

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

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O.A. 241/96

Date of decision: 30/6/97

Between

G. Ratnaiah

... Applicant

And

1. Union of India
(rep. by Secretary,
D/o Telecommunications,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi).

2. General Manager,
Telecom,
Surat Telecom District,
Narayanan Chambers,
Varachha Road,
Surat.

... Respondents

Party-in-Person

Shri K. Bhaskara Rao

.. Counsel for respondents

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HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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JUDGEMENT

The applicant was posted as Director of Finance and Accounts in Surat Telecom District, Gujarat Circle, on 27.11.93. He was reverted to Chief Accounts Officer from 6th July 1995 and retired on superannuation on 31.7.95. He proceeded on leave on 31st August 1994 to 28th October 1994, and resumed duties on 31st October 1994 after suffixing holidays on 29th and 30th October. He had applied for EXOL without pay on MC for this period. The counter-affidavit discloses that the applicant applied for half-day's casual leave on 31.8.94, proceeded to Ahmedabad and produced medical certificate from there applying for Half-Pay Leave on MC on 31.8.94 for 8 days, and extended the same in various spells, from 9th September to 10th September on HP with MC, Leave Not Due for 12 days with effect from 11.9.94 to 22.9.94 on the strength of Medical Certificate issued at Hyderabad, 15 days EXOL on MC on 23.9.94, EXOL on MC from 8.10.94, and finally EXOL on MC from 23rd to 28th October 1994.

2. On 16.12.94, the officer requested for certain 'conversions' in the leave as applied for by him. No decision was, however, taken either on his original applications or on his subsequent requests till the date of his superannuation, i.e. 31.7.95, when the leaves originally applied for by him was sanctioned ignoring, in the process, the officer's revised request in this regard.

3. The applicant prays for a direction to the respondents to grant him EL from 21.9.94 to 8.10.94 as applied for by him on 16.12.94 on the ground that Rule 10 of CCS (Leave) Rules, 1972 did in fact permit commutation of one kind of leave into another before the date of retirement. The complaint of the applicant, however, is that he was not granted the leave applied for in the first instance even after a lapse of 9 months

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obliging him to apply for a revision of leave from EXOL on MC to EOL on MC, which is not the same as commutation. He argues that the question of commutation of leave arises only when the leave initially applied for is granted and if the applicant thereafter seeks revision of leave so sanctioned before his retirement. He also draws attention to Rule 7 of CCS (Leave) Rules which stipulates that it is not open to the authorities to alter the kind of leave applied for except on the written request of the government servant.

4. Before I proceed to examine the counter-affidavit filed by the respondents it will be necessary to examine the provisions of the rules cited by the applicant.

(i) Rule 10 of CCS (Leave) Rules, 1972 reads as under:

"(1) At the request of a Government servant, the authority which granted him leave may commute it retrospectively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the Government servant cannot claim such commutation as a matter of right.

(2) The commutation of one kind of leave into another shall be subject to adjustment of leave salary on the basis of leave finally granted to the Government servant, that is to say, any amount paid to him in excess shall be recovered or any arrears due to him shall be paid."

(ii) Rule 7 of CCS (Leave) Rules, 1972 reads as under:

"(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

5. The respondents concede that the applicant had applied on 16.12.1994 for conversion of certain spells of leave as under:-

(i) 16.12.93 to 9.2.94 - Commuted leave granted.
Requested for conversion as H

(ii) 21.9.94 to 30.9.94 - Applied for EXOL (not granted till 31.7.95). To be converted into EL on MC.

(iii) 1.10.94 to 28.10.94 - Applied for EXOL (not granted till 31.7.95). To be converted into commuted leave on MC.

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They argue that the request of the applicant for the changes was not prior to the availment of leave. He did so only on 16.12.94, i.e. after availing of the leave applied for. The respondents also concede that the leave was sanctioned only on 31.7.95 but deny any vindictiveness as alleged by the applicant. They further admit that Rule 10 of Leave Rules permits commutation of one kind of leave into another but the same cannot be claimed as a matter of right and that the respondents have the discretion to refuse the same. They submit finally that Rule 7 cannot be read in isolation but has to be read with Rule 10.

