

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 31/7/87

Application No. 200 17(F)

W.P. No. /

Applicant

Smt. Seema S. Phene

V/s The Secy, Dept of Official language
M/o Home Affairs & 2 Ors

To

1. Smt. Seema S. Phene
Hindi Lecturer
Hindi Teaching Scheme
Office of the Asst. Director
Hindi Teaching Scheme
89/1, J.C. Road
Bangalore - 560 002

2. Shri Ranganatha S. Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

3. The Secretary
Department of Official Language
Ministry of Home Affairs, New Delhi-110 003

4. The Regional Officer/
Deputy Director (West)
Hindi Teaching Scheme
III Floor, Commerce House
Corrimbhoi Road, Ballard Estate
Bombay

5. The Officer-in-charge
Hindi Teaching Scheme
89/1, J.C. Road
Bangalore - 560 002

6. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN

APPLICATION NO. 200/87(F)

Please find enclosed herewith the copy of the Order/~~SECRET~~ passed by this Tribunal in the above said Application on 17-7-87.

Encl : as above.

R. Venkateshwar
DEPUTY REGISTRAR
~~SECRET~~
(JUDICIAL)

o/c

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CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 17TH DAY OF JULY, 1987

Present: Hon'ble Shri P. Srinivasan, Member (A)
and
Hon'ble Shri Ch. Ramakrishna Rao, Member (J)

APPLICATION NO. 200/1987

Smt. Seema S. Phene,
W/o Shri S. Phene, Major,
Hindi Lecturer,
Hindi Teaching Scheme,
O/o the Asst. Director,
Hindi Teaching Scheme,
89/1, J.C. Road,
Bangalore-2.

..... Applicant

(Shri S. Ranganatha Jois, Advocate)

v.

1. The Union of India by its Secretary, Department of Official Language, Ministry of Home Affairs, New Delhi-3.
2. The Regional Officer, Deputy Director, (West), Hindi Teaching Scheme, III Floor, Commerce House, Corimbhoy Road, Ballard Estate, Bombay.
3. The Officer in overall charge, Hindi Teaching Scheme, 89/1, J.C. Road, Bangalore-2. ...

(Shri M.S. Padmarajaiah, SCGSC)



This application having come up for hearing to-day, Hon'ble Shri P. Srinivasan, Member (A) made the following:

ORDER

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985.

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2. The applicant was appointed as Hindi Teacher in the Hindi Teaching Scheme of the Government of India in 1969 and was posted at Pune. In 1971 she was transferred to Bangalore in the same capacity. In 1974, she applied for maternity and other leave ^{o/} from 23.9.74 to 13.8.1975. According to her, leave including extraordinary leave was sanctioned to her for this period. But in the meanwhile, the respondent passed an order dated 29.9.75 terminating her services w.e.f. 30.9.75. It appears from the records produced by the respondent that there was some complaint about the applicant having been on leave for long periods giving rise to problems of stop gap arrangements to be made during her absence.

A letter dated 30.7.75 was written in this connection by the Regional Officer (Western) to the Director Hindi Teaching Scheme, New Delhi. A statement appearing below this letter shows that the applicant "was on leave from 23.9.74 - maternity leave for 270 days." Probably as a sequel to this letter her services were ordered to be terminated from the afternoon of 30.9.75 by a letter dated 29.9.75 (Annexure-B). Thereupon the applicant filed a writ petition before the High Court which was numbered as 1472/76. While this petition was pending, according to the applicant, the respondents persuaded her to withdraw the same and promised that they would take her back into service. She withdrew the writ petition and she was reinstated by order dated 23.11.86 (Annexure-D). By a subsequent order dated

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5.10.75 (Annexure-F) the Ministry of Home Affairs, Department of Official Language appointed the applicant as a temporary Hindi Teacher with retrospective effect from 29.8.1969 until further orders. The applicant, therefore, contends that by this last mentioned order, her services were made regular from 29.8.1969, the date of her original appointment, thereby cancelling the order of termination of her services passed on 29.9.75. In pursuance of the order dated 23.11.76 reinstating her she joined duty on 29.11.76. The question that arises is as to how the period between 23.11.74 to 28.11.76 should be treated. After representations made by her the authorities finally decided on the following treatment:

1. 23.9.74 to 22.10.74 - 30 days EL
2. 23.10.74 to 01.12.74 - 40 days half pay leave
3. 02.12.74 to 22.12.74 - 21 days leave not due
4. 23.12.74 to 22.03.75 - 90 days maternity leave
5. 23.03.75 to 09.06.75 - 79 days leave not due
6. 10.06.75 to 13.08.75 - 65 days EOL
7. 01.10.75 to 28.11.76 - 425 days EOL without pay

The applicant's grievance is that

i) she should have been given leave not due for 144 days instead of only 100 days as at 3 and 5 above taken together.

ii) that the period 1.10.75 to 28.11.76 should have been treated as on duty because her absence was not of her ~~Volition~~ ^M ~~Violation~~ but because her services had wrongly been terminated by the respondents.

