

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1334/92

Transfer Application No:

DATE OF DECISION: 27-4-94

Shri R. K. Saxena Petitioner

Applicant in person Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

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

CORAM :

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

The Hon'ble Shri

ACI
27/4

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M R Kolhatkar

(M. R. Kolhatkar)
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.No:1334/92

R.K.Saxena

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

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

Appearances:

1. Applicant in person
2. Mr.R.K.Shetty
Counsel for the Respondents.

JUDGMENT:

{Per M.R.Kolhatkar, Member(A)} |

Date: 27-4-1994

The applicant while working as Senior Scientific Assistant in the Directorate of Quality Assurance, Department of Defence Production was appointed to an ex-cadre post of Stores Officer on deputation in the Armed Forces Film Photo Division initially for a period of one year from 4.9.1989. The deputation period was extended further for one year from 4.9.90. Subsequently, the competent authority decided to curtail the period of deputation of the applicant and to repatriate him to his cadre post of Senior Scientific Asstt. This decision was conveyed in terms of Note. No.A/16801/S-4/CAO/R-1 dt. 26-10-90. The applicant was directed to report to his parent office, Director General Quality Assurance. It is the case of the applicant

that he actually did not join his parent office, but proceeded on four days' Earned Leave w.e.f. 29-10-90 to 1-11-90 with permission to prefix 27th and 28th October, 1990 and suffix 2nd, 3rd and 4th November, 1990. According to the applicant although he did not join his parent office, a false joining report was prepared by one T.P. Singh, Dy. Asstt. Director, on 29-10-90 stating that the applicant has joined at his HQ on 26-10-90. According to the applicant, joining report of the officer is normally prepared by the officer himself and submitted to all concerned. In this particular case, his joining report is recorded by some other officer and a copy of the same has not been marked to him. It may be noted here that the applicant had approached Principal Bench, C.A.T., New Delhi challenging premature termination of his deputation and also got interim relief order dt. 6-11-90 directing the respondents to maintain status-quo during pendency of the application. But the interim stay was vacated and his application rejected by the Principal Bench by its order dt. 4-1-91 in O.A. No. 2291/90. His application for review of this order was also rejected by C.A.T. vide their order in R.A.No.33/91 in O.A.2291/90 passed on 18-3-91. Subsequently, the applicant joined DGQA office at Pune w.e.f. 13-4-91. The absence of the applicant was regularised by sanctioning leave due and leave salary was also paid to him. The period was regularised as below:

	<u>Period</u>	<u>Total days</u>	<u>Kind of leave sanctioned</u>
(i)	29-10-90 to 7-12-90	40	Earned Leave
(ii)	8-12-90 to 20-12-90	13	Commuted Leave
(iii)	21-12-90 to 23-12-90	03	Earned Leave
(iv)	24-12-90 to 24-1-91	32	Commuted leave
(v)	25-1-91 to 17-02-91	24	Earned Leave
(vi)	18-02-91 to 12-4-91	54	EOL on MC

So far payment of the leave salary is concerned the same was made at the pay scale of the applicant in the grade of Senior Scientific and Assistant, not in the post of Stores Officer on which the applicant was on deputation. On page 28 of the application the details of the working out of the calculation of leave salary have been given.

Basically the applicant has been paid @ Rs.2060/- per month as against Rs.2120/- to which he would have been entitled if he were paid at the rate of pay of Stores Officer. The case of the applicant briefly is that he should be paid @ Rs.2120/- per month i.e. in the grade of Stores Officer and secondly so far as the sanction of the leave is concerned, the grant of leave should be regulated in such a manner that some of the Extra Ordinary Leave should be converted into Half Pay Leave, certain errors in the leave records should be rectified and the payment of HRA, CCA should be examined. These requests of the applicant were turned down by the Department vide their order dt. 3-1-92 at page 47

2. The respondents have resisted the claim of the applicant to grant of pay scale as Stores Officer on the basis that since

the applicant was reverted to the post of Sr. Scientific Assistant, he could not be paid at the rate of pay of Stores Officer. So far as other reliefs claimed by the applicant are concerned, the applicant cannot agitate them in this O.A. as it amounts to multiplicity of reliefs. However, ^{the} same have been examined and not found in order.

3. The applicant has basically relied on FR 40 which provides that "Except as provided in sub-rule (7), a Government servant who proceeds on earned leave is entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave." According to the respondents since the applicant joined as Sr. Scientific Assistant, FR 40 does not apply.

4. There is some force in the contention of the applicant that the joining report of an officer is required to be prepared by officer himself and someone ~~else~~ cannot prepare the report. We have obtained the service record of the applicant from which it is seen that the entry in the service record that on reversion of deputation from Armed Forces Film Photo Division he reported to ~~DGA~~ DQA office on 26-10-90, was based on an office order dt. 23-4-91. It is, therefore, clear that there is no contemporaneous record except ^{the} joining report which has been impugned by the applicant. In our view the so-called joining report on record, without going into the question of its veracity, cannot establish

1/12

that the applicant had actually joined the parent department in the absence of any signature of the applicant. Even apart from the question of whether the applicant joined his parent department prior to proceeding on E.L., FR 40 does require that the applicant should be paid salary at the rate that was drawn immediately before proceeding on earned leave. This can only be the salary of the Stores Officer.

5. So far as the objection of the respondents that no relief related to leave cannot be granted is concerned, the same does not appeal to us because if there is a wrong entry in the leave record and if while regularising the leave of the applicant the applicant suffers, it is open to the applicant to raise the matter as part of payment of leave salary for the period of leave which is the issue in question. We, therefore, consider that there is force in the contention of the applicant and dispose of the application by passing the following order:

O R D E R

- (i) The salary for the leave period of the applicant should be paid to the applicant in accordance with FR 40 and in particular @ Rs.2120/- the rate applicable to Stores Officer;
- (ii) The leave record of the applicant should be rectified and if he is entitled to Half Pay Leave in place of EOL which has been granted to him

NAK

the same may be done.

- (iii) We do not consider that in the circumstances of the case the applicant is entitled to payment of interest;
- (iv) No order as to costs.

R

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

REVIEW PETITION NO. 81/94
in
O.A. No. 1334/92

R.K. Saxena

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon. Shri M.R. Kolhatkar, Member(A)

TRIBUNALS ORDER: (By circulation)
(Per: M.R. Kolhatkar, Member(A))

DATED: 10.8.1994

In this application it is firstly suggested that a particular date mentioned in the order viz., the date on which the applicant joined DGQA Office, Pune should be corrected from 13.4.1991 to 15.4.91. Secondly it is suggested that the Tribunal may make it clear that the term salary includes the pay and allowances including H.R.A. & C.C.A. Thirdly it is stated that the prayer for grant of costs of Rs.10,000 has been overlooked.

We have considered the matter. To the extent the typographical error of date has crept in our judgment it is corrected to that extent viz., on page 2 in the line 5 reading from below the date 13.4.91 is corrected to read as 15.4.91.

The rest of the prayers have no merit. The Review Petition therefore stands rejected with the above clarification. Registry to issue a fresh corrected certified copy of the judgment to the parties.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member(A)

11/8
12