IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 446/89 ~~198~~
~~TXXXXX~~

DATE OF DECISION 30.7.90

P.K.Asokan &
V.K.Manoharan
Applicant (s)

Mr.M.Girijavallabhan
Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary, Ministry of Defence and 2 others.
Respondent (s)

Mr.V.Krishnakumar, ACGSC
Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 24.7.89 filed under section 19 of the Administrative Tribunals Act, Shri P.K.Asokan, the 1st applicant who has been working as a labourer in the Naval Store Depot, Cochin and the and the 2nd applicant as General Secretary of the Cochin Naval Base Civilian Labour Union in a representative capacity, have challenged the impugned order at Annexure-C by which 10 days sick leave on Medical Certificate in a calendar year on full pay was withdrawn by deletion of Rule 9 of Civilian in Defence Services (Industrial Employees) Leave Rules, 1954 with retrospective effect. They have also prayed that it should be

declared that the respondents have no authority to amend the rules as at Annexure-A by the executive instructions at Annexure-B. Their further prayer is that the respondents should be directed not to take any action to regularise the leave already availed under the old rules, in accordance with the impugned orders at Annexure B and C. The brief facts of the case are as follows:

2. In accordance with Rule 9 of the Civilian in Defence Services (Industrial Employees) Leave Rules, 1954 (hereafter referred to as Rules), the applicants were entitled to 10 days sick leave on Medical Certificate on full pay. In addition to this, leave on full pay up to 5 days (debitable by twice the period against half pay leave account) on Medical Certificate in a calendar year was also provided for. In addition to this, in accordance with Rule 14 of these Rules, they were entitled to half pay leave without production of Medical Certificate at the rate of 10 days for each completed year of service. According to the applicants, the 1st respondent in September 1988 circulated executive order dated 10th June 1988 (Annexure-B) deleting Rule 9 which provided for 15 days of leave on full pay on Medical Certificate and amending Rule 14 increasing the limit of 10 days of half pay leave without Medical Certificate to 20 days per year. According to the applicants, by the corrigendum issued by administrative instructions, the applicants could not be deprived of their entitlement of 10 days of sick leave on full pay. They have also challenged the impugned order

at Annexure-C by which sick leave on full pay granted during the years 1986 onwards is treated as irregular and to be regularised, because of the amendment issued on 10th June 1988. For those who had no leave to their credit, such regularisation would not be possible and they will have to forfeit their wages. They have challenged the retrospective effect being given to the impugned order at Annexure-B.

3. According to the respondents, in accordance with the unamended rule 9 of the Consolidated Leave Rules for industrial employees paid from the Defence Service Estimates which were issued on 22nd December, 1983, in addition to 10 days medical leave on full pay in a calendar year, 5 days of additional leave (on full pay) could be granted on medical certificate but twice the amount of the additional leave was to be debited against the half pay leave of 10 days earned for each completed year of service provided in rule 14. Since there was vast disparity in the matter of sick leave on half pay between industrial and non-industrial staff in Government departments, the matter was discussed in the Joint Consultative Machinery and was referred to an Arbitration Board. The Board of Arbitration gave an award that there should be no disparity for grant of sick leave on half pay between industrial and non-industrial employees under the

Government departments. The Government accepted the award and issued the order dated 10th June 1988 at Annexure-B amending the Leave Rules of industrial workers under the Defence Department deleting rule 9 and amending rule 14 of the Rules so as to provide for 20 days of half pay leave per year on completion of each year of service. The half pay leave could be accumulated without limit and commuted subject to production of medical certificate. It was also provided that industrial employees who have completed a year's service during the calendar year from 1.1.84 shall be entitled to half pay leave in accordance with the aforesaid order from 1.1.86. They have conceded that till the amendment was made industrial employees were eligible for 10 days sick leave with full pay in a year and 5 days leave on full pay on medical certificate or 10 days half pay leave without medical certificate subject to a maximum of 180 days but, with the amendment the total leave is restricted to 20 days half pay leave which is commutable as 10 days leave on full pay on production of medical certificate. They have clarified that the 1983 rules were promulgated by the Government and the same authority amended the rule and the question of incompetence of amendment does not arise. The accumulation of half pay leave on the basis of the amended rule was given effect to from 1.1.86. The excess sick leave availed of from 1.1.86