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3. Sri Ranganath Jois, learned counsel for the applicant contended that the applicant was entitled to be given a total of 144 days leave not due while, instead, the authorities had given her only 100 days of leave not due i.e. 21 days from 2.12.74 to 22.12.74 and 79 days from 23.3.75 to 9.6.75, Secondly, he contended that the authorities wrongly terminated her service from 30.9.75 by their order dated 29.9.75 and it was only after she filed a writ petition that they reinstated her and after reinstatement she rejoined on 29.11.76. It was because of the order of the respondents that his client was unable to report for duty from 1.10.75 and 28.11.76. This period therefore should have been treated as period spent on duty and she should have been allowed the benefit of pay and allowances for the period.

4. Sri M.S. Padmarajaiah, learned counsel for the respondents, countered the arguments of Sri Jois. He reiterated what has been stated in the reply of the respondents, that the applicant was absent from duty for 542 days from 23.9.75 to 28.11.76 and this absence was unauthorised and since it was unauthorised absence the authorities did the best that they could by giving her earned leave and half pay leave to the extent of such leave to her credit, maternity leave and leave not due to the extent permissible under the rules and treating the remaining period as extraordinary leave

T.S. [Signature]

(EOL). According to Rule 31 of the CCS (Leave) Rules, leave not due has to be limited to a maximum of 90 days at a time as against which the applicant had been given 100 days. The period from 1.10.75 to 28.11.76 could not be treated as on duty because the applicant was absent without authority and she was taken back to duty only on sympathetic considerations. This period has however been taken into account for all other purposes as continuous service except for grant of pay and allowances. The applicant cannot ask for pay and allowances for this period when she had not actually worked.

5. We have considered the rival contentions carefully. So far as grant of leave not due is concerned, Rule 31 no doubt provides that leave not due during the entire service shall be limited to a maximum 360 days and to not more than 90 days at a time and not more than 180 days on medical certificate. In the present case as seen from the letters dated 17.5.79 and 26.5.86 issued by the respondents (Annexure J & M), leave not due was allowed in two separate instalments, 21 days from 2.12.74 to 22.12.74 and 79 days from 23.3.75 to 9.6.75. Thus the total leave so granted cannot be treated as having been granted at one time. The second part of the leave from 23.3.75 will have to be considered as separate from the earlier spell from 2.12.74. Secondly, the applicant was granted maternity leave between these two spells and maternity leave ~~which~~ had to be limited to 90 days. The period falling after the expiry of maternity leave on 22.3.1975 was not covered by medical certificate, but in her representation to the authorities

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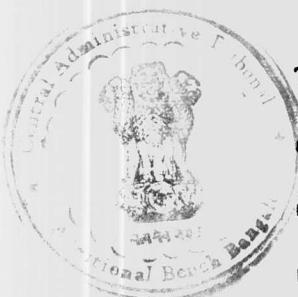
(Annexure-E1), the applicant had explained that she had taken maternity leave well in advance on medical advice as it was her second pregnancy and there had been some problems on the first pregnancy. The overall incharge of the Hindi Teaching Scheme at Bangalore had mentioned in his letter dated 24.4.1979 to the Deputy Director at Bombay (Annexure-H) that the applicant had sought extension of maternity leave granted for 23.9.74 to 21.12.74 mostly on medical grounds, ¹ Save for the last spell of leave for one month till 13.8.1975 on domestic reasons. This being so, we feel as a special case, the applicant could have been granted leave not due (as if on medical certificate) till 13.7.1975 and the remaining period of absence till 13.8.1975 treated as EOL. In other words, we would direct the respondents to treat the ^{period 1} ~~period~~ of 113 days from 23.3.1975 till 13.7.1975 as leave not due and the remaining period between 14.7.1975 to 13.8.75 as EOL.

6. As for the period 1.10.75 to 28.11.76 the statement made on behalf of the respondents that the applicant's absence was unauthorised does not seem to be correct. From 1.10.75, the applicant obviously could not join duty because of the letter dated 29.9.75 issued by the respondents terminating her services with effect from the afternoon of 30.9.1975. She could join duty only on 29.11.76 when she was reinstated. Therefore the absence from 1.10.75 to 28.11.76 cannot

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be treated as unauthorised absence from duty. Having said so much we also feel that the applicant cannot be allowed full pay and allowances for the period 1.10.75 to 28.11.76 because she did not actually work during this period. We are of the view that it would meet the ends of justice if she is paid during this period 50 per cent of pay and allowances to which she was entitled immediately before 1.10.75 (i.e. as if she were under suspension). Further, this period should be taken into account for purposes of increment in the scale. In other words, for determining her pay on 29.11.76 and on-wards the intervening period should be taken into account and all increments that fell due during the period should be given effect to. The said period will also count for other purposes including seniority and promotion etc. and will not be debited against her half pay leave account.



7. In the result, the application is allowed to the extent indicated above. The respondents will give effect to this order as expeditiously as possible but not later than 3 months from the date of receipt of this order.

- True copy-

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Member (J) 27-7-87

Member (A)

B. V. Venkateshwaran

DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

bsg/Mrv.