

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.160/09

Friday this, the 8th day of January, 2010

CORAM:

HON'BLE SRI K. GEORGE JOSEPH, MEMBER(A)

Smt. Elsy John, aged 60 years,
W/o A. George Mathen,
Supervisor (retired), O/o Accountant General (A&E)
Kerala, Thiruvananthapuram, residing at "Kayyalakakath House",
Vivekananda Nagar, Mukkolakkal,
Thiruvananthapuram.

.. Applicant

By Advocate : Mr. M.A. Shafik

vs.

1. Union of India,
represented by Secretary, Ministry of Finance,
New Delhi.
2. The Accountant General (A&E), Kerala,
Thiruvananthapuram.
3. The Senior Accounts Officer,
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram.
4. Shri Raveendran,
The Accountant General (A&E), Kerala,
Thiruvananthapuram.

... Respondents

By Advocate : None for R-1

Mr. Sunil Jacob Jose, SCGSC for Mr. P. Nandakumar

The application having been heard on 08.01.2010, the Tribunal on the same day
delivered the following:-

ORDER

HON'BLE MR. K. GEORGE JOSEPH, MEMBER(A):

When this O.A. was taken up for hearing, the proxy counsel for R2 to R4

requested for an adjournment. In the interest of not delaying justice, his request was not entertained, as the O.A. pertained to leave and the applicant retired from service on 31.5.2008 and the pleadings were complete. The application was considered on merits on the basis of the records available, which were quite sufficient for adjudicating the matter.

2. The applicant is aggrieved by the refusal of commuted leave and withholding of salary for the month of April, 2008 and salary for 11 days in May, 2008 and leave encashment for 43 days at her credit. The applicant who was designated as Supervisor in the office of respondent No.2 by virtue of her elevation under accelerated promotion scheme was actually entrusted with the duties of one of the many Senior Accountants. As she could not attend the office on account of illness she had applied for commuted leave from 1.4.08 for 32 days and again from 6.5.08 for 11 days. The leave application for 32 days along with medical certificate was submitted only on 5.5.08 as she was bedridden and she could not get the help of others to submit the same in time. She retired on 31.5.08. Vide Annexure 4 dated 3.6.08 she was informed that commuted leave applied for by her was not sanctioned by the Accountant General and that as a lenient measure if she applied for any other kind of leave, the same could be sanctioned. She made a representation to the second respondent on 17.6.08 pointing out that she had finished all her work and made clear to the Section Officer and Accounts Officer her intention to proceed on leave. Another official was entrusted with the responsibility to attend to the work in her absence. On the date of her superannuation she had 11 days of half pay leave after debiting the commuted leave applied for and 218 days earned leave at her credit and as such the intention of the second respondent in ordering that if she applied for any other kind of leave, the same could be sanctioned, was not clear to her. Vide Annexure A1 letter dated 10.11.08 she was informed that leave encashment for 174 days was authorized to her and 43 days of earned leave had been kept withheld to facilitate conversion of commuted leave already applied for, which can be released only on receipt of application for leave to regularize the period of absence of 32 days from 1.4.08 and 11 days from 6.5.08. As per Rule 7 of the CCS Leave Rules, leave cannot be claimed as a matter of right. As per Rule 19 governing grant of leave on medical certificate to Government servants, the grant of medical certificate under this rule does not in itself

confer upon the Government servant any right to leave and orders of leave sanctioning authority is required. After due consideration of all documents, the competent authority had decided not to sanction the commuted leave applied for. The amount withheld from DCRG and cash equivalent of leave salary, if any available will be authorized on regularization of period of absence, she was informed. Aggrieved, the applicant has filed this O.A.

3. The applicant contends that her application for commuted leave was in accordance with CCS (Leave) Rules 7 and 30(1) and that there is no justification or valid ground for refusing the same. Leave may not be a matter of right. But it does not invest on the authority any arbitrary discretion to reject leave without reason.

4. The respondents contested the O.A. Under Rule 7 of CCS (Leave) Rules, leave is not a matter of right. As per Rule 19(5) of the same rules the grant of medical certificate in itself confer upon the Government servant any right to leave and orders of the competent authority to grant leave has to be awaited. The applicant attended office and received her salary on March 31, 2008. There was no indication in the medical certificate that she was suddenly bedridden. She was well enough to visit the doctor on 1.5.08 and get a medical certificate. She could have delivered her leave application on 1.4.08 or soon thereafter or she could have informed of her absence to the office through phone. She did not submit item wise medical bills.

