

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1585/97.

Dt. of Decision : 26-12-97.

C.Nagamani

.. Applicant.

VS

1. The Regional Director (Estt-I),
Regional Office,
ESI Corporation, Hyderabad.
2. The Dy. Director,
ESI Corporation, Hyderabad.

.. Respondents.

Counsel for the applicant : Mr.P.Naveen Rao

Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

ORDER

OORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Heard Mr.Phaneraj for Mr.P.Naveen Rao, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. The applicant herein was engaged as adhoc LDC as the regular appointment could not be made in time by the memorandum No.52.A/22/11/90-Estt.I dt. 14-06-94 (page-7 to the reply). The applicant applied for leave during the period till 29-11-96 on various occasions. Initially leave requested by her was sanctioned. However the sanctioned leave at various occasions were reduced as it is stated that she is not entitled for grant of that leave being an adhoc LDC. Hence by office order No.52.A /25/15/97-Estt.I dt. 18-09-97 (Annexure-II to the OA) the excess leave sanctioned was withdrawn and that period of un-sanctioned leave was treated as break in service. Because of the above memorandum it was decided to recover the excess amount paid to



her from her salary payable in the month of Sep. 1997 and October, 1997.

3. This OA is filed to quash the impugned order No.52.A/25/15/97-Estt.I dated 18-9-97 (Annexure-II to the OA) and pay her the full salary with all consequential benefits.

4. An interim order was passed in this OA dated 26-11-97. As per the interim direction the salary for the month of November, 1997 (payable on 1-12-97) should be disbursed at the same rates as was done for the month of August'97 (payable on 1st Sep. 1997). The interim order does not talk of any payment for the month of Sep. 1997 and Oct. 1997.

5. A reply has been filed in this OA. The respondents contend that the applicant was posted ~~on~~ adhoc basis by the appointment order dated 14-06-94 (Annexure-I to the reply). This adhoc posting was done as a stop-gap arrangement and it was thought at that time that the above adhoc arrangement may not last for more than three months and there was no chance for ~~the~~ appointment being made on regular basis. The respondents further submit that the applicant accepted the offer of appointment with the conditions stipulated therein. She ~~had~~ applied for grant of Maternity Leave for 90 days from 27-12-94 to 26-3-95 i.e., four months after the date of her appointment. That was granted initially. She was also paid the pay and allowances for that period. However it was found that the said sanction of Maternity Leave to the applicant was erroneous. As she was appointed only on adhoc basis and does not hold any regular post under the ~~Government and hence~~ Government ~~and hence~~ not governed by the CCS (Leave) Rules, 1972. She is entitled to only Earn Leave at the rate of $2\frac{1}{2}$ days per month for completed service as per the Government of India instructions contained in O.M.13018/1/82-Estt.(L) dated 24-07-86. Since the leave was sanctioned in excess of her eligibility the same was withdrawn by the impugned order dated 18-9-97. The

Maternity Leave granted as indicated above was sanctioned only for the period from 27-12-94 to 5-1-95 prefixing the leave 24, 25, 26-12-94. The rest of the period was withdrawn and that portion for which leave was withdrawn ~~and~~ was treated as break in service of 80 days i.e., from 6-1-95 to 26-3-95. Similarly ~~the~~ ^{other} leave sanctioned to her erroneously as ~~per~~ ^{applicable} the regular employee ~~and~~ was also withdrawn and the period of leave withdrawn at each occasion was treated as break in service as indicated in the impugned office order dated 18-9-97. In view of the above withdrawal of the sanctioned leave the excess amount paid to her ~~for~~ ^{was} period also ~~to~~ to be recovered from her salary. Hence she was offered salary for the month of Sep. and October, 1997 deducting the excess amount paid for the leave which were withdrawn by the impugned order. The respondents further submit that the applicant is not entitled for bonus. As the adhoc employees are entitled for bonus only if they are in continuous service during the financial year without any break and also in service ~~on~~ the last working day of the month of February of the relevant year vide Headquarters Memorandum No.V-37(11)-1/81-E. III (Bonus) dated 22-2-88 (Page-13 to the reply). Inobediance to the interim direction of the Tribunal she was paid the pay and allowances for the month of November, 1997 on 28-11-97.

6. The respondents further submit that the case of the applicant who is an adhoc employee was also considered for extension of the benefit of all kinds of leave, as admissible to the temporary employee under the CCS(Leave) Rules, 1972 from the date of their initial appointment in accordance with the Govt. of India O.M.dated 24-7-86. The relevant para of that memorandum applicable in this case is reproduced below:-

"5. In accordance with the instructions contained in O.M.No.39021/5/83-Estt.(B), dated 9-7-85, adhoc employment is not likely to continue beyond a period of one year. If adhoc appointments made for brief periods initially, however, for some reasons, though rarely,



continue beyond a period of 3 years without break, such adhoc employees may be extended the benefit of all kinds of leave as admissible to temporary employees under the C.C.S.(Leave) Rules, 1972, from the date of their initial appointment."

