

/

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 85 OF 2009

FRIDAY....., this the 14th day of August, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Kumari. R. Baby,
Working as U.D.C., Films Division,
Ministry of Information and Broadcasting,
Government of India, Ground floor,
B-Wing, C.G.O. Complex, Poomkulam,
Vellayani. P.O., Thiruvananthapuram-22.

... Applicant

(By Advocate Mr. Rajeev Koyickal)

versus

1. The Union of India, Rep. by the Secretary,
Ministry of Information and Broadcasting,
New Delhi.
2. The Branch Manager, Films Division,
Ministry of Information and Broadcasting,
Government of India, Ground Floor,
B-Wing, C.G.O. Complex, Poomkulam,
Vellayani. P.O., Thiruvananthapuram-22.
3. The Chief Producer, Films Division,
Ministry of Information and Broadcasting,
Government of India,
24 Dr. G. Deshmukh Marg, Mumbai-26.
4. The Assistant Administrative Officer,
Films Division, Ministry of Information
and Broadcasting, Government of India,
24 Dr. G. Deshmukh Marg,
Mumbai-26.

... Respondents

(By Advocate Mr. M.M. Saidu Muhammed, ACGSC)

 The application having been heard on 31.07.2009, the Tribunal
on 14.08.2009..... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

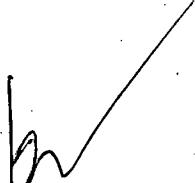
The applicant challenged her transfer order earlier through O.A. No.623/2007 and 133/2008 which were disposed of by a common order dated 24.09.2008 whereby in regard to absence from duty of the applicant, the Tribunal has passed the following orders :-

"She shall, therefore, report for duty at Mumbai immediately within two weeks from the date of receipt of this order. In that case, official respondents shall treat her absence as duty from 18.10.2007 till date of her joining at Mumbai as duty for all purposes and it shall be regularized by granting her leave due as admissible to her."

2. In pursuance of this order of the Tribunal, the respondents have issued Annexure A2 order dated 06.10.2008 followed by Annexure A3 order dated 05.11.2008. In the later order, her absence from duty was regularized by grant of 129 days of H.P.L., 14 days of E.L. and 282 days of E.O.L. Applicant made representation against the Annexure A3 order stating that according to the Court order, from 31.07.2007 onwards upto the reported duty day, the period should be treated as on duty as such leave will be sanctioned with pay instead of without pay. Hence, the applicant has requested for regularisation of leave and payment of salary. On consideration of the above request the respondents have issued the impugned Annexure A5 order wherein the following details have been given :-

"26/7/08 to 30/09/08 EOL without pay for 67 days.

Total Leave : (1)03/08/07 to 09/12/07 HPL
(2)10/12/07 to 23/12/07 E.L.
(3)24/12/07 to 07/01/08 E.L.



- (4)08/01/08 to 17/01/08 HPL
- (5)18/01/08 to 30/06/08 EOL
without pay without M.C. For
165 Days.
- (6)01/07/08 to 15/07/08 E.L.
- (7)16/07/08 to 25/07/08 HPL
- (8)26/07/08 to 30/09/08 EOL
without pay without M.C. for
67 Days.

Kum. R. Baby, Assistant reported duty
on 03.10.2008.

"We are drawing her salary for 44 days
in full, HPL for 149 days and EOL without pay for
232 days."

3. Being aggrieved by the above order also, the applicant has filed this O.A. with a prayer to call for the records and to quash the Annexure A5 order and for a direction to the respondents to pass necessary orders afresh by granting appropriate leave to the applicant so as to draw leave salary for the period of absence in connection with the transfer dated 31.07.2007.
4. Respondents have resisted the O.A. According to them, as there were some mistakes in the initial order regularizing the leave vide Annexure A3, on locating the same Annexure A5 was passed. The said order also was found to be erroneous in calculation and hence Annexure R2 order has been passed. This has resulted in the regularization of the leave of the applicant which has resulted in issue of Annexure R3 order.
5. The applicant has filed her rejoinder indicating the arrear statement furnished to her by the Department vide Annexure A5. Here again, the applicant is not satisfied as according to her, some more amount is due. The respondents have stated that after paying the amount as worked out vide

order dated 02.01.2009, the respondents were working out the difference of pay and allowances in the light of the revision of leave account vide order dated 02.03.2009 and the amount shall be paid to the applicant.

6. Counsel for the applicant stated that as per the Court order, the applicant is entitled to have the entire period of absence treated as duty and leave salary paid to her. Counsel for the respondents, however, argued that the period of absence would be treated as duty but at the same time by way of adjusting the leave due to the applicant and as such the applicant is not entitled to full pay and allowances.

7. Arguments were heard and documents perused. The leave accounts furnished by the respondents indicated as under :-

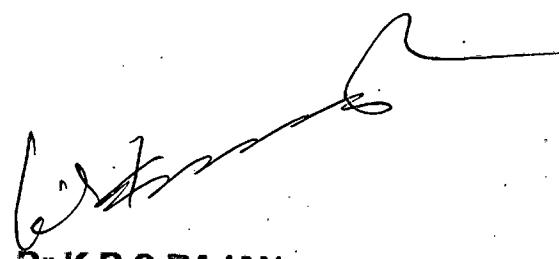
Period	Op. Bal plus leave credited		Period of absence	Regularised			Bal. Credit	
	E.L.	HPL		EL	HPL	EOL	EL	HPL
2 nd half of 2007	7+ 15= 22	119+10=129	159 days	22	129	8	0	0
1 st Half of 2008	0+15=15	0 + 10 = 10	182 days	15	10	157	0	0
2 nd Half of 2008	0+15=15	0 + 10 = 10	107 days	15	10	82	0	0
1 st Half of 2009	0+7=07	0 + 10 = 10		2	2	Nil	Nil	5 10
2 nd Half of 2009	5+15 = 20	10+10=20	Nil	Nil	Nil	Nil	20	20

8. From the above it is seen that the respondents have religiously followed the direction that the period of absence shall be treated as duty whereby leave has been credited every 6 months even though, applicant was not actually present in the office and it was only when no leave was at her credit to the extent to 82 days after the order of the Tribunal was issued that at the rate of 1/10 of the period of absence credited out of the Earned Leave has

been deducted. The calculation is absolutely correct and as such the action of the Department cannot be faulted with. Apparently, the applicant has misread the order of the Tribunal where it is stated that the period of absence shall be treated as duty. Infact, the same has been followed by the words, "and it shall be regularized by granting her leave as admissible to her". It is this part which the applicant forgot but respondents have meticulously (and rightly so) taken into account. Thus no legal lacuna can be discerned in Annexure A5 order or order dated 02.03.2009.

9. The O.A. is dismissed. No costs.

Dated, the 14th August, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

rkr