

664

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 336/1989
T.A.No.

Date of Decision : 23-12-1991

Dr. G. V. Chelapathi Rao

Petitioner.

Advocate for the
petitioner (s)

Versus

Respondent.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R. Balasubramanian, Member (A)

THE HON'BLE MR. T. Chandrasekhara Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS

T. C. Reddy
HTCR

165

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.336/1989

Date of decision: 23/12/1991.

Between

Dr.G.V.Chelapathi Rao

... APPLICANT

AND

1. The Comptroller & Auditor
General of India, New Delhi.

2. The Director of Audit,
Central Revenues, New Delhi.

3. The Secretary, Govt. of India,
Ministry of Finance
(Dept. of Expenditure),
New Delhi.

... RESPONDENTS

Appearance:

For the applicant : Shri I.Dakshina Murthy, Advocate

For the Respondents : Shri G.Parameshwara Rao, SC for AG

CORAM

The Hon'ble Shri R. Balasubramanian, Member (Admn.)

The Hon'ble Shri T. Chandrasekhara Reddy, Member (Judl.)

JUDGMENT

(of the Bench delivered by the Hon'ble Shri R.Balasubramanian,
Member (A))

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant
Dr.G.V.Chalapathi Rao seeks a direction to the Respondents
that the amount of Rs.10,198-95 unjustifiably recovered
from him be refunded.

contd...2.

2. The applicant while working as Sr. Deputy Accountant General in the A.G.'s Office, was sent on deputation to the Government of West Bengal as Member of the West Bengal Electricity Board. On the completion of deputation on 31-8-1981, he proceeded on leave as follows:

- a) 1-9-81 to 28-2-82 : Earned leave and commuted leave
- b) 1-3-82 to 28-2-83 : Study Leave
- c) 1-3-83 to 29-5-83 : Commuted leave
- d) 30-5-83 to 30-12-83 : Study Leave
- e) 31-12-83 to 22-3-84 : Extension of Study Leave.

For the leave as at (a) above, he was paid at the rates he was drawing with the West Bengal Electricity Board (Rs.2625/- p.m.). But in respect of other spells of leave a doubt arose as to the rate of payment. A reference was made to the Comptroller and Auditor General who vide his letter dated 2-12-1982 (A2) clarified that the applicant should be paid at the rate he would have been paid as if he was in the A.G.'s Office. The applicant represented stating that the word 'Government' in Rule 56(2)(a) of C.C.S. (Leave) Rules, 1972 (Leave Rules for short) should cover the West Bengal Government also to which he was deputed. Vide letter dated 23-12-83, the C.A.G. clarified again, this time stating that the concerned spells of leave should be regulated under Rule 40(4) of the Leave Rules. The applicant was accordingly paid and he was satisfied. Matter did not rest there. On 1-6-1984 the Government stated that the applicant was eligible only for the rate he would have drawn had he been in the Central Government. The C.A.G., again wrote to the Ministry of Finance seeking clarification. By their letter of 14-1-1986 (page 9 of the material papers), the Ministry of Finance confirmed

that since the applicant is to be deemed to have reverted back to the parent department on 1-9-1981 on completion of deputation, the leave salaries (other than the first item) should only be what he would have got in the parent cadre. The respondents recovered the excess payment. Further representations from the applicant were of no avail. Hence this application.

3. The Respondents have filed a counter affidavit and opposed the application. The thrust of their pleadings is that since the applicant has been reverted back to his parent department on 1-9-1981 on completion of his deputation the other spells of leave should be regulated treating him only as belonging to A.G.'s office, i.e. his parent unit.

