

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.1126/99

DATE OF ORDER: 19-11-1999

Between :

K. Subba Rao, s/o K.Ch.Sivayya,
aged about 60 years, Retd.Sub-Divisional
Engineer, Telecom, R.T.T.C.,Hyderabad,
R/o H.No.2-48/12, Plot No.170, Telecom Nagar,
Gachibowli, Hyderabad-321. .. APPLICANT

(By Advocate Mr.K. Venkateswara Rao)

A N D

1. The Director,
Regional Telecom Training Centre,
Hyderabad-32.
2. The Chief General Manager,
Telecommunication, A.P.Circle,
Hyderabad.
3. The Chairman,
Telecom Commission,
New Delhi.
4. The Secretary,
Department of Personnel and Training,
Ministry of Pension and Welfare,
Personnel & Training,
North Block, New Delhi. .. RESPONDENTS

(By Standing Counsel Mr.V.Rajeshwara Rao)

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN.

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O R D E R.

Justice D.H.Nasir, VC:

1. The respondents are sought to be directed in this O.A. to allow the commutation of 104 days of HPL into 52 days of EL for the purpose of having the benefit of encashment of 300 days as per OM No.14028/7/97-Estt(L) dated 7.10.1997.

2. By a ~~letter~~ dated 31st December, 1997 issued by the Department of Personnel and Training in connection with the recommendations of the Fifth Central Pay Commission regarding conversion/commutation of one kind of leave into another had been accepted by the Government and the President was pleased to decide that the application of a Government servant for commutation of one kind of leave into another be considered in accordance with the provisions of Rule 10 of CCS(Leave)Rules,1972, only if the same had been received by the leave sanctioning authority or any other authority designated in that behalf within the period of 30 days of the concerned Government servant joining his duties on the expiry of the relevant spell of leave availed of by him/her by an earlier Office Memorandum dated 7.10.1997. It was communicated that consequent upon the decision taken by the Government on the recommendation of the Fifth Central Pay Commission relating to leave the President was pleased to decide that the existing provisions of the Central Civil Services (Leave)Rules,1972 be modified as stated in the body of the said Office Memorandum in respect of civilian employees of the Central Government. According to Clause (a) of the said Office Memorandum, the existing ceiling of 240 days on accumulation of earned leave

provided in Rules 26 and 23 shall be enhanced to 300 days.

The said direction was to take effect from 1st July, 1997.

3. The applicant made a representation in accordance with the said Office Memorandum on 13.12.1997 requesting for availing of the maximum of 300 days encashment of earned leave after converting 104 days' half pay leave into 52 days of earned leave by a letter dated 25.9.1979. In the meantime, however, according to the applicant, the impugned Memo dated 24.2.1998 was issued refusing conversion to the applicant on the ground that he had not applied for conversion within the specified period of 30 days which was illegal and void according to the applicant. It is further submitted by the applicant that this was not legal and proper because the orders dated 31.12.1997 for conversion of one kind of leave into another was issued subsequent to the retirement of the applicant on 30.9.1997. Further according to the applicant, the said order dated 31.12.1997 was applicable only to the officers who retired on or after 31.12.1997. The applicant, therefore, preferred an Appeal to the second respondent on 18.5.1998 contending inter alia that the O.M. dated 31.12.1997 was prospective and it was made effective from the date of issue of the same, and therefore, it was wholly unjust to insist upon the clause providing for conversion of commutation of leave within 30 days after ^{and that the same is} availing actual leave could not be made applicable to the present applicant. The orders existing as on the date of the applicant's retirement on 30.9.1997 were applicable to him. The applicant submitted that the O.M. dated 7.10.1997 enhancing the encashment of E.L. was applicable to his case because the said O.M. was given retrospective effect

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from 1.7.1997. The applicant further points out that the impugned order dated 24.2.1998 issued by the first respondent and the consequential order dated 8.7.1998 issued by the second respondent were unsustainable inasmuch as the applicant had already been permitted to encash E.L. of 240 days and his claim for commutation of short fall of 52 days was admissible in the light of the letter dated 25.9.1979 and also as per O.M. dated 7.10.1997 which had been given retrospective effect from 1.7.1997 on which date the applicant was continuing in service.