till the issue of the revised Leave Rules had to be regularised and the matter is under consideration. They have further stated that since the amendment is based on the award of the Arbitration Board, the retrospective effect is binding in law. They have further stated that instead of representing against the impugned order at Annexure-C, the applicants should not have approached the Tribunal.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There is no gainsaying the fact that by the impugned amendment of the Leave Rules applicable to civilian industrial employees, issued by the Ministry of Defence on 10th June 1988, Rule 9 was deleted and the provision of sick leave for 10 days on full pay and the additional leave of 5 days on medical certificate debitable as 10 days to half pay leave account was taken away. As a compensation for loss of 15 days of sick leave on full pay, Rule 14 was amended by increasing the rate of accumulation of half pay leave per year from 10 days to 20 days. That is, an additional benefit of 10 days of half pay leave per year, commutable to 5 days on full pay, was added to the leave entitlement. Thus, on an overall basis, there was a loss of 10 days of sick leave on full pay by the impugned amendment. This amendment was given effect from 1.1.86. It is now established law

that amendment to service conditions even by statutory rule cannot be given retrospective effect so as to take away the vested rights and interests. In P.W.Agarwal and others Vs. State of U.P. and others [ATR 87 (2) SC 128] the Supreme Court held that the Government has, under the proviso to Article 309 of the Constitution, powers to frame rules regarding conditions of service with powers to amend or alter rules with retrospective effect but that should not take away or impair vested right. In Rafiquennesa Vs. Lal Bahadur Chetri [AIR 1964 SC 1511] the Supreme Court had held that where vested rights are affected by statutory provisions, it should be construed to have prospective effect except in procedural matters. Thus, if even statutory rules cannot take away vested rights with retrospective effect, rules issued by administrative instructions cannot do so. It is not the case of the respondents that the original rules of 1983 and the impugned amendment of 10th June 1988 were statutory rules framed under Article 309 of the Constitution. On the other hand, they have stated that the Consolidated Leave Rules issued on 22nd December 1983 and the impugned amendment of 10th June 1988 were issued by the Government under its executive powers. The retrospective effect has been justified on the ground that it is done on the basis of the award. We are not impressed by this argument as, if statutory rules cannot take away vested rights, we have no doubt that the same cannot be taken away

on the plea of implementation of an award.

5. During the course of the arguments the learned counsel for the respondents produced a futher order issued by the Ministry of Defence No.11(2)/86/D(Civ-II) dated 15th May 1990 by which the casual leave of industrial employees in a calendar year was increased from 7 days to 12 days with effect from 1.1.85 and it was indicated that those who had availed of sick leave during the period from 1.1.85 to 10.6.88, the sick leave granted to them would be adjusted against the enhanced casual leave/half pay leave and in such cases no recovery of leave salary paid for sick leave will be made and where recovery has been made, refund will be given. Though the aforesaid order compensates by regularisation of excess sick leave taken upto an extent of 5 days, since the loss of sick leave by the retrospective effect of the amendment was to the extent of 10 days on full pay, the adverse effect of the retrospectivity of the amendment has not been fully met. This would be possible only if,in addition to 5 days of casual leave, a provision is made for covering the excess sick leave for which recovery is to be made, by grant of special casual leave upto an extent of 5 days more in cases arising between 1.1.85 and 10.6.88. As regards the competence of issuing the impugned

amendment of 10th June 1988, the learned counsel for the respondent has not been able to show any document to establish that the original Leave Rules applicable to civilian industrial employees of the Defence were issued under Article 309 of the Constitution. On the other hand, the Leave Rules applicable to civilian industrial employees paid from the Defence Service Estimates were consolidated and issued by the Ministry of Defence O.M. of 22nd December 1983 which reads as follows:

> "Subject: Leave Rules for Civilian Industrial Employees paid from the Defence Services Estimates.
>
> The undersigned is directed to state that a need has been felt for some time past of consolidating at one place the orders/instructions on the above subject issued by this Ministry from time to time. Accordingly, the previous orders/ instructions relating to the "Civilians in Defence Services (Industrial Employees) Leave Rules" have been consolidated as in Appendix to this Office Memorandum.
>
> Sd/-
> (R.Subramanian)
> Under Secretary To the Government of India."