4. We have examined the case and heard the learned counsel for the applicant and the Respondents. The main question to be decided is ~~on what rate~~ ^{the at which} he should be paid, for the spells of leave indicated at para 2 above other than the item (a). As regards the item (a) there is no dispute and it is not necessary to go into this question. As per the Study Leave, this is governed by Rule 56(2)(a) of the Leave Rules. According to this, a Government servant on study leave in India shall draw leave salary equal to the pay ~~the~~ Government servant drew while on duty with the Government immediately before proceeding on such leave. While it is the contention of the applicant that the word 'Government' should be taken to mean the Government of West Bengal and thereby entitling him to the pay he was drawing from the West Bengal Electricity Board, it is the contention of the Respondents that since he had reverted back to the

U

parent department on 1-9-1981, the Government should only be mean the Government of India, that is, his parent unit. No doubt, attempts were made by the Comptroller and Auditor General to convince the Ministry of Finance that the contention of the Applicant was correct. But finally the Ministry of Finance who is the authority to decide the issue, in consultation with the Department of Personnel, had decided that his pay during study leave should only be regulated depending upon his pay due in the parent department, that is, A.G.'s Office because he had already reverted to that office on 1-9-1981 on completion of the deputation. While earned leave is a leave, as the very name connotes, earned by an official for the service rendered by him and the leave salary for this leave period is the same as the one which he was drawing last while on duty irrespective of the unit he was serving. Against this, Study Leave is governed by a separate set of rules in Chapter-VI. There are so many conditions also for grant of Study Leave. The Study Leave is controlled by the parent unit-in this case the Government of India and naturally the word 'Government' in the rule 56(2)(a) should also be taken to mean only the Government of India in this case. We are, therefore, inclined to agree with the Respondents that his pay for the Study Leave and other spells of leave following that should only be based on the pay he was drawing with the parent unit namely the A.G.'s Office.

U
contd...5.

49

5. In the course of hearing, the learned counsel for the applicant stated that for maternity leave availed of immediately in the wake of completion of deputation, the leave salary is regulated according to Rule-40. He was not in a position to show any authority supporting this statement. More over, we find from Chapter-V of the Leave Rules that ~~these~~ are for certain special kinds of leave other than Study Leave. This chapter includes maternity leave. Maternity leave is given only to a certain section of the staff (females) and under specific conditions. Hence this cannot be extended as an analogy to the Study Leave for which there is a separate chapter (VI). Study Leave is governed by altogether different conditions.

6. In the course of hearing, the learned counsel for the applicant stated that in any case the Department should not recover the amount already paid to him in the ^{light of} clarifications received from the Comptroller and Auditor General. While there are ^{Court} decisions to the effect that recovery should not be made after 10 or 15 years, even in cases of ^{admitted} accepted over payments, that situation does not arise here because the time gap between the over-payment and the recovery is only short.

contd..6.

72

S. D. S.

-6-

7. In these circumstances, we find no scope to interfere in this case and accordingly we dismiss the O.A. with no order as to costs. We, ^{also} however, made it clear that for the spell of leave from 1-9-81 to 28-2-82 (earned leave and commuted leave) if any recovery had been affected from the applicant by the Respondents applying Rule 56(2)(a) of the leave rules, the said amount shall be refunded to the applicant by the Respondents within two months from the date of this order as we are of the opinion that the salary for the said leave period (1-9-81 to 28-2-82) is governed by Rule-40.

R.Balasubramanian

(R.Balasubramanian)
Member (A)

T.Chandrasekhara Reddy

(T.Chandrasekhara Reddy)
Member (J)

Dated: 23rd day of December, 1991.

S2/12/91
Dy. Registrar (J)

mhb/

To

1. The Comptroller & Auditor General of India, New Delhi.
2. The Director of Audit, Central Revenues, New Delhi.
3. The Secretary, Govt. of India, Ministry of Finance
Dept. of Expenditure New Delhi.
4. One copy to Mr.I.Dakshina Murthy, Advocate,
10-1-18/25, Shamnagar, Masab Tank, Hyderabad.
5. One copy to Mr.G.Parameswara Rao, SC for A.G. CAT.Hyd.
6. One spare copy.

pvm

*Parbatika
Office*