

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1101/96

Date of Decision : 20th November 2001.

V.C.Narasimhula Applicant

Shri A.I.Bhatkar Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri V.K.Majotra, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other No.
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1101/96

Dated this the 20th day of November 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri V.K.Majotra, Member (A)

V.C.Narasimhula,
Assistant Engineer (B/R),Retd.,
C/o. A.I.Bhatkar,Advocate,
R.No.13, Mohammad Husain Chawal No.4,
Opp.Antop Hill Post Office, Shaikh
Mistry Road, Antop Hill, Wadala (East),
Mumbai.

...Applicant

By Advocate Shri A.I.Bhatkar

vs.

1. Union of India through
Engineer-in-Chief,
Engineers Branch,
Army Head Quarters,
Kashmir House,
New Delhi.
2. The Commander Works Engineers
(Suburbs), Pawai, Bhandup,
Mumbai.
3. The Chief Controller of
Defence Account, (Pension),
Allahabad.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

P. Shetty

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside Show cause notice dated 20.10.1995, orders dated 25.3.1996, 17.4.1993 with a direction to the respondents to treat the entire period of so called absence from 26.2.1981 to 19.12.1985 as extra ordinary leave in accordance with Rule 32(1)(b) of CCS (Leave) Rules and to restore the then leave as applied for by the applicant and sanctioned by the competent authority during the period from 20.12.1985 to September, 1991 along with cost.

2. The applicant filed OA.No.246/92 before this bench which was decided on 9.6.1992 and the operative part of the order is as under :-

"The objection taken is that the appellate authority has observed that the absence of the applicant from 26.2.1981 to 19.12.1985 shall be treated as dies-non. Shri Shetty submitted that this is no punishment. We, therefore, made it clear that the punishment awarded to the applicant by the disciplinary authority shall be treated to be the real punishment. The observations made by the appellate authority regarding dies-non shall not be enforced against the petitioner. With these observations this petition is disposed of."

Shri / ..3/-

3. The applicant filed OA.No.567/92 before this Bench which was decided on 10.8.1992 in respect of his pay fixation vide order dated 30th March,1992 and the operative part of the order is as under :-

"In view of the note appended to the order reducing the pay scale of the applicant, as extracted above, it is clear that the deduction in the pay scale has taken place on account of an imputation against the applicant. The applicant was, therefore, entitled to be given atleast an opportunity of hearing before any order adverse to his interest could be passed. It is apparent that the applicant has suffered a pecuniary loss on account of impugned order.

Failure of the respondents to afford an opportunity to the applicant in the facts and circumstances of the instant case is fatal. The application is allowed. The impugned order is quashed. There shall be no order as to costs."

4. After the decision of OA.No.567/92, the respondents issued show cause notice to the applicant dated 21.9.1992 (Ex.-9 OA. page 56 & 57). The applicant replied to the said show cause notice vide his reply dated 12th November,1992 (Ex.-10 OA. page 60 to 64). The respondents decided the pay fixation matter vide Ex.12 No.1197/VCN/115/E1R dated 19th April, 1993 (OA. page 65). The applicant filed another OA.NO.386/93 challenging the order dated 19th April, 1993 which was decided by the Tribunal vide order dated 7.8.1995 with the following order :-

" The departmental letter dated 19.4.93 is hereby quashed and set aside. The respondents are directed to issue a fresh Show Cause notice to the applicant regarding recovery proposed to be effected in terms of proper pay fixation on the basis of regularisation of the leave as shown in

P. G. N. / ..4/-

the P.T.O. order dated 17.4.93. The Show Cause notice referred to above may be issued within eight weeks from the date of receipt of this order. The applicant may file a reply to the Show Cause notice within four weeks from the date of receipt of Show Cause notice. Respondents to dispose of the case in accordance with Rules. As far as DCRG is concerned since respondents are claiming over payment to the tune of Rs.40,000/- approximately, they may withhold corresponding or appropriate amount of DCRG and accordingly interim relief stands vacated. No order as to costs."

5. Thereafter, the respondents issued show cause notice dated 20th October, 1995, No.136/VCN/443/E/C (OA. page 81 & 82) to which the applicant replied vide his reply dated 20.5.1993 (OA. page 83 to 86). The respondents passed the order dated 25th March, 1996 (Ex.-1 OA. page 31 to 33).