5. The records were perused very carefully.

6. Rule 7 of CCS Leave Rules reads as under:-

"7. Right to leave

(1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.

GOVERNMENT OF INDIA'S DECISIONS

(1) Government servants to be encouraged to take leave regularly.- The Government have had under consideration the recommendation made by the Second Pay Commission that the Heads of Departments, Offices, etc., should plan their work in such a way as to permit Government servants to take a certain amount of leave annually and a longer period after some years or according to any special necessity.

Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. These provisions have been made in the rules because it is not always possible to let all who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These provisions are not intended to be used as in effect to abridge the leave entitlement of the staff. Indeed it is desirable in the interest of efficiency of the public service that Government servants take leave at suitable intervals and return to work keen and refreshed.

The leave sanctioning authority may, therefore, encourage Government servants to take leave regularly, preferably annually. In cases where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority should draw up phased programme for the grant of leave to the applicants by turns with due regard to the principles enunciated.

(G.I., M.H.A., O.M.No.6/51/60-Ests.(A), dated the 25th January, 1961 and reiterated, vide G.I., Dept. of Per. & Trg., O.M.No.14028/3/2000-Estt.(L), dated the 22/27th March, 2001.)

(2) Leave should not ordinarily be denied during the last ten years of service.- Rule 7 provides that leave cannot be claimed as of right. When the exigencies of public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. These provisions have been made in the rules because it is not always possible to let all who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These provisions are, however, not intended to be used, as in effect, to abridge the leave entitlement of the Staff. Indeed, it is desirable in the interest of efficiency of public service that Government servants take earned leave at suitable intervals and return to work keen and refreshed.

2. The position has been reviewed by the Government in the light of the recommendation of the Fourth Pay Commission regarding increase in ceiling on earned leave accumulations from 180 days to 240 days. While accepting the recommendation, the Cabinet have also observed that earned leave should not ordinarily be denied to any employee, especially in the last ten years of his career, so that earned leave accumulations beyond 180 days normally do not take place. The leave sanctioning authorities are, therefore, requested to ensure that the earned leave is not ordinarily denied to an employee.

(G.I., Dept. of Per. & Trg., O.M.No.14028/19/86-Estt.(Leave), dated the 29th September,1986.)

7. A Government servant cannot claim leave as of right as per Rule 7(1). This does not confer any unbridled and arbitrary power on the sanctioning authority to deny leave at its whims. Only in the exigencies of public service can the authority refuse leave. It is not open to that authority to alter the kind of leave due and applied for except at the written request of the Government servants. In the instant case respondent No.2 ignores Rule 7(2) of CCS Leave Rules. The Govt. of India decision is such that the Govt. servants are to be encouraged to take leave regularly. Leave is not to be denied during the last ten years of service. Rule 7(1) restrains employees from evading responsibilities by resorting to leave; it does not give a licence to the leave sanctioning authority to refuse leave at its whims and fancies or to use it as an instrument of torture.

8. Rule 19(3) reads as under:-

“(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.”

9. Rule 19(5) reads as under:-

“(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.”

10. Both Rules 19(3) and 19(5) may be read together. The grant of medical certificate does not in itself confer upon the Govt. any right to leave. Medical certificate has to be forwarded to the authority competent to grant leave and orders of that authority awaited. The competent authority to grant leave cannot withhold sanctioning of leave. In case of doubt the authority may write under intimation to the official concerned for second medical opinion. If respondent No.2 had any doubt about the genuineness of commuted leave asked for he could have got second opinion at least for the period of leave from 6th May for which the applicant had applied in advance. The applicant had taken leave in two spells. For the second spell she had submitted the application with a medical certificate in time. The fact that he has given the same treatment for both the spells betrays his intention somehow not to grant the leave. Respondent No.2 has failed to find any administrative exigency that can justify the denial of commuted leave to the applicant who was on the verge of retirement. The duties entrusted with her were not so high and important that her absence could have an impact on the administration. She was only one among the many Senior Accountants in the office of respondent No.2. She had informed her superior about her intention to go on leave.

11. Rule 30(1) of CCS (Leave) Rules is extracted as under:-

"1) Commuted leave not exceeding half the amount of half pay leave due may be granted on medical certificate to a Government servant (other than a military officer), subject to the following conditions:-

(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry."


