 31.07.2011. According to him, since he suffered injury in performance of his official duties/position, as per the rules he is entitled to Special Disability Leave. Hence, in this OA he has prayed to quash the order dated 09.12.2010 and 15.04.2011 with further prayer to direct the Respondents to grant him special disability leave for the period from 24.4.2009 to 23.4.2011.

3. According to the Respondents, in their counter, the husband of the Applicant namely Permananda Nanda while



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working as Business Executive reported sick on 23.4.2009 supported by unfit medical certificate. He reported to be sick continuously and applied for leave which was considered and sanctioned in his favour as due and admissible to him as per rules upto 31.7.2010. He submitted an application dated 29.11.2010 request to convert his leave to special disability leave as per Rule 44 & 45 of CCS Leave Rules on the ground that he sustained spinal cord injury during September, 1971 while representing Odisha Circle P&T Team in All India P&T Football tournament held at Jammu and Kashmir. Such request of the applicant was considered by the competent authority but rejected the same as his case did not come under the extant rules as he had not informed the authority within three months from the date of occurrence nor had he availed any kind of leave from September, 1971 to February, 1972 except one day EL on 6.11.1971 and that he had discharged his duty as Business Executive of Bolangir HO from 25.5.2005 to 24.4.2009 which involves intensive touring. He had never informed the authority, at that relevant point of time, about his disability. In view of the above, the Respondents have prayed for dismissal of this OA. Despite due opportunity no rejoinder has



been filed by the Applicant refuting the stand taken by the Respondents in their counter.

4. I have heard Mr.D.P.Dhalsamanta, Learned Counsel for the Applicant and Mr.L.Jena, Learned Additional CGSC appearing for the Respondents and perused the materials placed on record. Before proceeding to deal with the contentions advanced by respective parties, we would like to put on record the provisions of Rule 44 & 45 of CCS Leave Rules which is stated herein below:

“44. Special Disability Leave for injury intentionally inflicted:

(1) 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 of his official duties or in consequence of his official position.

(2) 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.

Provided that the authority competent to grant leave may, if it is satisfied as to the cause of the disability, permit leave to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause.

(3) The period of leave granted shall be such as is certified by an Authorized Medical Attendant and shall in no case exceed 24 months.

(4) Special disability leave may be combined with leave of any other kind.

(5) Special disability leave may be granted more than once if the disability is aggravated or reproduced in similar circumstances at later date, but not more than 24 months of such leave shall be granted in consequence of any one disability.

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(6) Special disability leave shall be counted as duty in calculating service for pension and shall not, except the leave granted under the proviso to Clause (b) of sub rule (7) be debited against the leave account.

(7) Leave salary during such leave shall, -

(a) for the first 120 days of any period of such leave, including a period of such leave granted under sub rule (5) be equal to leave salary while on earned leave; and

(b) for the remaining period of any such leave, be equal to leave salary during half pay leave;

Provided that a Government servant may, at his option, be allowed leave salary as in sub rule (a) for a period not exceeding another 120 days, and in the event the period of such leave shall be debited to his half pay leave account.

NOTE- Leave salary in respect of special disability leave granted to a Government servant who has rendered service under more than one Government may be apportioned between the Governments in accordance with the normal rules.

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45. **Special disability leave for accidental injury:**

(1) The provisions of Rule 44 shall apply also to a Government servant whether permanent or temporary, who is disabled by injury accidentally incurred in, or in consequence of, the due performance of his official duties or in consequence of his official position, or by illness incurred in the performance of any particular duty which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the civil post which he holds.

(2) The grant of special disability leave in such case shall be subject to the further conditions -

(i) that the disability, if due to disease, must be certified by an Authorized Medical Attendant to be directly due to the performance of the particular duty;

(ii) that, if the Government servant has contracted such disability during service otherwise than with a military force, it must be, in the opinion of the authority competent to sanction leave, exceptional in character; and

(iii) that the period of absence recommended by an Authorized Medical Attendant may be covered in part, by leave under this rule and in part by any other kind of leave and that the amount of special disability leave granted on leave salary

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equal to that admissible on earned leave shall not exceed 120 days."

5. Mr. Dhalsamanta's contention is that the husband of the applicant was a permanent employee of the Postal Department who while representing for Odisha Circle P&T Team in All India P&T Foot Ball Tournament held at Jammu during 1971 had sustained spinal injury which was subsequently led to polarization for which he had undergone spinal cord operation and was issued Disability Certificate by the chief District Medical Officer, Bolangir. Since his subsequent illness was related to such injury he was entitled to Special Disability Leave and rejection of his prayer being without due application of mind the orders of rejection are liability to be set aside. On the other hand, Mr. Jena reiterated the stand taken in the counter that intimation of injury accidentally incurred in performing the official duty within a period of three months is a pre-condition for grant of special disability leave to an employee, if subsequently suffered and such suffering is due to injury inflicted/ caused. By relying on the submission of the applicant made in the OA, it was submitted by Mr. Jena that it cannot be said that the subsequent illness of the applicant was such injury related

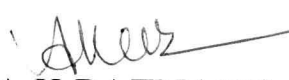
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because the applicant had not availed of any kind of leave from September, 1971 to February, 1972 except one day EL on 06.11.1971. He had also discharged his duty as Business executive of Bolangir HO from 25.5.2005 to 24.4.2009 which involves intensive touring when he was having 52% disability. He had never informed his disability at any point of time during the said period. On receipt of such request belatedly, the authority examined the same but rejected as his case did not come within the four corners of the Rule 44 and 45 of the Rules and as such he has reiterated that this OA being devoid of any merit is liable to be dismissed.

6. I have considered the rival submission of the parties with reference to the provision of Rule 44 and 45 of the Rules vis-à-vis the stand taken by the parties in their respective pleadings. It is not the case of the Applicant neither in the pleadings nor in course of hearing that he had informed the authorities about his injury accidentally incurred while representing Odisha Circle P&T Team in All India P&T Foot Ball Tournament held at Jammu during neither 1971 nor subsequent thereto. It has also not been disputed by the Applicant that thereafter he had discharged his



duty which involves intensive touring successively. Rule clearly provides that such leave, unless informed by the concerned employee, **shall** not be granted unless the disability manifested itself within three months of the occurrence and to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause, this Tribunal lacks competence to enlarge the scope and ambit so as to grant the relief to the applicant. It is to be noted that in this type of cases, it is for the Authority to take a view on the basis of the materials available on record with reference to the Rules. Since the applicant failed to substantiate with reference to the material that he had ever informed the authority in time about his injury till 2010, I find no flaw on the order of rejection. Hence this OA stands dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judicial)