6. The learned counsel for the applicant relied on Rule 7(2) of the Central Civil Services (Leave) Rules, 1972 which is as under :-

"7(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." (Emphasis supplied by us)

7. He further relied on 1995 (3) A.I.SLJ 318 Mr.K.N.Jayachandra vs. Union of India & Ors., decided by CAT, Bangalore Bench on 5.4.1995 and argued that the respondents have no authority to alter the kind of leave due and applied for except with the written request of the Government servant. We find merit in his submission in view of Rule 7(2) of CCS (Leave) Rules, 1972.

ACM -

8. On perusal of the case of Mr.K.N.Jayachandra referred above in para 6 & 7 of the order, observing the principle of natural justice was insisted upon and ultimately in para 7 last but one sentence, it is ordered, that "Therefore, we hold that this is not a case of justice being denied but it is a case of justice being foreclosed for ever". The said case relates to sanctioned leave which was cancelled. We are in agreement with the learned counsel for the applicant that the action of the respondents with respect to leave sanctioned by them in pursuance of the leave applied for by the applicant, it's cancellation or any change in it, in whatsoever manner, is against the provision of Rule 7 (2) of CCS (Leave) Rules, 1972, deserves to be quashed and set aside and is quashed and set aside.

9. The learned counsel for the applicant relied on the following precedents :-

(i) 1995 (1) ATJ 200

(ii) 1992 (1) A.I.SLJ (CAT) 43, 315.

(iii) 1993 (1) ATJ 609.

10. The learned counsel for the applicant submitted that he is not challenging the pay fixation but in view of the decisions referred above, whatsoever is paid to the applicant, even in view of wrong fixation, cannot be recovered.

11. The learned counsel for the respondents relied on AIR 1964 S.C. 345, Rajabhai Abdul Rehman Munshi vs. Vasudev Dhanjibhai Mody and argued that the applicant has not come to the

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Tribunal with clean hands, as such he is not entitled to any relief for the reason that his attempt was to get his pay fixed on the basis of false/untrue statements. He has relied on the ratio of the said authority which is as under :-

"A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of bearing of the appeal."

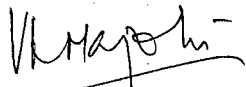
12. The contention is based on the submission that the applicant has moved the respondents vide his note (OA. page 128) to fix his pay on wrong footing. Admittedly, the said page is in the handwriting of the applicant and it was not the job of the applicant to submit such a note. It is true that he has interfered with fixation of his pay and probably might have misled his superiors in this respect. But the responsibility of the superior is noway shaken to find out the correct facts and to pass the appropriate order. In such circumstances, we do not feel it proper that applicant be deprived of any relief to which he is entitled in view of the facts stated by the respondents. The applicant's act may be condemned but on that count we do not feel it just to discriminate his case with others. Had the applicant fixed his own pay, we might have considered the plea of

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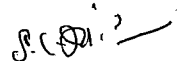
respondents. As there were intervening factors and someone else was responsible to fix the pay of the applicant, it is not a fit case where such proposition can be applied.

13. In view of 1993 (1) ATJ 609, Sunder Lal Kureel vs. Union of India & Ors. decided by CAT, Jabalpur Bench, 1995 (1) ATJ 200, P.M.Samuel vs. Union of India & Ors. decided by Mumbai Bench and 1992 (1) A.I.SLJ (CAT) 43 decided by Calcutta Bench Himanshu Kumar Chatterji vs. Union of India & Ors., 1992 (1) A.I.SLJ (CAT) 315 Shri Chamel Singh vs. Union of India & Ors. decided by Mumbai Bench, we are of the considered opinion that whatever over payment was made to the applicant due to wrong fixation of pay, recovery cannot be made.

14. In the result, OA. is allowed. The respondents are not entitled to make any recovery in view of over payment, in view of wrong fixation of pay at higher side and not entitled to change the leave applied for and sanctioned by them. The respondents are directed to correct the leave records of the applicant within a period of one month and with a copy to the applicant. If the applicant has any grievance in respect of the above, he can represent the matter with the respondents which shall be decided within one month and if not satisfied, he may agitate the matter in accordance with law. No order as to costs.



(V.K.MAJOTRA)
MEMBER (A)



(S.L.JAIN)
MEMBER (J)