Commuted leave is to be granted on the strength of a medical certificate to a Government servant if there is a reasonable prospect of his returning to duty on its expiry. Leave cannot be denied at the whims of the sanctioning authority. Commuted leave on medical certificate to an employee who is about to retire cannot be denied; if it is denied, it is sheer harassment, in the facts and circumstances of this case.

12. Under the guise of being lenient, respondent No.2 is ready to sanction any kind of leave other than commuted leave. After illegally and unjustly refusing leave, he has withheld 43 days of earned leave from encashment so as to inflict monetary loss upon the applicant. This action on the part of respondent borders on perversity and abuse of power. There is no justification in denying leave to the applicant and on insisting that she should not take commuted leave. The refusal on the part of respondent No.2 to sanction commuted leave to the applicant is against the spirit of the Leave Rules, unjust, mala fide and reeks of personal prejudice. It is illegal, inhuman and arbitrary. In the interest of justice, this O.A. needs to be allowed.

13. It appears from the documents that an amount of Rs.1,18,941/- was sent by cheque to the applicant who refused it as it did not represent cash equivalent of 218 days of earned leave at her credit on the date of her superannuation. She could have accepted it under protest and continued her battle for the remaining amount. Therefore she is not eligible to receive interest on the amount that was sent to her in time. The balance amount that was payable to her by way of leave encashment, death cum retirement gratuity and salary should be paid to her with interest at the rate of 9% per annum from 1.6.08 till the date of actual payment.

14. The O.A. is allowed. The respondents are directed to regularize the period of applicant's leave from 1.4.08 for 32 days and from 6.5.08 for 11 days by allowing her commuted leave as applied for and to disburse the withheld amounts with interest at the rate of 9% per annum from 1.6.08 till the date of actual payment within 15 days of receipt of a copy of this order.

15. No order as to costs.



(K. GEORGE JOSEPH)
MEMBER(A)

/njj/

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 160 of 2009

Thursday, this, the 4th day of March, 2010

CORAM:

HON'BLE SRI K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Smt. Elsy John, aged 60 years,
W/o A. George Mathen,
Supervisor (retired), O/o Accountant General (A&E)
Kerala, Thiruvananthapuram,
Residing at "Kayyalakakath House",
Vivekananda Nagar, Mukkolakkal,
Thiruvananthapuram.

.. Applicant

By Advocate : Mr. M.A. Shafik

versus

1. Union of India,
represented by Secretary,
Ministry of Finance,
New Delhi.
2. The Accountant General (A&E), Kerala,
Thiruvananthapuram.
3. The Senior Accounts Officer,
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram.
4. Shri Raveendran,
The Accountant General (A&E), Kerala,
Thiruvananthapuram.

... Respondents

By Advocate : Mr. P.S. Biju for R1 (not present)
Mr. P. Nandakumar for R2-4


The application having been reheard on 04.03.2010, the Tribunal on the same day delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, ADM. MEMBER

Aggrieved by the refusal of commuted leave and withholding of salary for the month of April, 2008 and for 11 days in May, 2008 and leave encashment of 43 days at her credit, this OA has been filed by the applicant. It was allowed on 08.01.2010, rejecting the request by the proxy counsel for the respondents for an adjournment. However, RA No. 07/2010 in this O.A. was allowed on 25.02.2010 to afford another opportunity of being heard to the respondents, in the interest of justice. The OA was reheard on 04.03.2010 when both the learned counsel for the parties were present.

2. To state the facts of the case briefly, the applicant who was designated as Supervisor in the office of respondent No.2 by virtue of her elevation under accelerated promotion scheme was actually entrusted with the duties of one of the many Senior Accountants. As she could not attend the office on account of illness she had applied for commuted leave from 1.4.08 for 32 days and again from 6.5.08 for 11 days. The leave application for 32 days along with medical certificate was submitted only on 5.5.08 as she was bedridden and she could not get the help of others to submit the same in time. She retired on 31.5.08. Vide Annexure 4 dated 3.6.08 she was informed that commuted leave applied for by her was not sanctioned by the Accountant General and that as a lenient measure if she applied for any other kind of leave, the same could be sanctioned. She made a representation to the second respondent on 17.6.08 pointing out that she had finished all her work and made clear to the Section Officer and Accounts Officer her intention to proceed on leave. Another official was entrusted with the responsibility to attend to the work in her absence. On the date of her superannuation she had 11 days of half pay leave after debiting the commuted leave applied for and 218 days earned leave at her credit and as such the intention of the second respondent in ordering that if she applied for any other kind of leave, the same could be sanctioned, was not clear to her. Vide Annexure A1 letter dated 10.11.08 she was informed that leave encashment for 174 days was authorized to her and 43 days of earned leave had been kept withheld to



