

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.09.2013

OA No. 273/2012

Applicant present in person.
Mr. Amit Mathur, Proxy counsel for
Mr. R.B. Mathur, Counsel for respondents.

Heard the applicant present in person and the learned
counsel for the respondents.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 273/2013

Jaipur, the 19th day of September, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

N.B. Khandelwal son of Late Shri C.B. Khandelwal, aged 63 years, resident of I-E-162, 163, Prem Nagar, Jhotwara, Jaipur (Rajasthan).

... Applicant

(Applicant present in person)

Versus

1. Union of India through Secretary, Ministry of Labour, Government of India, new Delhi.
2. The Central Provident Fund Commissioner, Bhikaiji Kama Palace, New Delhi.
3. The Regional Provident Fund Commissioner, "Nidhi Bhawan", Jyoti Nagar, Jaipur (Rajasthan).
4. The Commissioner, Sub Regional Office, Employees Provident Fund Organization, Paschim Pal Vistar Yojana, Oppo. Shankar Nagar, Jodhpur (Rajasthan).
5. The Commissioner, Sub Regional office, Employees Provident Fund Organization, "Nidhi Bhawan", Vigyan Nagar, Kota.

... Respondents

(By Advocate: Mr. Amit Mathur proxy to Mr. R.B. Mathur)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed an OA No. 233/2009 with MA No. 177/2011, which was decided by this Tribunal on 30.08.2011. The applicant was given liberty to file a representation, if he so wishes, to the respondents stating his claim of the leave encashment and the respondents were directed to pass a reasoned & speaking order on the representation of the

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applicant within a period of two months from the date of receipt of the representation.

2. In compliance of this order, the applicant has filed a representation before the respondents (Annexure A/5). The respondents have decided the representation of the applicant vide letter dated 21.12.2011 (Annexure R/2) and letter dated 23.01.2012 (Annexure R/1).

3. The brief facts of the case are that the applicant retired from service on superannuation on 31.10.2004. According to the applicant, he had 259 days of Earned Leave to his credit on the date of his retirement. He has stated that the respondents have not sanctioned leave encashment to the applicant. He has divided this period of 259 days leave into three parts (i) 67 days leave related to illegal transfer (ii) 64 days of seventeen different periods and (iii) 128 days remaining.

4. Applicant submitted that his transfer order from Jaipur to Kota dated 15.09.1999 was set aside by the Tribunal and thereafter he joined the duty at Jaipur. The intervening period of 67 days is not being treated as duty inspite of the fact that Central Administrative Tribunal has stayed the transfer order dated 15.09.1999 on 22.11.1999 and he has resumed the duty on 24.11.1999. To support his averments, he referred to office order dated 24.11.1999 (Annexure A/16 of OA No. 233/2009, N.B. Khandelwal vs. Union of India & Others). With regard to

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other periods for which the applicant is claiming leave encashment, he has given details in his OA.

5. On the other hand, learned counsel for the respondents submitted that the respondents have sanctioned leave encashment to the applicant for a period of 158 days and the payment of Rs.65,296/- has also been made to the applicant vide Cheque No. 812572 dated 07.03.2012. The applicant in this OA has not stated that after the payment of cheque of Rs.65,296/- against the leave encashment of the period of 158 days, how much period of leave encashment remains to be paid.

6. He further submitted that the applicant is not entitled for the leave encashment for the period of 67 days as he was illegally absent from duty. He was transferred from Jaipur to Kota on 15.09.1999 and he was allowed to join at Jaipur on 24.11.1999 in pursuance to the interim order of this Tribunal dated 22.11.1999. Therefore, the period between 18.09.1999 and 23.11.1999, he did not perform any work. Accordingly, he was advised to take Earned Leave to regularize this period.

7. For the balance period, the respondents have done a detailed exercise and for each period of absence, a decision has been taken by the competent authority, taking a lenient view. To Support his averment, learned counsel for the respondents referred to the order of the respondents dated

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23.01.2012 (Annexure R/1) and order dated 21.12.2011 (Annexure R/2). Therefore, he submitted that there is no merit in the OA and it should be dismissed with costs.

8. The applicant has also filed a rejoinder.

9. Heard the applicant present in person and the learned counsel for the respondents. The applicant agreed that he has received the payment for leave encashment for 158 days, as stated by the respondents in their written reply.

10. The applicant submitted that the absence of 67 days is the result of the illegal action of the respondents and it was not the fault of the applicant. From the perusal of the record, it appears that the applicant was transferred on 15.09.1999 from Jaipur to Kota. In pursuance to this order, he did not join at Kota. He filed an OA for the cancellation of his transfer as is evident from the office order No. 1(30)-Estt-I/857 dated 24.11.1999 (Annexure A/16 of OA No. 233/2009). It appears that the Tribunal granted the stay on 22.11.1999 against the transfer order dated 15.09.1999. In compliance of this order, the applicant was allowed to join duty on 24.11.1999 (F/N). Subsequently the transfer order of the applicant was quashed & set aside. This fact has not been disputed by the learned counsel for the respondents.

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11. Thus the matter regarding the transfer of the applicant was sub-judice before this Tribunal. This Tribunal initially granted the stay and finally quashed and set aside the transfer order. The applicant submitted that he was not allowed to perform his duties by the respondents for which he is not responsible. I am inclined to agree with the averments made by the applicant that he is entitled for 67 days of leave encashment as his transfer order was stayed and subsequently cancelled by this Tribunal.

12. With regard to other period, the respondents have in detailed taken a decision vide their letters dated 23.01.2012 (Annexure R/1) and 21.12.2011 (Annexure R/2). I do not find any illegality in these orders. Therefore, I do not find any reason to interfere in the decision taken by the respondents vide these two letters dated 23.01.2012 (Annexure R/1) and 21.12.2011 (Annexure R/2).

13. Consequently, the OA is partly allowed in terms of the observations made above with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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