

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.405/2006.

Jaipur, this the 21st day of November, 2006.

**CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.**

Krishna Avtar Gupta
S/o Late Shri Nanoo Mal Gupta
Aged about 65 years,
R/o B-31, Triveni Nagar,
Jaipur-302018.

... Applicant.

By Advocate : Self.

Vs.

1. Deputy Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi 110 0166.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
G.C.F. Estate,
Jabalpur M.P. 482011.

... Respondents.

: ORDER :

Per M. L. Chauhan, Judd. Member.

The applicant has filed this OA thereby praying for the following reliefs :-

"8.1 The Hon'ble Tribunal is humbly prayed to allow and admit this application of the humble applicant.

8.2 The humble applicant most respectfully prays the Hon'ble Tribunal to set aside the impugned order dated 31.7.2006 of the Respondent NO.1.

8.3 The Hon'ble Tribunal is prayed to issue order or direction to the Respondents to make payment of balance of leave encashment of 103 days to the humble applicant with cost.

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8.4 The humble applicant respectfully prays to the Hon'ble Tribunal to issue appropriate order or direction to the respondents to make payment of interest on the total sum of 300 dyas of leave encashment from 1.1.2002 till the date of full and final payment to the humble applicant.

8.5 Any order or direction deemed just in favour of the humble applicant."

2. Briefly stated, the facts of the case are that the applicant while working as Principal, Kendriya Vidyalaya Sangathan, retired on superannuation on 31.12.2001. However, he was further re-employed for 3 months and accordingly the applicant quit the service on 31.3.2002. The grievance of the applicant in this case is regarding leave encashment amount. According to the applicant he was entitled to leave encashment for 300 days whereas the respondents have paid the leave encashment for 197 days amounting to Rs.1,26,165/-, which was paid to him on 30.10.2003 i.e. after a lapse of one year and 10 months. Feeling aggrieved, the applicant filed OA No.415/2004 before this Tribunal. This Tribunal vide order dated 13.4.2006 directed the applicant to make fresh representation to Respondent No.2 regarding balance amount of leave encashment within ten days and it was observed that in the event of making such representation within ten days, Respondent NO.2 shall decide such representation within six weeks from the date of receipt thereof thereby quoting the provisions of rule/instructions on the basis of which the applicant is not entitled to the claim of remaining amount of leave encashment. It was further observed that in case the respondents comes to the

conclusion that the applicant is entitled to further leave encashment amount, the respondents will make payment of the remaining amount to the applicant within further period of six weeks from the date of decision on such representation and in case the applicant is still aggrieved, it will be open for the applicant to approach this Tribunal for redressal of his grievance.

3. Pursuant to the said order, the applicant made representation Annexure A/7 thereby giving the particulars and number of days the applicant is entitled for payment of encashment of leave of 103 days. From the perusal of representation Annexure A/7, it is clear that the applicant has raised 9 claims. However, the said representation was again considered by the respondents and vide order dated 9.6.2006 it was found that the applicant is entitled to leave encashment amount for 56 days instead of 103 days. It was further observed that the applicant has been paid salary for 59 days in excess and recovery has to be made. As such, nothing is payable to the applicant. At this stage, it will be useful to quote order dated 9.6.2006, so far as, it is relevant in extensio whereby the contention ~~was~~^{of} the applicant was noticed vis a vis the finding recorded by the competent authority and thus reads as under :-

"....."

WHEREAS his representation was once again considered afresh and the following findings have emerged.

