

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 2/2010

Dated this the 13th day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Saraswathy Viswanathan
Private Secretary (Retd.)
Office of the Chief Commissioner of
Income Tax (Appeals)
Trivandrum.
Residing at Prasanthi, 142
Arunoottimangalam Nagar
Mangad (P.O.), Kollam - 691 015. Applicant

(By Advocate Mr. K.M.V. Pandalai)

Vs

- 1 Union of India
represented by the Secretary
Ministry of Personnel
Public Grievances and Pensions
New Delhi.
- 2 The Central Board of Direct Taxes
represented by its Chairman
New Delhi
- 3 The Chief Commissioner of Income Tax
Aayakar Bhavan, Kawdiar
Trivandrum. Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Application having been heard on 3.1.2011 the Tribunal
delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Private Secretary of the Income Tax Department, is aggrieved by the refusal of the respondents to grant commuted leave on medical ground.

2 The applicant, a Private Secretary to the Commissioner of Income Tax (Appeals) in the office of the Chief Commissioner, Income Tax Trivandrum, retired from service on superannuation on 31.7.2009. She had availed commuted leave for 19 days from 1.12.2008 to 19.12.2008 on medical ground. On expiry of the said leave, she had to report for duty on 22.12.2008. Unfortunately on 18.12.2008 she met with an accident at Kollam. She was hit by a Minibus while she was standing by the road side. She fell down and suffered many injuries and was immediately rushed to the nearest hospital and the incident reported to the police station. She underwent immediate treatment at the private hospital, a fracture in the right hand was confirmed and treatment continued for days. As she could not report for duty on 22.12.2008, she applied for 45 days more commuted leave from 19.12.2008 on the strength of a medical certificate issued from the Private hospital (Annexure A-1). The said leave was further extended by another 12 days on the strength of another medical certificate issued from the same hospital (Annexure A-2). She was allowed to rejoin duty on 16.2.2009 and was paid full salary for the leave period of 57 days. However, she received Annexure A-4 letter directing her to produce medical certificate and fitness certificate from the Authorised Medical Attendant as the certificate produced from the private hospital

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was defective. She submitted a representation explaining the circumstances under which she was compelled to get emergency treatment and for relaxation under Rule 65. She represented for grant of 57 days commuted leave accepting medical certificate(A-5). However, after retirement, the 3rd respondent rejected her request and granted Extra Ordinary leave (A-6 and OA-7). The grievance of the applicant is that she was denied 57 days commuted leave. Hence, she filed this O.A to quash A-6 and A-7, to declare that she is eligible for 57 days' commuted leave as applied for and to direct the respondents to consider the circumstances of the case invoking Rule 65 of the CCS (Leave) Rules.

3 The respondents in the reply statement submitted that the applicant applied for commuted leave from 1.12.2008 to 19.12.2008 with the support of Medical Certificate from the District Ayurveda Hospital, Asramam, Kollam certifying that the applicant was suffering from 'Vatarektham'. She made further representation on 23.12.2008 requesting for commuted leave for 45 days till 1.2.2009 which was supported by photocopy of medical certificate from a Private Hospital. This was further extended upto 13.2.2009. The practice followed in the department is that the officer who goes on commuted leave is paid full salary on the assumption that the medical and fitness certificates would be in order. The application was considered for processing only after the official joined duty on 16.2.2009. On scrutiny of the certificates, the certificate submitted by her being one from the Private hospital, she was asked to produce Medical as well as Fitness certificate from an authorised Medical Attendant. They further stated that request of the applicant for relaxation under Rule 65 of CCS(Leave) Rules, 1972 was

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referred to CBDT clearly stating the circumstances under which the applicant was admitted to hospital etc. which was not acceded to. Since the absence was not regularised, the salary paid was ordered to be recovered.

4. Rule 30 of Leave Rules provides for commuted leave as follows:

30 Commuted leave

(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.

(d) when commuted leave is granted, twice the amount of such leave shall be debited against the half pay leave due.

(1-A) Half pay leave upto a maximum of 180 days maybe allowed to be commuted during the entire service (without production of medical certificate where such leave is utilised for an approved course of study certified to be in the public interest by the leave sanctioning authority.

5. It is settled law that leave cannot be claimed as of right.

6. As per Rule 65 of the Leave Rules, where any Ministry or department of Government of India is satisfied that the operation of any of the rules causes undue hardship in any particular case that Ministry/Department may for reasons to be recorded in writing dispense with or relax the requirements of that rule in a just and equitable manner provided that no such order shall be made except with the concurrence of the Ministry of Personnel, Public Grievances and Pensions. In the case of the applicant the CBDT has rejected the request of the applicant for relaxation of the rules.

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7 The applicant being a Gazetted Officer with 30 years of service is bound to follow the prescribed procedure while applying for grant of commuted or any leave. In fact when she applied for commuted leave from 1.12.2008 to 19.12.2008, she had produced medical certificate from the approved District Ayurveda hospital, Kollam. Therefore, the applicant was aware of the leave rules. In the facts and circumstances of the case, the applicant could have at least got the medical and fitness certificates obtained from the private hospital countersigned by the DMO, Kollam, when it was pointed out to her while in service that the medical certificate and fitness certificate were defective.

8 In the circumstances, I do not find any merit in the O.A., it is dismissed accordingly. No costs.

Dated 13-1-2011.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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