

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

6

Original Application No.448/94.
Transfer Application No.

Date of Decision 2/3/95

Keru Tukaram Wagh

Petitioner

S.F. Saxena

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

R.K. Shetty


Advocate for the
respondents

C O R A M :

The Hon'ble Shri P.P. Srivastava, Member(A).

The Hon'ble Shri

- (1) To be referred to the Reporter or not ? **No**
- (2) Whether it needs to be circulated to **Ab**
other Benches of the Tribunal?


(P.P. SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

O.A.448/94.

Keru Tukaram Wagh

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

CORAM: Hon. Shri P.P. Srivastava, Member(A).

APPEARANCES:

S.P. Saxena, Counsel
for Applicant.

R.K. Shetty, Counsel
for Respondent.

ORAL JUDGMENT:

DATED : 2/3/95.

¶ Per Shri P.P. Srivastava, Member(A) ¶

The Applicant in this case was transferred on 30/5/92. However, on re-consideration after the applicant had approached this tribunal, the transfer was cancelled on 4/5/93. The contention of the applicant is that the period from 20/5/92 to 4/5/93 should be treated as on duty as the transfer order was illegal and the respondents had no right to keep him away from work when his transfer was treated as against the rules and illegal and therefore it is to be treated as on duty.

2. The respondents, while considering the direction of this tribunal in the case of transfer, passed the order cancelling the transfer order. However, they demanded that the applicant should give an undertaking that he would accept the regularisation of the intervening absence from the date of SOS to the date of TOS as leave admissible. The Applicant had given this undertaking which is available at Exhibit-A-6.

3. The respondents cancelled the transfer order and passed an order dt. 23/4/93. In para-4 of this order they have mentioned that the intervening absence from the date of SOS to TOS should be treated as ^{leave} leave admissible as per existing/rules.

...2/-

4. The respondents first sanctioned leave in terms of Exhibit R-2 dt. 27/5/93 wherein the period from 1/6/92 to 4/5/93 was regularised as under:-

Committed leave for 89 days on Medical Certificate debitable to 178 days HPL.

29/9/92 to 2/5/93-249 days Earned Leave.

5. However, the respondents noted that there has been a mistake in sanctioning of 249 days Earned Leave and therefore the sanction of the leave was modified vide their order dt. 11/10/93 as Exhibit A-5. In this order the applicant was sanctioned leave as under:-

54 days on Medical Certificate equivalent to 108 days HPL from 1/6/92 to 24/7/92.

180 days Earned Leave from 25/7/92 to 20/1/93.

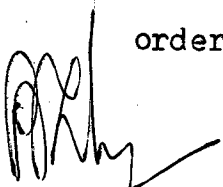
10 days HPL from 21/1/93 to 30/1/93.

31/1/93 to 4/5/93 - 94 days Extra Ordinary Leave not on Medical Certificate which will not count as Qualifying service for pension and gratuity.

6. This change in the leave pattern has been made the without/applicant applying for the same.

7. The applicant is aggrieved by this order and he has prayed that this whole period should be treated as on duty except the committed leave.

8. I have considered the argument submitted by the applicant. When the CA against the transfer was decided, the tribunal had ordered the respondents to dispose the representation within two weeks keeping in view the observations made by the tribunal. Thus the tribunal had not outrightly cancelled the transfer, but had left it to the respondents in terms of their directions. The respondents considered the representation of the applicant and cancelled the transfer order. I am of the view that it cannot be said that the transfer order which was issued was wholly illegal and therefore



I am not inclined to agree with the submissions of the Counsel of the Applicant that the period should be treated as on duty.

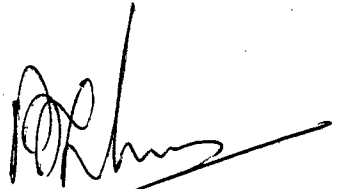
9. Regarding sanctioning of the leave, it is clear that there is some mistake in the order of leave sanctioned by Respondent-2 as 249 days Earned Leave has been sanctioned while Earned Leave admittedly cannot be more than 240 days at a time. The Counsel for the respondents argue that according to the circular, the leave period cannot be sanctioned more than 180 days in terms of Dept. of Personnel & Training O.M.No.11014/3/89-Estt(L) dated the 12/10/90 and they have sanctioned the leave accordingly for 180 days as Earned Leave and remaining period has been treated as half pay leave which was due to the employee and whatever was the remaining period was treated as leave without pay.

10. I have considered the whole question and I am of the view that although it may be that at one time only 180 days can be sanctioned but in the present case the question is of regularising the intervening period between the order of transfer and the order of joining back between the date of transfer and the date of joining back. Since the employee has got more than 180 days Earned Leave to his credit, it would be correct and proper to utilise the whole ^{leave at his credit for regularising the period} if he so desires. Thus I am of the view that the limitation of 180 days for sanctioning of the leave cannot be applied when question is of regularisation of the period of absence as in the present case.

11. According to the applicant he has got more than 180 days to his credit and therefore I am of the view that the whole Earned Leave can be set against the period between the date of transfer to the date of joining at the request of the applicant. I therefore, direct as under:-

That the applicant would submit an application for regularising the period of absence by sanctioning the leave for the period of absence. The respondents will regularise the absence ^{by} ~~for~~ sanctioning the leave according to rules keeping ^{more than} in view my observation concerning sanction of ^A maximum of 180 days leave in para above. The Applicant further mentions that he may have to apply for 'leave not due', which will also be considered by the respondents according to rules. The OA is disposed of with above directions. No order as to the costs.

abp/7.3.95.



(P.P. SRIVASTAVA)
MEMBER (A)