4. On perusal of the relevant orders as well as the submissions made by the learned counsel for both the parties, I am of the opinion that the applicant's claim for allowing encashment of leave for 300 days is quite reasonable and fair because the applicant was very much in service on 1.7.1997 when the aforesaid benefit was enforced. It would not be legal and proper to deny the said benefit to the applicant.

5. The respondents in their reply affidavit point out that at the time of retirement the applicant was having 248 days of E.L. at his credit and the leave encashment for full 248 days was paid to him as per orders contained in the Memo dated 7.1.1997.

6. It is further pointed out by the respondents that for conversion of EL into half pay leave under Rule 10 of the CCS(Leave)Rules,1972 instructions of Government of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M.No.P.12025/2/81-Est.(L) dated 2.12.1981, clarify as under :

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"...Attention is invited to the provisions under Rules 9 and 3(1)(a) of the above said Rules according to which all leave standing to the credit of a Government servant lapses as soon as he ceases to be in service. It is thus clear that the powers vested in the Ministries/Departments under Rule 10 ibid, cannot be exercised by them after the employee concerned has ceased to be in service. Any sanction issued by the Ministries/Departments concerned commuting one kind of leave granted to the employee when he was in service, into any other kind of leave, after the employee has ceased to be in Government service is irregular and violative of the provisions of the Statutory Rules."

7. The requirement of making application for conversion within 30 days could not be lawfully insisted upon in the applicant's case because the benefit though introduced with effect from 1.7.1997, was announced on 31.12.1997. The applicant retired on superannuation in September, 1997 which fell between the date on which O.M. was made effective and the date on which O.M. was actually issued. Obviously therefore the applicant could not be expected to make suitable application for conversion within 30 days while he was still in service. I would have allowed this O.A. on the basis of the views expressed above, but for the fact that there maybe large number of similar cases involving large financial implications. The ends of justice would therefore be met if the matter is remanded to the respondents for reconsideration.

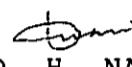
8. This O.A. is therefore disposed of with a direction to the first respondent to reconsider the applicant's case for encashment of the additional leave upto the maximum of 300 days E.L. in the light of the views expressed above and in light of the stand taken by the Government in similar cases. This exercise shall be completed within two months from the date of receipt of a

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copy of this order by passing a speaking order.

The Registry is directed to forward a copy of the present original application along with its annexures to the respondent No. 1 to enable him to take into consideration the averments made by the applicant in the O.A. read with the material papers produced by the applicant along with the O.A.

9. The O.A. is disposed of accordingly. No costs.


(D. H. NASIR)
VICE-CHAIRMAN.

DATED THE 19th DAY OF NOVEMBER, 1999.


DJ/
I.P.M.C.

DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

Reportable case
6/11/1999
16/11/1999

1ST AND 2ND COURT

COPY TO :-

1. BORN ✓

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

2. HRRN M (A)

THE HON'BLE MR. JUSTICE D.H.NASIR

3. BOSJP M (J)

VICE - CHAIRMAN

4. D.R. (A) ✓

THE HON'BLE MR.R.RANGARAJAN :

5. SPARE ✓

MEMBER (ADMN.)

6. ADVOCATE

THE HON'BLE MR.G.S.JAI PARAMESWAR :

MEMBER (JUDL.)

7. STANDING COUNSEL

* * *

⑧ Dr (J) - 2
⑨ Lpds - 5

DATE OF ORDER: 19/11/99

MA/RA/CP.No.

in

OA. NO. 1126/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

(16 copies)

CA CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

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