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CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

...

JULY 4, 1989

Registration O.A. No. 136 of 1988(L)

R.K. Sikka Applicant

Vs.

Union of India & ors ... Respondents

Hon' Mr. Justice K. Nath, V.C.

Hon' Mr. K.J. Raman, A.M.

(By Hon' Mr. Justice K. Nath, V.C.)

This is an application under section 19 of the Administrative Tribunals Act, 1985, to direct the Opp. Parties to pay 13 days salary to the applicant, and to direct the Opp. Parties to pay Medical T.A. Bill amounting to Rs.1604.20 p. in connexion with the journeys undertaken on those very 13 days.

2. The applicant was Investigator in the N.S.S.O. of Government of India, posted in Lucknow when he was to go under some medical treatment. The applicant had been transferred to Gonda in February, 85, but his problem was that the specialised medical treatment, which he required was to be had at Lucknow only. He, therefore, had to proceed on leave from time to time which was granted in respect of which there is no grievance.

3. The controversy is confined to 13 specified dates, namely, 18, 19, 21, 26, 28-11-1985, 3, 5, 10, 12, 13, 17 and 24-12-1985, and 10-1-1986. The applicant's case is that on those dates, he had to proceed from Gonda to Lucknow for medical treatment and for that purpose he used to make applications

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for permission to leave station. It appears from a leave account Annexure-A, that as on 31-12-1985, he had 80 days earned leave and 95 days leave on half average pay in his account.

4. The applicant having not applied for any sort of leave along with his application for permission to leave the station on those days, the Department, ultimately treated his absence as extra ordinary leave without pay, vide Annexure-VII dated 10/11-12-1986. On 27-12-1986, the applicant made an application Annexure-VIII for converting the extra-ordinary leave into earned leave on medical grounds; that was refused.

5. The case of the applicant is that since he had earned leave as well as leave on half average pay to his credit at the end of 1985, the Department should have granted him earned leave and not extra ordinary leave without pay. The stand of the Opp.Ps. is that the applicant did not apply for any kind of leave, in his application for permission to leave the station, and, therefore, he was not entitled to get the leave bearing emoluments. It is further said that no medical certificate for the period up to 13 days in question had been submitted, and, therefore, the absence could also not be treated on medical ground.

6. We wanted the learned counsel for the applicant to indicate as to why, after all, the applicant, while making applications for permission to leave station for the purpose of medical treatment, had also not made a prayer for grant of some kind of leave,

The learned counsel for the applicant has not been

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able to assign any reason for the applicant's failure. He also admits that no medical certificate of illness had been furnished for the 13 days in question.

7. It is well settled that leave is not a matter of right; ^{it} ~~which~~ has to be sought for and if due to be determined whether to be granted or not. Although the competent authority is not entitled to refuse leave arbitrarily, or capriciously, nevertheless he is not bound to grant leave where reasonable grounds are not made out.

8. This Tribunal does not sit in appeal over administrative action. Its function is only to judge whether or not, certain administrative actions are within the field of administrative jurisdiction and are not vitiated by arbitrariness. If the administrative authority is competent to make a decision and reasonable grounds exist for making of such a decision, it is not the function of the Tribunal to interfere, simply because it may be found that the administrative authority could have taken a different view. In the absence of any illegality, lack of jurisdiction, malice, arbitrariness, the Tribunal cannot interfere in ~~the~~ matters like the one involved in this case, where the authority has acted within the powers which belong to it.

9. The learned counsel for the applicant, invited our attention to Rule 32 of the CCS (Leave) Rules, 1972 and says that extra ordinary leave without pay could not have been granted to the applicant because

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of those provisions. The rule says that extra ordinary leave may be granted in special circumstances, when no other leave is admissible or when other leave is admissible, but the government servant applies in writing for the grant of extra ordinary leave. It is true that in that sense, the applicant was not entitled to be given extra ordinary leave; but that does not ipso facto entitle him to get earned leave or the leave on medical ground. It is not necessary for us to mention as to what would be the consequences ~~even~~ if the extra ordinary leave granted to the applicant is held to be invalid in view of Rule 32. But, in any view of the matter, there is no illegality or invalidity involved in refusing to grant earned leave or leave on medical ground to the applicant in view of the facts and circumstances set out as above.

10. It is a different matter that the competent authority may take a compassionate view of the problem and give such relief to the applicant in their discretion as may be admissible under the law; but, so far as this Tribunal is concerned, there is no reason for its interference. We need not repeat that the claim for medical T.A. Bills is linked with the grant of leave or otherwise, for 13 days on medical grounds, and with the failure of the claim of leave the claim of the T.A. Bill must also fail.

11. Before parting with the case, however, we may observe that if the applicant makes a fresh application to the competent authority within one month from today for converting the extra ordinary

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leave ^{into} ~~with~~ earned leave simpliciter, and not for
earned leave on medical grounds, ^{the} competent
authority will do well to decide it as early as
possible, say within 6 weeks of the date of making
of the application and give appropriate relief, if
any, to the applicant.

This application is ^{dismissed} ~~decided~~ in the above
terms.


A.M.


V.C.

(sns)

JULY 4, 1989.
LUCKNOW.