6. Government of India vide Ministry of Home Affairs OM No. 6/51/60-Estt.(A) dated 25.1.1961 lays down that leave cannot be claimed as of a right and that if exigencies of public service so require discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. The same letter also goes on to say that these provisions are not intended to be used as in effect to abridge the leave entitlement of the staff. It is pointed out that it would be indeed desirable in the interest of efficiency of the public service that Government servants take leave at suitable intervals and return to work keen and refreshed. The same OM enjoins the leave sanctioning authority to encourage government servants to take leave regularly, preferably annual.

7. Government of India, DOP&T OM No. 14028/19/86-Estt.(Leave) dated 29th September 1986 discusses the position in the light of the recommendation of the Fourth Pay Commission regarding increase in the ceiling of encashable Earned Leave from 180 days to 240 days. The said OM says that while accepting the recommendation the Cabinet have also observed that EL should not ordinarily be denied to any employee especially in the last 10 years of his career, so that EL

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accumulation beyond 180 days shall not ordinarily be allowed to take place. The leave sanctioning authorities were therefore requested to ensure that EL is not normally denied to an employee.

8. The thrust and spirit of the above rules and instructions is clear. The facts of the case have therefore to be examined in the light of the said rules, read together with guidelines and instructions, in the matter.

9. The applicant had applied for conversion of certain spells of leave granted to him earlier on 16.12.94. This request was not attended to for the next 7½ months. It was neither accepted nor rejected but simply kept in cold storage. Then suddenly on 31.7.95, i.e., on the day of his retirement on superannuation, the leave applied for originally by the applicant was granted ignoring the request made on 16.12.94. The delay is not understood nor explained properly. It is a settled position in law as well as by administrative instructions that leave cannot be claimed as a matter of right. It is also true that retrospective commutation of leave already granted into leave of different kind due and admissible to him cannot also be claimed by right. The applicant had applied for EXOL from 21.9.94 to 30.9.94. He subsequently requested that this period of 10 days be treated as EL on MC for 10 days. Similarly the applicant had applied for EXOL for 28 days from 1.10.94 to 28.10.94 and subsequently requested that the same be converted into commuted leave on MC for 28 days. The above request was received on 16.12.94. Thus, while it was not open to the authority to alter the kind of leave due and applied for on their own, they were under an obligation to consider the revision as subsequently applied for by a specific written request of the applicant.

Rule 7(2) 7

10. Under the circumstances, there is force in the applicant's contention that the question of commutation will

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arise only when the leave initially applied for was granted. What he actually applied for was conversion of EXOL on MC to EL on MC. By the date of the revised application i.e., 16.12.94 he may have earned enough revised leave of the kind at his credit for he was applying for. This somehow does not seem to have received proper attention of the concerned authorities. Apart from non-grant of his request as per rules, with the result that, 12 days of EL over and above the ceiling has had to be forfeited by the applicant.

11. Under the circumstances it is to be held that ignoring the request of the applicant made on 16.12.94 was not based upon any valid, permissible ground, nor have any acceptable reasons been explained for such failure. The authorities seem to have been influenced by extraneous factors like submission of incorrect caste certificate and frequent availment of leave in short spells without prior permission, in not acting upon his revised application of 16.12.94. This cannot be regarded as just or fair. If the authorities felt justified in refusing to accede to his revised request, they would have been within their rights to take a decision to that effect within the ambit of rules. Alternately, if they were dissatisfied with his frequent absences, they could have taken notice of the same in an appropriate proceeding or action. It was not, however, correct to postpone a decision for more than seven months right upto the date of the applicant's retirement. Such long and unconscionable delay is not understood, and abrupt, last-minute sanction cannot be explained away by an omnibus prerogative of 'discretion'. Discretion has to be fair and transparent and not subjective and cryptically stated.

12. In the light of the above discussion the plea of the applicant warrants re-consideration. Respondent-2 is accordingly directed to review his decision for conversion of

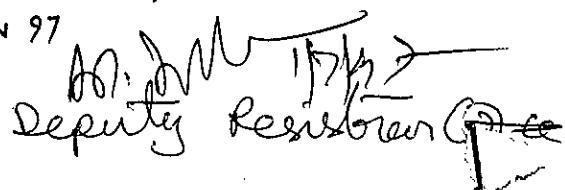
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leave applied for by the applicant, and convey his decision through a speaking order. Consequential benefits, if any, shall be extended to the applicant if the earlier decision is altered. This exercise shall be taken up and completed within 60 days of the receipt of a copy of this order.

Thus the O.A. is disposed of.


(H. Rajendra Prasad)
Member (Administrative)

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Deputy Registrar

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