

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 738/93

Transfer Application No.

Date of Decision

13-10-95

R.C.Kotiankar

Petitioner/s

Shri B.J. Ranganathan,

Advocate for
the Petitioners

Versus

Union of India and others

Respondent/s

Shri Suresh Kumar for

Advocate for
the Respondents

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)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 738/93

R.C.Kotiankar

...Applicant.

V/s.

1. Union of India, through
Secretary to Govt. of India
Department of Atomic Energy
Anushakti Bhavan,
Chhatrapati Shivaji
Maharaj Marg.
Bombay.
2. Addl. Secretary to Govt. of India,
Department of Atomic Energy
Anushakti Bhavan,
Chhatrapati Shivaji Maharaj Marg,
Bombay.
3. Managing Director
Nuclear Power Corporation of
India Ltd., World Trade Centre
(Centre - I), Cuffe Parade,
Bombay.

...Respondents.

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

Appearance:

Shri B. Ranganathan, counsel
for the applicant.

Shri Suresh Kumar for Shri
M.I. Sethna, counsel for
the respondents.

JUDGEMENT

Dated:

13-10-95

(Per Shri M.R. Kolhatkar, Member (A))

This O.A. has been filed under Section 19
of Administrative Tribunals Act 1985, the facts are
as below:

1. The applicant had served in Indian Rare
Earths Ltd.(IRE), a public sector undertaking under
the administrative control of the Department of
Atomic Energy(DAE) from 4.8.1950 to 1.1.1959. From
2.1.59 to 31.10.88 the applicant worked in DAE and
superannuated. The applicant had submitted a
representation on 12.8.87, which is seen at R3 of the
written statement for counting of his service rendered
in IRE towards pensionary benefits etc. in DAE.

15 days leave will have to be carried over against the year against the year 1959 i.e. before crediting the leave subsequently earned by you in the Department irrespective of when the recasting is done. Since you had 180 days leave (restricted) credit to your account as on 30.4.70, it is regretted that your request for payment of cash equivalent of leave salary for 15 days cannot be agreed to."

The applicant made further representation and he was informed on 27.11.92 vide Exhibit 'A' that the decision already communicated does not require any revision. The relief claimed by the applicant is to direct the respondents to credit the said 15 days EL balance to the EL account of the applicant on or after 26.10.88, to direct the respondents to pay cash equivalent of leave salary to the applicant towards the carried over 15 days of EL with interest at the rate of 18% and to direct the respondents to allow conversion of 14 days of EL availed by the applicant while in service into half pay leave and pay difference in leave salary as was allowed to other employees.

2. The O.A. was filed on 22.7.93 and was admitted on 8.11.93. Thereafter the applicant had filed an M.P. 32/94 on 5.1.94 for condonation of delay. No separate reply to this M.P. has been filed by the respondents. The reasons given in the M.P. for condonation of delay are that after receiving the reply of the respondents dated 12.9.90 which the applicant actually received on 17.10.90, the applicant had taken up the matter personally with the Dy. Secretary and at the instance of the Dy. Secretary submitted a further representation dated 7.9.92 to which a regret

A sanction for counting the past services rendered in IRE as qualifying service for the purpose of retirement benefits was conveyed on 26.10.88 vide O.M. Exhibit 'C' to the O.A. This O.M. says nothing regarding any accumulation of leave to the credit of the applicant at the time of joining DAE. Subsequently, the applicant pursued the matter and was informed by letter dated 24.5.89 from General Manager, (P&A) IRE at Exhibit 'E' that he had 15 day's earned leave at his credit when he left IRE. The applicant had made another representation on 27.1.90, Exhibit 'F' to the effect that since the leave to his credit on the date of his superannuation from DAE was 218 days and since the addition of the 15 day's leave accumulated in the IRE would make (218 + 15 = 233) and sanction under Rules of encashment is admissible upto 240 days and therefore he should be given leave encashment of 233 days. In otherwords he wanted the credit of leave to be given to him as on the date of sanction, namely 26.10.88. The department informed him by the letter dated 22.2.90 that the request for encashment equivalent cannot be acceded to. The applicant thereafter submitted a representation to the Additional Secretary to Govt. of India but he was informed by letter dated 12.9.90 as below:

" Please refer to your representation dated 1.5.90 regarding your claim for cash equivalent of leave salary for 15 days E.L. The matter has been considered by this Department and you are informed that though the Department's approval for counting of past service rendered in Indian Rare Earths Ltd for purpose of pensionary benefits was conveyed vide O.M. No.20/28/2/86-CCS/1282 dated 26.10.88

reply was received on 27.11.92. The applicant continued to pursue the matter informally and under these circumstances O.A. dated 22.7.93 was filed.

3. At the stage of arguments the counsel for the respondents has raised the preliminary objection regarding the O.A. being barred by limitation. For this purpose he relied on 1995(30)ATC 635 Secretary to Govt. of India and others V/s. Shivram Mahadu Gaikwad. We are aware that repeated representations do not extend the limitation. In view of the averments of the applicant that he was pursuing the matter informally as the result on which he further represented to which a negative reply was received on 27.11.92 and considering that the application is within the limitation on the basis of the latest communication and even on the basis of the first communication having been received by the applicant on 27.10.90 the ~~delay~~ is less than 2 years, I therefore condone the delay and proceed to dispose of the case on merits.

