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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.108/97

Dt. of order: 21/10/99

S.L.Agrawal, S/o Shri Radha Krishana, R/o 394, Surya
Nagar, Gopalpura By-pass, Tonk Road, Jaipur.

...Applicant.

Vs.

1. Union of India through the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
2. The Accountant General (Audit-I), Rajasthan, Bhagwan Das Road, Jaipur.

...Respondents.

Mr.Anupam Agarwal - Counsel for applicant

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the Memo dated 17.7.96 and to direct the respondents to grant conversion of his commuted leave into Half Pay Leave and such Half Pay Leave should be adjusted against the Earned Leave already taken by the applicant for encashment.

2. The applicant was superannuated as Senior Audit Officer on 31.7.96.

3. The case of the applicant in brief is that his application for conversion of one kind of leave into another was rejected by the respondents vide Memo dated 17.7.96 which is not in conformity with Rule 10 of the CCS (Leave) Rules, 1972. The applicant submitted an application in the prescribed form on 24.6.96 and thereafter on 30.7.96 for sympathetic consideration but the same was rejected by the impugned order. It is also stated that his application was rejected on whimsical ground whereas similar benefit was granted to one Shri M.L.Gupta, by the Accountant General. Therefore, denying such benefit to the applicant is illegal and unlawful and in violation of Articles 14 and 16 of the Constitution of India. Therefore, the applicant filed this O.A for the relief as mentioned above.

4. Reply was filed by the respondents. In the reply it has been stated that the scheme of commutation of one kind of leave into another kind of leave as envisaged under Rule 10 of the CCS (Leave) Rules, 1972, has not been framed for the financial interest/benefits of the Govt. employee. It is further stated that a Govt. servant is entitled to encashment of leave salary for a

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maximum period of 240 days at the time of his retirement. The applicant did not have leave due to his credit at the time of his retirement for the purpose of leave encashment. Therefore, the applicant submitted an application and requested for commutation of one kind of leave retrospectively and four leave applications in the prescribed forms were submitted for allowing commutation of Earned Leave/Commuted Leave into half pay leave for the period from September 1966 to April 1981. It is stated that the applicant sought commutation of 265 days Earned Leave/Commuted Leave into Half Pay Leave for the period from September 1966 to April 1981 and at the time of his superannuation on 31.7.96, he did not have leave at his credit. It is submitted that the intention of Rule 10(2) of the CCS (Leave) Rules, has not been to commute retrospectively at the time of superannuation, the leave sanctioned three decade back retrospectively would mean only within a reasonable period. Therefore, it is stated in the reply that this O.A deserves to be dismissed.

5. Heard the learned counsel for the parties and also perused the whole record including the file of Shri M.L.Gupta, Sr. Audit Officer, who was superannuated in the year 1994.

6. The case of the applicant is distinguishable from the case of Shri M.L.Gupta, Sr.Audit Officer, who retired in the year 1994. Moreover, grant or refusal of leave is the discretion of the competent authority as leave cannot be claimed as a matter of right. The Tribunal can only interfere with the refusal of leave by the competent authority when it is arbitrary. In the instant case it is not the case of the applicant that his applications were refused arbitrarily whereas the contention of the respondents has been that provisions of Rule 10(2) of the CCS(Leave) Rules can only be made applicable retrospectively within a reasonable time. The intention of the rule is not to provide the monetary benefits to the persons retired but at the same time the interest of the administration and convenience of administration shall also be taken into account. Rule 10(2) of the CCS(Leave) Rules, provides as under:

"Rule 10: Commutation of one kind of leave into another:

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

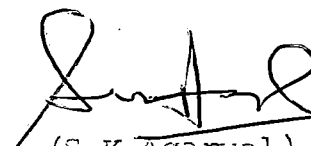
(2) The commutation of one kind of leave into another shall be subject to adjustment of leave salary on the basis of leave finally granted to the Govt servant that is to say any amount paid to him in excess shall be recovered or any arrears due to him shall be paid."

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7. On the basis of the above rule the settled position is that the competent authority can commute one kind of leave into another retrospectively but this cannot be claimed as a matter of right. Employee cannot claim similarity of treatment with an earlier action if the same is not enforceable by law. Doctrine of discrimination is founded on existence of an enforceable right, therefore one can claim the similarity on the ground that he was discriminated and denied equality as some similarly situated person had been given the same relief.

8. Rule 10 of the CCS (Leave) Rules, was framed not only as a welfare measure as stated by the applicant but this rule was framed protecting the public interest also. There is no overwhelming reason with the applicant why his applications should be accepted except that he will get leave encashment if the applications are sanctioned after retirement. No arbitrariness could be established against the respondents while rejecting the applications filed by the applicant and the case of the applicant is not para-materia with the case of Shri M.L.Gupta, as referred by the applicant, in the facts and circumstances of this case. Therefore, there is no basis to interfere with the action of the respondents and denying such benefits to the applicant by the respondents is neither illegal nor in violation of Articles 14 and 16 of the Constitution of India. Admittedly, the applications of conversion of leave of one kind into another relates to the period 16 years to 30 years back. Therefore, it is not a fit case in which interference by this Tribunal is called for after such a long lapse.

9. I, therefore, find no merit in this O.A. Therefore, this O.A is dismissed with no order as to costs.


(S.K. Agarwal)
Member (J).