As the applicant has not fulfilled the conditions of "3 years without break" she is not eligible to get the benefit in accordance with law. Hence the respondents submit that they are left with no other alternate except to deduct the excess payment made on account of ~~the leave~~ certain portion of the leave already sanctioned having been withdrawn by the impugned memorandum dated 18-9-97.

7. No rejoinder has been filed to this reply. No employees can demand sanctioning of leave which is not provided for in the CCS (Leave) Rules, 1972. Though the learned counsel for the applicant submits that the applicant is not aware of the leave rules and the respondents who is aware of the leave rules should have intimated her in regard to her eligibility for maternity leave and other leave, ~~and~~ if she had been informed about the leave rule she would not have applied for leave in excess to her eligibility. Since the respondents fail to discharge their duties and granted her leave as applied by her she cannot be held responsible for sanctioning ~~excess~~ of excess leave. Further the applicant also submits that before withdrawing the leave sanctioned to her no notice was given to her and thus the principle of natural justice has not been adhered to. In view of the above, the recovery is improper.

8. No employees can be ignorant of the leave rules whether adhoc or regular. Hence an erroneous leave sanctioned, the respondent organisation is at liberty to withdraw the leave sanctioned and grant the leave only to the extent the employees is eligible. However the respondents should make sure that before leave is sanctioned that an employee is eligible for such kind of leave. Unfortunately in this case the authority who



sanctioned the leave failed to discharge his duty properly. But that will not stand in the way of recovery of the excess amount as non recovery of the amount will only lead to the financial impropriety as she has been paid from the public money.

9. In view of what is stated above, I do not find any reason to set aside the impugned order No.52.A/25/15/97-Estt. I dated 18-09-97. The respondents ~~are~~ entitled to recover the excess amount paid to her due to grant of excess leave and that has to be deducted from her salary. As the salary for the month of Sep. 1997 and Oct. 1997 is yet to be paid, the respondents should recover the same from the salary for the month of Sept. '97 and Oct. '97. But before doing that she should be informed of the calculation of the amount to be recovered from her in ^{pay} detailed fashion within a period of 15 days from the date of receipt of a copy of this judgement. After the lapse of the above stipulated period the respondents are at liberty to recover the excess amount paid to her by way of excess leave sanctioned to her from the salary for the Sep. '97 and Oct. '97 clearly indicating ~~that~~ the amount she is eligible for ~~the~~ months and the amount recovered from her for excess leave sanctioned to her.

10. The learned counsel for the applicant submits that the leave should not be withdrawn without informing her by issuing a notice. As I stated earlier the applicant cannot say that she is ignorant of her ~~of the~~ leave ^{rules} ~~position in regard~~ to grant ~~of~~ leave. Hence even if it is not informed to her the respondents are at liberty to withdraw the excess leave granted to her in accordance with the rules. But the respondent authorities should have ensured the leave eligible to be granted to her before sanctioning the leave. That was not done by the respondent authorities at the initial stage. For this lapse the authorities who



sanctioned the leave without checking the rule position is to be held fully responsible and that authority should be suitably be taken up to correct such failure in future. The action taken against that authority should be intimated to this Tribunal within a period of two months from the date of receipt of a copy of this order.

11. The learned counsel for the applicant submits that the applicant is entitled for the salary for the month of December, 1997 and also arrears due to the introduction of 5th Pay Commission scales of pay. It is not necessary for me to give any direction in this connection as the Government cannot deny her due pay and allowances in accordance with the rule inforce. If some amount has to be deducted from that also due to the grant of excess leave the respondents can take suitable action to deduct from the amount payable to her after deducting the money from the month of Sep. '97 and Oct. '97. But if such a deduction is made the respondents should be informed the applicant so that she aware of the position.

12. With the above direction the OA is disposed of. No costs.

प्रमाणित इति
CERTIFIED TO BE TRUE COPY

मानवाधि अधिकारी/दूष रजिस्ट्रार (न्यायिक)
Court Officer/Dy. Registrar
केंद्रीय प्रशासनिक दस्तावेज
Central Administrative Tribunal
हैदराबाद बैच
HYDERABAD BENCH

केंद्र संचय
CASE NUMBER... OA/1585/97
मामला का संख्या
Date of Judgement 26/12/97
कानून ददार किया गया तिथि
Copy Made Read/On... 5/1/98
कॉपी बनायी गयी तिथि
Signature (संस्कारित दस्तावेज)
Signature (संस्कारित दस्तावेज)
D. Registrar