

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

..... Date of Order : 13.12.2002.

O.A. NO. 78/2002

Smt. Kirti Varshney W/o Kanti Chandra Varshney aged about 61 years, at present resident of 2/E-19, Pawan Puri Housing Scheme, Bikaner (Ex. Teacher Kendriya Vidyalaya School, No. 3, Nal, Bikaner).

Mr. Sumeet Mehta, for the applicant.Applicant.

VERSUS

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.

2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.

3. Principal, Kendriya Vidyalaya No. 3, Nal, District Bikaner.Respondents.

Mr.K.K.Shah, for the respondents.

CORAM :

Hon'ble Mr. A.P. Nagrath, Administrative Member

Hon'ble Mr. J.K. Kaushik, Judicial Member

.....

ORDER

[Mr. J.K. Kaushik, Judicial Member]

Smt. Kirti Laṭa Varshney, has filed this application under section 19 of the Administrative Tribunals Act, 1985 and has sought the following concise relief :-

"That from the facts and grounds mentioned hereinabove the applicant prays that the respondents be directed to make the final payment of amount of Group Insurance Scheme and Accumulated Earned Leave to the applicant."

2. Skipping the superficialities, the factual matrix, necessary for adjudication of the controversy involved in this application, depicts/that the applicant retired on superannuation from pleadings

the post of Drawing Teacher in July 2001, after rendering twenty years of qualifying service. She was paid the retiral

.2.

benefits except the amount of Group Insurance Scheme and the Leave Encashment. After issuance of the Notices of this O.A., the respondents released the left-out dues i.e. amount of Group Insurance Scheme and Leave Encashment. However, the applicant was satisfied with the amount of Group Insurance Scheme paid to her but was not satisfied with the amount paid towards the Leave Encashment inasmuch as she had twenty three days leave to her credit but the leave encashment was paid to him only for thirteen days.

3. The defence set-out by the respondents in their reply is that due to oversight ten days period was allowed towards joining time despite her transfer from Ganganagar being on her own request. After sanction of the Leave Encashment, the mistake came to be detected and the payment was accordingly made for the thirteen days leave to his credit.

4. By the consent of the parties, the case was finally heard for disposal at admission stage. We have bestowed our earnest consideration to the arguments advanced at the Bar, pleadings and the documents on record.

5. The sole controversy remains to be resolved in this case is regarding the number of days for which the leave encashment is admissible to the applicant. The learned counsel for the applicant has made two-fold arguments; namely (1) the applicant was fully entitled for ten days joining time and (2) the entry relating to leave encashment for twenty three days remained unaltered in her service book, she was sanctioned the due amount, but without any notice or corrigendum the leave encashment has been reduced.

6. On the first point, the learned counsel for the applicant

has relied on the instruction No. 1 on the Transfer Order dated 27th April, 1992, the contents of which are extracted as under :-

"1. An employee who has been transferred on request will not be entitled to travelling allowance, joining time, etc. for joining Kendriya Vidyalaya to which he/she has been transferred. He/She will also not be granted leave prior to joining the new posting. However, if any employee has been transferred after minimum of five years stay at a station on the date of issue of transfer order be granted transfer benefits even if he/she has been transferred on his/her own request."

7. On the contrary, the learned counsel for the respondents has strenuously contended that the transfer of the applicant was on her own request and no joining time is allowed in such transfers. The applicant was only entitled for Travelling Allowance and Transit Time, which had been allowed to her. In order to buttress and appreciate his arguments, he referred to para 67 of Accounts Code wherein, the provisions have been made regarding grant of various benefits on different type of transfers. The contents of same read as under :-

"Transfer on Request"

All employees are transferable and transfers are regulated by the guidelines decided by the Board of Governors from time to time.

- (a) Transfer of staff made at their own request from one Vidyalaya to another will be regulated as follows :-
 - (i) The minimum period of transit required for the actual journey will be allowed.
 - (ii) The period of transit will be treated as follows :
 - (a) As earned leave, or as half-pay leave, if such leave is due.
 - (b) As extra-ordinary leave without pay, if neither earned leave nor half-pay leave is due
 - (iii) No transfer TA will be admissible.
- (b) When the transfer is made in the public interest, the KVS employee shall be entitled to avail joining time and claim transfer TA as admissible under the rules. Employees transferred after completion of their

8/2

tenure, are also entitled to transfer TA and transit time, even if they are posted to the place of their choice.

(c) Officials transferred after completion of 3 years stay in the North Eastern Region, Sikkim, A&N Islands and hard stations declared by KVS from time to time are entitled to transfer TA and no joining time, even if they are posted to the place of their choice."

8. With the cogent reading of the aforesaid provisions, it is amply obvious that no joining time is admissible in case of any type of own request transfer. Thus, the contention of the learned counsel for the applicant stands repelled and we do not find any infirmity in the action of the respondents. The applicant is only entitled for encashment for a period of thirteen days.

9. Adverting now to the other ground urged on behalf of the applicant that the entry of leave remained unaltered for a long time and no show cause notice was given before altering amount of leave encashment to the applicant.

10. In view of the fact that the action of the respondents is in violation of the doctrine of *audi altrem partem*, we would normally have adopted the easier and somewhat tempting course of remanding the matter to the authorities concerned. But, in the facts and circumstances of this case, we are clearly of the opinion that this would be merely an exercise in futility. The remanding of case would tantamount to flogging a dead horse or to make alive a lifeless issue. Such a course would not be in the interest of either party. In view thereof, we have taken upon ourselves the burden of determining the question about the correctness of number of days of leave encashment of the applicant and have recorded our findings hereinabove on the basis of material, evidence and provision of rules placed before us. We are, therefore, not in favour of remanding this case.



2/11

10. In view of the aforesaid discussions, no cause of action survives to the applicant and the Original Application has become infructuous. The same is accordingly dismissed. However, there shall be no order as to cost.

J.K.Kaushik
[J.K.Kaushik]
Judicial Member

A.P.Nagrath
[A.P.Nagrath]
Administrative Member

.....
jrm