facilitate conversion of commuted leave already applied for, which can be released only on receipt of application for leave to regularize the period of absence of 32 days from 1.4.08 and 11 days from 6.5.08. As per Rule 7 of the CCS Leave Rules, leave cannot be claimed as a matter of right. As per Rule 19 governing grant of leave on medical certificate to Government servants, the grant of medical certificate under this rule does not in itself confer upon the Government servant any right to leave and orders of leave sanctioning authority is required. After due consideration of all documents, the competent authority had decided not to sanction the commuted leave applied for. The amount withheld from DCRG and cash equivalent of leave salary, if any available will be authorized on regularization of period of absence, she was informed. Aggrieved, the applicant has filed this O.A.

3. The applicant contends that her application for commuted leave was in accordance with CCS (Leave) Rules 7 and 30(1) and that there is no justification or valid ground for refusing the same. Leave may not be a matter of right. But it does not invest on the authority any arbitrary discretion to reject leave without reason.

4. The respondents contested the O.A. Under Rule 7 of CCS (Leave) Rules, leave is not a matter of right. As per Rule 19(5) of the same rules the grant of medical certificate in itself confer upon the Government servant any right to leave and orders of the competent authority to grant leave has to be awaited. The applicant attended office and received her salary on March 31, 2008. There was no indication in the medical certificate that she was suddenly bedridden. She was well enough to visit the doctor on 1.5.08 and get a medical certificate. She could have delivered her leave application on 1.4.08 or soon thereafter or she could have informed of her absence to the office through phone. She did not submit item wise medical bills.

5. Learned counsel for the parties were heard and the records perused.

6. Rule 7 of CCS Leave Rules reads as under:-

"7. Right to leave

(1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.

GOVERNMENT OF INDIA'S DECISIONS

(1) **Government servants to be encouraged to take leave regularly.-** The Government have had under consideration the recommendation made by the Second Pay Commission that the Heads of Departments, Offices, etc., should plan their work in such a way as to permit Government servants to take a certain amount of leave annually and a longer period after some years or according to any special necessity.

Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. These provisions have been made in the rules because it is not always possible to let all who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These provisions are not intended to be used as in effect to abridge the leave entitlement of the staff. Indeed it is desirable in the interest of efficiency of the public service that Government servants take leave at suitable intervals and return to work keen and refreshed.

The leave sanctioning authority may, therefore, encourage Government servants to take leave regularly, preferably annually. In cases where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority should draw up phased programme for the grant of leave to the applicants by turns with due regard to the principles enunciated.

(G.I., M.H.A., O.M.No.6/51/60-Ests.(A), dated the 25th January, 1961 and reiterated, vide G.I., Dept. of Per. & Trg., O.M.No.14028/3/2000-Estt.(L), dated the 22/27th March, 2001.)

(2) **Leave should not ordinarily be denied during the last ten years of service.-** Rule 7 provides that leave cannot be claimed as of right. When the exigencies of public service so require,



discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. These provisions have been made in the rules because it is not always possible to let all who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These provisions are, however, not intended to be used, as in effect, to abridge the leave entitlement of the Staff. Indeed, it is desirable in the interest of efficiency of public service that Government servants take earned leave at suitable intervals and return to work keen and refreshed.

2. The position has been reviewed by the Government in the light of the recommendation of the Fourth Pay Commission regarding increase in ceiling on earned leave accumulations from 180 days to 240 days. While accepting the recommendation, the Cabinet have also observed that earned leave should not ordinarily be denied to any employee, especially in the last ten years of his career, so that earned leave accumulations beyond 180 days normally do not take place. The leave sanctioning authorities are, therefore, requested to ensure that the earned leave is not ordinarily denied to an employee.

(G.I., Dept. of Per. & Trg., O.M.No.14028/19/86-Estt.(Leave), dated the 29th September, 1986.)

