

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 97 199 2

DATE OF DECISION 15.6.93

K.P. Bhaskaran Nair Applicant (s)

Mr. T. A. Rajan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Ministry of Home Affairs
New Delhi and others

Mr. N.N. Sugunapalan, Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
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

MR. N. DHARMADAN JUDICIAL MEMBER

This application has been admitted only in regard to the second applicant and his grievance is against denial of Earned Leave for the work carried out by the applicant during the ^{le}vacation period in the year 1991.

2. The second applicant is at present working as Librarian in the M.G. College, Andhroth. He is serving in a vacation Department. The employees working in the vacation department can have the freedom to avail full vacation. However, authorities may by special or general orders require the government servant working in the vacation department to forego a portion of the vacation by issuing orders. In such cases, the govt. servant is entitled to E.L. leave taking into consideration the period of duty. The applicant has produced Annexure-I

Rule 28 of the CCS (Leave Rules) 1972. As per the aforesaid rule, if the govt. servant has foregone full vacation by general or special order, he is entitled to 30 days E.L. in addition to normal leave. The said rule further stipulates ^{that} if the Govt. servant has availed a portion of vacation, he is entitled to E.L. in such proportion of 30 days as the number of days of vacation not taken to the full vacation. If the government servant has been prevented by general or special order then he shall be considered to have availed himself of a portion of the vacation and this provision of the Rule is clarified by a note with a proviso. Since the note with the proviso is relevant, they are extracted below:

"Note-1: A Government servant entitled to vacation shall be considered to have availed himself of a vacation or a portion of a vacation unless he has been required by general or special order of a higher authority to forego such vacation or portion of a vacation.

Provided that if he has been prevented by such order from enjoying more than fifteen days of the vacation he shall be considered to have availed himself of no portion of the vacation."

3. By Annexure-II order dated 14.3.91 the applicant along with 8 others ^{who} were directed to work during the vacation April-May, 1991. The total period of vacation comprises 76 days. Out of 76 days, the applicant was directed to work as per special order for 19 days. According to applicant since he was put on duty during the period of vacation beyond 15 days, he is entitled to get E.L. ⁱⁿ ~~such proportion~~ of 30 days as may be granted as per rules. Circular Annexure-III dated 16.4.91 was also issued by the Director of Education, Lakshadweep Administration, purported to be a clarification of Rule 28(3)(1) of CCS (Leave) Rules, 1972. Since the applicant was denied the benefit of getting E.L. ⁱⁿ ~~proportionately~~ in terms of the aforesaid rule, he has filed this application ^{challenging} ~~challenging Annexure-I, Rule 28 of CCS (Pension) Rules 1972 to the limited extent of note and the~~ ^{which} ~~proviso~~ stands against him for getting the relief. He has

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also challenged Annexure-III circular issued by the Director of Education.

4. In the reply filed by respondents 1 to 3, they have stated that the interpretation of the rules by the applicant that if a Government servant is ordered to forego vacation for more than 15 days, he is entitled to get E.L. in ¹/₂ proportion to 30 days E.L. is misleading and it is against the interpretation of the Rules given by the Departmental authorities. According to departmental authorities, the applicant is not entitled to such service benefits since he attended invigilation duty during the vacation period in connection with the P.D.C. Examination for 19 days. The duration of the vacation of the college was 76 days and the applicant was called for duty only 19 days while he has enjoyed the remaining 57 days. Regarding the comparable cases cited by applicant, in the rejoinder by producing Annexures V to IX, respondents have taken the stand that the said orders have been issued on a mistaken interpretation of the rule and the matter has been referred to the Ministry of Finance, New Delhi for clarification. Further action will be taken after getting reply from the Ministry. It is also stated that the application is to be dismissed.

5. I have heard learned counsel on both sides. From Annexure-II order it is clear that the applicant was put on duty for 19 days and he was prevented from enjoying the two spells of vacation for 76 days during the year 1991. Since the applicant was prevented from enjoying vacation for a period more than 15 days, his case comes squarely within Rule 28(3)(1)(a) which reads as follows:

" In respect of any year in which a Government servant availed himself of a portion of the vacation, he shall be entitled to earned leave in such proportion of 30 days or 45 days when governed by the exception to sub rule (i) of the rule 26, as the number of days of vacation not taken to the full vacation."

The proviso to the note attached to the aforesaid clause says that if any employee has been prevented from

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enjoying more than 15 days of the vacation by a special or general order, he shall be deemed to have availed himself of any portion of the vacation. The wording of the proviso is very clear and the only condition is that the employee should ^{be prevented from} ~~not~~ be enjoying more than 15 days of vacation, by a special order. The applicant has satisfied the condition and is eligible for getting ^{be} ~~proportionate~~ E.L. as per the Rule 28.

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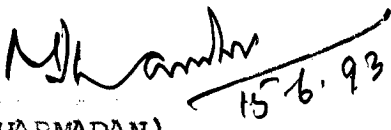
6. The comparable cases cited by the applicant are mentioned in Annexures V to IX. Annexure-V is an order passed in favour of Shri M.P. Bansal. In that order it is made clear that since Shri Bansal was prevented from availing vacation for more than 15 days, he is eligible for E.L. @ applicable to non-vacational staff and he is deemed to have not availed of vacation for the year. Similar wording is contained in other orders passed in favour of similarly situated employees.

7. The orders Annexure-V to IX have been issued considering the note ^{in 4} ~~at~~ the proviso of Rule 28 as extracted above. Since the other teachers in the same institute were granted the benefit of proportionate E.L. for attending office during the period of vacation, there is no legal justification to deny the same to the applicant.

8. In this view of the matter, having considered the contentions raised by the applicant, I declare that the applicant is entitled for getting Earned Leave in terms of the Rule as in comparable cases ^{shall in 4} Annexure-V to IX.

9. The application is allowed to the extent indicated above.

10. There shall be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER
15.6.93