4. The main contentions of the applicant in support of his claim are as below:

First of all he argued that the memo dated 11.9.64 in terms of which his request for counting of 15 day's leave towards encashment was rejected is not applicable to his case. This memo dated 11.9.64 Exhibit R1 deals with " Terms of service Governing exchange of personnel between the department and the Indian Rare Earths Limited. In Item 6 under heading 'Leave' in column No.4 it is stated as below:

" The employee will be entitled to carry forward the amount of leave to their credit at the time of appointment under the Department subject to the condition

that the leave carried forward together with leave earned subsequently under the Department shall at no time exceed the maximum limits of accumulation under the Revised leave Rules, 1933.

According to the applicant this memo was issued 5½ years after applicant's appointment in DAE and it cannot be considered for regulating the terms and conditions relating to leave. Further the applicant states that the IRE intimated the EL balance to DAE on 24.5.89 i.e. after about 7 months of retirement of the applicant, and therefore the applicant had not opportunity to avail of the said leave while in service. Hence the Rules should not be read mechanically and in view of the special circumstances of this case viz. that the formal orders permitting counting of his service in the IRE were issued on 26.10.88 and since the leave is an integral incidence of service rendered, the leave should be deemed to have accrued on 26.10.88 and he should be given the benefit. Further it is contended by the applicant that several other employees had been allowed conversion of leave availed to the extent of maximum encashment benefit whereas such concession was not extended to the applicant inspite of his request to authorities. The applicant had about 500 days HPL to his credit at the time of his retirement.

5. The respondents have opposed the O.A. Firstly it is contended that the O.A. is time barred. We have already noted the delay in filing the O.A. and we have condoned the same.

6. So far as Memo dated 11.9.64 is concerned it is contended that the same was cancelled by memo dated 27.10.80 at Exhibit R2. However, this withdrawal was not to affect the cases already decided which were to be governed by the special orders of 11.9.64. Thereafter

cases of deputation of DAE personnel to PSUs or vice versa are to be regulated under the Government of India, Ministry of Finance or Cabinet Secretariat or Bureau of Public Enterprises orders as amended from time to time.

7. Secondly it is contended that in terms of O.M. dated 11.9.64 the leave carried forward together with leave earned subsequently under the Department shall at no time exceed the maximum limit i.e. 180 days. Reference is also made to the Government of India O.M. dated 30.12.60 which is seen at pages 109 and 110 of Swamy's Compilation of Leave Rules. This provides that in respect of employees of bodies corporate owned or controlled by Government appointed to posts in the Central Civil Departments, the carry forward of leave is not permissible. However, if in any particular case, the State Government or the body corporate agree to bear the leave salary charges in respect of the carried forward leave, the concession may be agreed to by the Administrative Ministry concerned, as a special case. According to the respondents the applicant did not take up his case with the concerned authorities for counting the past services rendered by him from 4.8.50 to 31.12.58, either at the time of issue of the DAE O.M. dated 11.9.64 or atleast in October 1980 when the position regarding the applicability of the O.M. dated 11.9.64 was reviewed. The Department did agree to regulate his case according to the O.M. dated 11.9.64 and allowed counting of the service rendered by the applicant in IRE for pensionary benefit but in terms of the same the leave would lapse as it was in excess i.e. 180 days which was the maximum accumulation permissible and the applicant had such maximum accumulation permissible in 1966

and thereafter in 1970. So far as the request of the applicant for conversion of Earned leave availed of by him into Half Pay Leave at the time of his retirement is concerned the respondents have referred to the O.M. dated 2.12.81 appearing as Government of India Decision No.1 under Rule 10 of CCS(Leave Rules) 1972 (Swamy's Compilation of CCS (Leave) Rules 1972 (page 11) which prohibits commuting one kind of leave into another kind after the employee ceases to be in Government service. According to the respondents it is true that the claims of the employees for conversion of leave availed earlier to Half Pay Leave for getting maximum encashment benefits were approved by the Department in all cases where the employees have applied as per Rules before they have actually retired from service. It is denied that the applicant had requested the Kaiga Project Authorities to extend similar benefit of converting the Earned leave availed of by him earlier into Half Pay Leave.

8. I have considered the matter in the light of the pleadings documents on record and arguments. The contention of the applicant that the memo dated 11.9.64 should be held as not applicable to his case cannot be accepted. The applicant had got the benefit of counting of his service for pensionary benefits vide sanction dated 26-10-88 and the applicant has availed of the sanction; it is not open to the applicant to approbate and reprobate. I am therefore of the view that the department was right to consider the case of the applicant in terms of memo dated 11.9.64 which provides that the accumulation of leave cannot exceed the maximum limit namely 180 days.

9. Even otherwise it cannot be disputed that the leave which accumulated prior to applicant's appointment in the department of Atomic Energy has been counted as leave for that particular period and it cannot be treated as leave having accrued at the time of sanction namely 26.10.88. The applicant had not been able to show any Rules which would show that prior to 1.1.86 when the maximum limit permissible for accumulation was raised to 240 days the leave would not lapse. The contention of the applicant that he has not actually availed of the leave and has been denied the benefit of both the leave and accumulation is purely hypothetical and cannot be accepted.

10. So far as the relief seeking a direction to the respondents to allow conversion of 14 days EL availed by the applicant while in service into half pay leave and allow consequential benefit is concerned it is also not in accordance with the Rules. We find that the stand of the department conveyed vide its letter dated 12.9.90 which we have reproduced above was in accordance with the Rules and it is not open to challenge. O.A. lacks merits and is therefore dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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