7. A Government servant cannot claim leave as of right as per Rule 7(1). This does not confer any unbridled and arbitrary power on the sanctioning authority to deny leave at its whims. Only in the exigencies of public service can the authority refuse leave of any kind. But this power to refuse leave should not be used to abridge the leave entitlement of the staff. It is not open to that authority to alter the kind of leave due and applied for except at the written request of the Government servants. In the instant case respondent No.2 ignores Rule 7(2) of CCS Leave Rules. The Govt. of India decision is such that the Govt. servants are to be encouraged to take leave regularly. Leave is not to be denied during the last ten years of service. Rule 7(1) restrains employees from evading responsibilities by resorting to leave; it does not give a licence to the leave sanctioning authority to refuse leave at its whims and fancies.

8. Rule 19(3) reads as under:-



“(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.”

9. Rule 19(5) reads as under:-

“(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.”

10. Both Rules 19(3) and 19(5) may be read together. The grant of medical certificate does not in itself confer upon the Govt. any right to leave. Medical certificate has to be forwarded to the authority competent to grant leave and orders of that authority awaited. The competent authority to grant leave cannot withhold sanctioning of leave. In case of doubt the authority may write under intimation to the official concerned for second medical opinion. If respondent No.2 had any doubt about the genuineness of commuted leave asked for he could have got second opinion at least for the period of leave from 6th May for which the applicant had applied in advance. The applicant had taken leave in two spells. For the second spell she had submitted the application with a medical certificate in time. The fact that he has given the same treatment for both the spells betrays his intention somehow not to grant the leave. Respondent No.2 has failed to find any administrative exigency that can justify the denial of commuted leave to the applicant who was on the verge of retirement. The duties entrusted with her were not so high and important that her absence could have an impact on the administration. She was only one among the many Senior Accountants in the office of respondent No.2. She had informed her superior about her intention to go on leave.

11. Rule 30(1) of CCS (Leave) Rules is extracted as under:-

“(1) Commuted leave not exceeding half the amount of half pay leave due may be granted on medical certificate to a Government servant (other



than a military officer), subject to the following conditions:-

(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry."

Commutated leave is to be granted on the strength of a medical certificate to a Government servant if there is a reasonable prospect of his returning to duty on its expiry. Leave cannot be denied at the whims of the sanctioning authority. Commuted leave on medical certificate to an employee who is about to retire should not be denied. The respondent leave sanctioning authority would have been truly lenient if the leave sought by the applicant was sanctioned. The leniency indicated by the readiness of the leave sanctioning authority to sanction any kind of leave other than commuted leave is not leniency; it amounts to a violation of Rule 7(2) of CCS (Leave) Rules which clearly states that the authority should not alter (much less compel the applicant to alter) the kind of leave due and applied for except at the written request of the Government servant.

12. The proceedings of the 2nd respondent dated 30.05.2008 in which he contemplated taking disciplinary action for dereliction of duty and took a decision to treat the absence of the applicant who had applied for leave, as unauthorised has the date over written. It might be dated 30.05.2008 or 31.05.2008, the day applicant retired. It would have been graceful and an act of indulgence on the part of the respondent authority, if leave was sanctioned on the last day of the service of the applicant, accepting her explanation. In the facts and circumstances of this OA, it is only just and right to sanction the commuted leave sought by the applicant. But the leave sanctioning authority failed to understand the spirit of CCS (Leave) Rules. He arbitrarily exercised the powers under the said rules to the detriment of the applicant without any valid or justifiable reason. There was no exigency of public service to deny leave to the applicant. He went beyond the rules in asking her to take any leave other than commuted leave she applied for. It was unreasonable not to regularise the periods of absence of the applicant. Annexure A-1 and A-4 orders are illegal and arbitrary and deserve to be set aside.



13. It appears from the documents that an amount of Rs.1,18,941/- was sent by cheque to the applicant who refused it as it did not represent cash equivalent of 218 days of earned leave at her credit on the date of her superannuation. She could have accepted it under protest and continued her battle for the remaining amount. Therefore she is not eligible to receive interest on the amount that was sent to her in time. The balance amount that was payable to her by way of leave encashment, death cum retirement gratuity and salary should be paid to her with interest at the rate of 9% per annum from 1.6.08 till the date of actual payment.

14. In view of the above, the O.A. is allowed. Annexure A-1 and A-4 orders are hereby quashed and set aside. The respondents are directed to regularize the periods of applicant's absence from 1.4.08 for 32 days and from 6.5.08 for 11 days by allowing her commuted leave as applied for and to disburse the withheld amounts with interest at the rate of 9% per annum from 1.6.08 till the date of actual payment within 15 days of receipt of a copy of this order.

15. No order as to costs.

(Dated, the 4th March, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvt.