

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 771/96.

Date of Decision: 16.10.1997.

Shri U. K. Wagh, Applicant.

Shri D. V. Gangal, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri R. K. Shetty, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M. R. Kolhatkar, Member (A).

Hon'ble Shri.

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

OS²

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 771/96

Dated this Thursday, the 16th day of October, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Shri U. K. Wagh,
(Retired as Chargeman Gd.II
from Ordnance Factory,
Varangaon).

R/at.: Qtr. No. 202/4 Type-II(M),
Ordnance Factory Estate,
Varangaon - 425 308.

(By Advocate Shri D.V. Gangal)

... Applicant

VERSUS

1. Union Of India through
The Director General,
Ordnance Factory Board,
Calcutta - 700 001.

2. General Manager,
Ordnance Factory,
Varangaon - 425 308.

... Respondents.

(By Advocate Shri R. K. Shetty)

: O R D E R :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

In this O.A., the applicant has challenged the order dated 06.07.1990 of the respondents recovering an amount of Rs. 24,751/- on account of adjustment of leave for 349 days from 23.02.1989 to 06.02.1990 as Extra Ordinary Leave. The amount on this account is Rs. 24,751/- though the O.A. mentions the amount as

Rs. 29,950.00. I will take the amount as Rs. 24,750/-.

The applicant also does not press prayer at para 8(b) of the O.A. The applicant was due to retire on 30.6.1995 ~~1995~~ but he was actually medically boarded out from 06.02.1990. The applicant had applied for leave ^{not due} for treatment of his illness, ~~described as pulmonary tuber-~~ ~~culosis~~, under Rule 31 of the C.C.S. ~~xxxxxx~~ (Leave) Rules, but his application was rejected by the respondents vide letter dated 27.07.1994. The O.A. has been filed on 03.12.1995. The applicant has filed a Miscellaneous Petition for Condonation of delay stating that he was suffering from T.B. and was in continuous correspondence with the department ~~and~~ and therefore, the same may be condoned. This M.P. has been opposed by the Counsel for the respondents.

In my view, although the deduction on account of leave salary was effected on 06.07.1990, the application for grant of 'leave not due' was rejected on 27.07.1994 and limitation would start from that date and since the period involved is marginal and considering that this case relates to retirement dues of a medically boarded out employee, suffering from Tuberculosis, I hold that there are satisfactory grounds for condonation of delay. Delay condoned.

2. On merits, the applicant contends that the respondents ought to have considered the provisions of

C.C.S. Leave Rules and in particular, Rule 31 (1) which deals with circumstances under which 'Leave not due' could be sanctioned and proviso to Rule 31(2);

"31. Leave not due.

(1) Save in the case of leave preparatory to retirement, leave not due may be granted to a Government servant in permanent employ or quasi-permanent employ (other than a military Officer) limited to a maximum of 360 days during the entire service on medical certificate 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.

(b) leave not due shall be limited to the half-pay leave he is likely to earn thereafter.

(c) Leave not due shall be debited against the half-pay leave the Government servant may earn subsequently.

(1-A) Leave not due may also be granted to such of the temporary Government Servants as are suffering from TB, Leprosy, Cancer or Mental illness for a period not exceeding 360 days during entire service, subject to fulfilment of conditions, namely :-

(i) that the Government servant has put in a minimum of one years service.

(ii) that the post from which the Government servant proceeds on leave is likely to last till his return to duty; and

(iii) that the request for grant of such leave is supported by a medical certificate as envisaged in clauses (c) and (d) of sub-rule (2) of Rule 32.

(2)(a) Where a Government servant who has been granted leave not due resigns from service or at his request permitted to retire voluntarily, without returning to duty, the leave not due shall be cancelled, his resignation or retirement taking effect from the date on which such leave had commenced, and the leave salary shall be recovered.

(b) Where a Government servant who having availed himself of leave not due returns to duty but resigns or retires from service before he has earned such leave, he shall be liable to refund the leave salary to the extent the leave has not been earned subsequently;

Provided that no leave salary shall be recovered under Clause (a) or clause (b) if the retirement is by reason of ill-health incapacitating the Government servant for further service or in the event of his death :

Provided further that no leave salary shall be recovered under clause (a) or clause (b) if the Government servant is compulsorily retired prematurely under Rule 48 (1) (b) of the Central Civil Services (Pension) Rules, 1972, or is retired under Fundamental Rule 56 (j) or Fundamental Rule 56(1)."

3. It would appear that the absence of applicant from duty from 23.2.1989 to 06.02.1990 was not regularised till he was medically boarded out from service. However, in order to avoid financial hardship to the applicant and his family, the respondents state that he was paid from the Factory Funds. Subsequently by the Factory Order dated 05.03.1990 at page 52 to the written statement, the same was regularised. The period from 23.02.1989 to 06.02.1990 was 349 days, which was regularised as Extra Ordinary Leave on medical grounds. It is the contention of the respondents that it is because the leave is treated as Extra Ordinary Leave on medical grounds that it has been counted as qualifying service and therefore, the applicant should not have any ground for complaint. The grievance of the applicant,

is however not relating to counting of service as qualifying service but ~~in~~^{regarding} ~~on~~ treatment the period of 349 days' leave as Extra Ordinary Leave on medical grounds rather than ~~an~~ 'Leave not due'. It is the contention of the applicant that the respondents have not considered the proviso to Rule 31 (2) which states that - 'no leave salary shall be recovered under Clause (a) or Clause (b) if the retirement is by reason of ill health incapacitating the Government servant for further service or in the event of his death.'

On the other hand, according to the respondents, the rule is not applicable and the reason for not regularising the leave as 'Leave not due' as contended in para 8.2, is reproduced below :

"It is evident from the above rule position that Leave not due may be granted to an employee if the competent authority satisfying itself that there is sufficient prospect of the Govt. Servant resuming back duty after the expiry of the Leave not due, if granted to him and there is a possibility of regularising such leave not due granted to him from the half pay leave subsequently to be earned by him. In this particular case, there was no possibility of the applicant joining back to resume duty. Further, even if there was a possibility of his resuming for duty after availing Leave not due, there was no possibility for him to earn sufficient Half Pay Leave to regularise the entire period of the Leave not due demanded by him i.e. 368 days (19 + 349), as he was due for superannuation by 30.06.1995. In other words, if he would have continued in service, he would have earned 110 days of Half Pay Leave only from 1990 to 30.06.1995. As such, his application for grant of Leave

M

not due for the above two spells and to waive the recovery of over-payments on this account, is not covered by Government instructions. This position has been intimated to the applicant several times but he continues to persists with his demand, which is not maintainable or acceptable in terms of the rules."

4. The contention of the Counsel for the applicant is that, this reasoning of the respondents is fallacious because it does not take account of Rule 31(2) and further while assessing the presumptive half pay leave, the presumptive full pay leave has not been calculated. He further invites my attention to Rule 31(1-A), which though not applicable, is helpful in interpretation of the rules. This provides that 'Leave not due' may also be granted to such of the temporary Government Servants as are suffering from TB, Leprosy, Cancer or Mental illness for a period not exceeding 360 days during entire service, subject to fulfillment of conditions provided that the Government servant has put in a minimum of one year service. The counsel for the applicant submits that it is not disputed that the applicant was a permanent Government servant and therefore, it was all the more necessary to consider the applicability of proviso to Rule 31(2).

5. I have considered the matter. In my view Rule 31 is to be read as a whole and while interpreting

Rule 31(1) provision relating to extra ordinary leave viz. rule 32 should also been gone into. It has been provided that when the other leave is not admissible, a Government servant may be sanctioned Extra Ordinary Leave, if he has applied for the same. My attention has also been invited to Auditor General's instructions under Rule 29. Undoubtedly, the applicant has not applied for Extra Ordinary Leave. It was not therefore correct on the part of the respondents to have sanctioned the Extra Ordinary Leave though on medical grounds, as stated by them, so as to make the period eligible for being counted as qualifying service. Rule 31 provides that 'Leave not due' may be sanctioned under the following circumstances :-

- (i) The Government servant must be permanent.
- (ii) The leave to be sanctioned should be limited to a maximum of 360 days.
- (iii) Leave not due shall be limited to half-pay leave he is likely to earn thereafter.
- (iv) Leave not due shall be debited against the half-pay leave the Government servant may earn subsequently.

This of course, is subject to the rider that the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry. Since the Government servant was by medically incapacitated, there is only academic. In the present case, the point which appears to have been ~~weighed with~~ the departmental authority, is provision, relating to Rule 31(1)(b). There is a

fallacy involved that the respondents have not taken into account the full pay leave, which might have been earned by the applicant before superannuation, which could have been converted into half-pay leave. The applicant could have earned 165 days full pay leave, which converts into 330 days of half-pay leave and he would have been ~~admittedly~~ entitled to 110 days half-pay leave ^{as such}. Therefore, even on the basis of presumption, the applicant had enough half-pay leave to ~~more~~ than **cover** 349 days, which was the period involved in question. I am, therefore, of the view that the respondents erred in not considering the request of the applicant for sanctioning the relevant period as 'Leave not due' and in particular denying the benefit of 'Leave not due' to a Government servant who was a permanent employee and who had put in more than 25 years of qualifying service ^{and who was suffering from T.B.}. The action of the respondents, therefore, in treating the 349 days period as Extra Ordinary Leave on medical grounds is clearly illegal and **to be** liable ~~set aside~~.

6. The Counsel for the respondents at this stage submits that the fact that the applicant did not retire but he was terminated should also be kept in view/for this purpose, he relies on the usage of the term 'services of the applicant as Charge-man ^{are} terminated w.e.f. 06.02.1990' vide order dated 24.02.1990. The Counsel for the applicant

submits however, that if he was terminated, he would not be entitled to pension but in fact, in terms of the Pension Rules, he has retired and on retirement, he is getting invalid pension in terms of Rule 38 of the C.C.S. Pension Rules. I have also considered the submission of the Counsel for the respondents. I have noted that the applicant ~~xx~~ infact, retired on pension and reference to the termination is to be taken in a technical sense and not in the sense of removal or dismissal. Since he was not retired on Superannuation pension under Rule 35 of the C.C.S. Pension Rules or Retiring Pension under Rule 36 of the C.C.S. Pension Rules or Compensation Pension under Rule 39 of the C.C.S. Pension Rules, the applicant ^{is} held to have retired on invalid pension in the facts and circumstances of the case. Therefore, the fact that he was terminated, ^{stated to be} cannot stand in the way of regularisation of the period of 349 days as leave not due.

7. The O.A. is allowed. The respondents are directed to regularise the service of the applicant by issuing ^a formal order for the period of 349 days as Leave not due and make payment to the applicant ~~as for~~ ^{as for} ~~xxxxxx~~ half-pay leave as per rules. The applicant may also be sanctioned interest @ 12% from the date of filing of the O.A. ~~xxxxxx~~ till the date of payment.

8. The O.A. is allowed in the above terms. No order as to costs.

M.R. Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)