Since the amendment was also issued by administrative order the Ministry of Defence, it cannot be said that the rules were amended by an authority inferior to one which had issued the original rules. In a lucid judgement (K.M.Bindra Vs. Union of India and another, 1973 (1) SLR 928) the High Court of Delhi dealt with the question of modalities and authority of issuing rules governing conditions of service and of amending them. It held that power of Government to frame such rules without

recourse to legislation or statutory rules is derived from articles 310 and 73 of the Constitution. As regards amending such rules it held that it is elementary that the instrument of change should be of the same kind as the thing to be changed. Symmetry therefore requires that (1) law may be changed by law, (2) a statutory rule by statutory rule, (3) administrative instructions by administrative instructions." Since in this case the rules and the amendment were issued by the Ministry of Defence through Government orders, the amendment cannot be faulted on ground of incompetence. Further, since the amendment was effected in implementation of an arbitration award, its prospective effect/even though adverse to the applicants, cannot be challenged. Since the service of the applicants is under the Government, they have acquired a status and the rights and obligations are no longer determined by the consent of both the parties and the same can be framed and altered unilaterally by the Government as originally laid down the celebrated judgement of the Supreme Court in Roshanlal Tandan Vs. Union of India [AIR 67 SC 1989].

6. In the facts and circumstances, we allow the application in part only to the extent of directing the respondents to cover all/cases of excess sick leave arising between 1.1.85 and 10.6.88 by the grant of ordinary or special casual leave upto an extent of

5 days in a calendar year in addition to the 12 days casual leave already made admissible by the OM of 15th May 1990. No recovery of leave salary paid for sick leave covered by the special and ordinary casual leave will be made and where recovery has already been made, refund may be given immediately in such cases. No order as to costs.

30.7.90

(A.V.Haridasan)
Judicial Member

30.7.90

(S.P.Mukerji)
Vice Chairman

23.5.90

C.C.P.No.20/90
O.A.No.446/89

Shri Girijavallabhan
Shri V.Krishnakumar-ACGSC.

SPM & ND

At the request of the learned counsel for the respondents, list for further directions on 31.5.90.

23.5.90

SPM & ND

Shri Girijavallabhan for the applicant by proxy
Shri V. Krishnakumar, ACGSC for respondents

At the request of the learned counsel for the applicant list for further directions on 21.6.90 along with O.A. 446/89.

31.5.90

Reply filed

21.6.90

SPM & VH

Mr. CS. Ramanathan
for Girijavallabhan.

Adjourned at the request on behalf of the Counsel for the applicant, to 22.6.90

21.6.90.

SPM & ND

CS Ramanathan for the applicant-(proxy)
V. Krishnakumar ACGSC for respondents-

List for final hearing on

28.6.90.

22/6/90

28.6.90 SPM & AVH

Shri Girijavallabhan-for applicant.
Shri Krishnakumar-for respondents.

(Order by VC)

We have heard the learned counsel for both the parties on the C.C.P. and gone through the documents carefully. The petitioner has not produced any order or given evidence of any action taken by the respondents which may amount to contempt of our/interim order dated 1.8.89. The learned counsel forthe petitioner himself wants to withdraw the contempt petition. Accordingly the contempt petition is dismissed and notice of contempt is discharged.

(A.V.Haridasan)
Judicial Member

(S.P.Mukerji)
Vice Chairman

28.6.90

Ksn