Sl. No.	Applicant's contention	Real position
1.	Leave earned in lieu of the winter break of 10 days not availed in KV Sector 31 Chandigarh	Proportionate EL of 6 days have already been included in leave account of 197 days as verified in Page 55 of Recast leave a/c. Hence His claim cannot be admitted Again.
2.	Leave earned in lieu of joining time not availed while on transfer from Sector 31 Chandigarh to NVS Bhopal on deputation (8 days)	Since he had gone on deputation at his own request, the credit of unavailed joining time is not admissible. However, the matter proposed to be got clarified from KVs (HQ). claim
3.	Leave earned in lieu of joining time not availed on repatriation from NVS Pune to KVS (HQ) (4 days)	
4.	Leave earned in lieu of joining time not availed on posting at KV No.2 Khetri Nagar from KVS (HQ) on repatriation from NVS (4 days)	
5.	Leave earned in lieu of Summer vacation not availed in KV No.2, Khetri Nagar on Deputation in KV Jhunjhunu as I/C Principal (5.5.95 to 31.5.95 - upto 10.6.95	Since no proportionate credit of Earned Leave has been made in the recast leave account, 16 days of Earned leave is found admissible.
6.	Leave earned in lieu of break/ Vacation not availed in KV Jalwar Autumn break 29.9.95 to 8.10.95 Winter break 22.12.95 to 31.12.95	Since no proportionate credit of Earned Leave has been made in the recast leave account, 06 days of Earned leave is found admissible. Leave has been made in the recast leave account, 06 Days of Earned leave is Found admissible.
	Summer vacation from 7.5.96 to 29.5.96 not Availed.	Since no proportionate credit of Earned Leave has been made In the recast leave account, 13 days of Earned Leave is Found admissible.
7.	Leave earned in lieu of Joining time not availed On transfer on promotion To the post of the Principal From KV Jalwar/Khetri Nagar To KV ONGC Cambay (12 days)	He is eligible for 9 days of unavailed period of joining time and the same has already been included in the recast leave account of 197 days. Hence his claim is not Admissible again.
8.	Leave earned in lieu of Joining time not availed on transfer from KV ONGC	Since he did not avail joining time due to his being on commuted leave, the unavailed

Cambay to KV Mahasamund.
relieved from KV Cambay on
7.5.99 and joined (KV
Mahasamund on 4.8.99.
(15 days) Remained on
Commutated leave full pay
on medical grounds from
1.5.99 to 3.8.99.

Joining time of 15 days may
be granted.

9. Leave earned during the
Period of re-employment
for the period from
1.1.2002 to 31.3.2002
(8 days).

During the re-employment
period, Earned Leave cannot
be accumulated and not admi-
ssible for encashment.

Further, he was on commuted leave from 1.5.99 to 3.8.99 for 95 days. As per the entries in the leave account in the service book, he is having 62 days of Half Pay leave as on 30.06.99 and he availed commuted leave for 61 days against the Half Pay leave of 62 days (full pay 31 days) for the period from 1.5.99 to 30.6.99. Hence 30 days excess full pay granted resulting in over payment which is to be recovered from him. Further, he continued to remain on commuted leave from 1.7.99 to 3.8.99 (34 days) while only 5 days full days (10 half Pay Leave) due on 1.7.99 can be granted to him resulting in overpayment of 29 days. Thus the over all excess payment made to him was for 59 days which is to be recovered from him."

4. Subsequently, in terms of the contention raised by the applicant against Sl. No.2,3 & 4 above, whereby the matter was processed to get the clarification from KVS, Headquarter, The KVS, Headquarter, has again issued a clarification vide letter dated 7.7.2006 (Annexure A/1B) whereby it has been held that since the applicant had gone on deputation to Navodaya Vidyalaya Samiti at his own volition, the credit of unavailed joining time, as requested by him, is not admissible to him under the rules. At this stage, it will be useful to quote the said letter also, which reads as under :-

"No.F.6-13/96-KVS(Estt-I)4846

dated 07.07.06

The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Jabalpur

Sub : OA No.415/2004 filed by Shri K.A. Gupta,
Principal (Retd.), KV, Mahasamund before
The Hon'ble CAT, Jaipur Bench-Regading.

Sir,

I am to refer to your office order No.F.24-2/2006-KVS(JBP)/5610 dated 9.6.2006 on the subject mentioned above and to clarify the position as under :-

As per Rules, Transfer at own request - No joining time is admissible. Regular leave may be availed of to cover the period from the date of relinquishing charge of the old post to the date of assumption of charge of the new post. If, however, holiday(s) intervene(s) between the date of relief at the old station and joining at the new station, the intervening holidays may be availed as 'holidays' and the employee need not take any leave of such period. The pay for the period so availed will be borne by the Department/Office where the official joins after transfer.

In view of the above position, since Shri K.A. Gupta, Principal (Retd.) had gone on deputation to Navodaya Vidyalaya Samiti at his own volition, the credit of unavailed joining time, as requested by him, is not admissible to him under the rules. You are, therefore, requested to settle the dues payable to him immediately, if not settled by now.

This issues with the approval of the competent authority.

Your faithfully,

(R.N. Singh)
Sr. ADMN. OFFICER (ESTT.)"

It is these orders which are under challenge in this OA.

5. We have heard the Learned Counsel for the parties and gone through the material placed on record.

6. As can be seen from the order dated 9.6.2006, the relevant portion of which has been extracted above, the question which requires consideration is whether the claim of the applicant against Item No.2,3 & 4, i.e. leave earned in lieu of joining time is admissible to him. Respondents have quoted the provision whereby the applicant is not entitled to the leave earned in lieu of joining time. The provisions as quoted by the respondents is in conformity with the Government of India, Ministry of Home Affairs, Department of Personnel & A.R., O.M. No. 19011/33/81-Est.(Allowance), dated 29.01.1983. These instructions have been issued pursuant to Rule 4 (i) of the Central Civil Services (Joining Time), Rules, ^{which stipulates that} joining time is admissible in cases of transfer in public interest. However, it has been clarified that in the case of own request transfer, a person ^{may be} granted regular leave as admissible by the competent authority under the Leave Rules applicable to him to cover the period between the date of handing over charge at the old station and that of taking over at another, if the government servant applies for it and the competent authority is willing to sanction it. Learned Counsel for the applicant who was present in person has failed to

brought out any provision to the contrary. He has simply argued that since he was on deputation, as such, his transfer was in public interest, which contention cannot be accepted.


7. Respondents have further stated that the applicant has been granted leave earned by him in lieu of vacation not availed of, ⁱⁿ a proportionate credit and the leave which was due to him has been credited in his leave account now. The applicant has failed to show how the figure arrived at by the respondents is incorrect. From the perusal of Item No.5 of show cause notice Annexure A/7, it is evident that the applicant has claimed summer vacation w.e.f. 5.5.95 up to 10.6.95 whereas according to respondents the applicant has worked during summer vacation during 5.5.95 to 31.5.95. There is discrepancy in leave as claimed by the applicant which is on higher side as ~~against~~ the leave which the applicant was found entitled for which no explanation has been given by the applicant during the course of hearing. According to us, the applicant is also not entitled to the leave earned by him during the period i.e. re-employment from 1.1.2002 to 31.3.2002 for 8 days as the applicant has put in only 3 months of service during his re-employment whereas according to rule, a Government servant is entitled to the earned leave at the rate of 2 & 1/2 days for each complete calendar month of service, which he is likely to render in 1/2 year of calendar year in which he was appointed and further as per Leave Rules, the leave at the

credit of government servant has to be credit 1/2 yearly in two installments on 1st January and 1st of July of every Calendar year. Since the applicant was re-employed only for 3 months and has not rendered 1/2 year of service in the Calendar year in which he was re-employed, as such, he is not entitled to the earned leave at the rate of 2 & 1/2 days for each complete calendar month of service and we are of the view that the respondents have not committed any infirmity while rejecting the claim of the applicant qua Sl. No.9.

8. For the foregoing reasons, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is dismissed at admission stage. It is, however, clarified that the issue whether the applicant was made excess payment of salary for 59 days which is to be recovered from him is not subject matter in this OA and this OA was confined only as to whether the applicant was entitle to further leave encashment of 103 days, As such, no finding is required on this point. It will be open for the applicant to agitate this matter in separate OA, if so desires.

9. With these observations, the OA is dismissed.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C.