

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00020/2014

Date of Decision : 19/12.2014

Reserved on: 16.12.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Bhupinder Singh Johar, son of late Sh. Ram Singh Johar, Aged 61 years,
resident of House No.551, Vigyan Vihar, Sector 49-A, Chandigarh.

Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General NCC, Directorate General NCC, Ministry of Defence, Government of India, West Block No.4, R.K.Puram, New Delhi-110066.
3. Deputy Director General NCC, NCC Directorate Punjab, Haryana, Himachal Pradesh and Chandigarh, Kendriya Sadan, 5th Floor, Chandigarh.
4. Principal Controller of Defence Accounts (Western Command), Kendriya Sadan, Sector 9, Chandigarh.

Respondents

Present: Mr. Tarun Deep Kumar, proxy for Mr. Rajeev Anand, counsel for
the applicant
Mr. Deepak Agnihotri, proxy for Mr. Sanjiv Dahiya, counsel for the
respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of
the Administrative Tribunals Act, 1985, seeking the following relief:-



- "8 (i) for the quashing of the orders dated 05.07.2013 and the order dated 16.07.2013 (Annexure A-12 Colly.) wherein the claim of the petitioner for leave encashment for the period of leave (287 days Earned Leave and 13 days Half Pay Leave = 300 days) accumulated while serving the Directorate of NCC has been declined and rejected illegally and arbitrarily in contravention of the relevant provisions and by invoking the wrong provisions of law.
- (ii) Directions for the grant of the claim of the petitioner for Leave Encashment for the period of leave (287 days Earned Leave and 13 days Half Pay Leave – 300 days) accumulated while serving the Directorate of NCC from 02.03.1998 to 31.07.2012 and pay the balance amount of Leave Encashment for 210 days @ Rs.2,56,500 in addition to the 90 days Rs.78,639 already paid to the applicant and entitled in peculiar facts and circumstances of the case of the applicant along with interest @ 18% PA from the date due till the date of realization."

2. The background of the matter is that the applicant was enrolled in the Indian Air Force as an Airman having Service No.611954R and served the Indian Air Force from enrolment upto 31.05.1997 and superannuated on the completion of terms of engagement as a Sergeant rendering 26 years and 17 days of service. The applicant was granted Pension Payment Order No.08/14/8/0574/1997 (Annexure A-1). The applicant participated in the recruitment of Ex-Serviceman for the post of LDCs in the NCC and was issued letter of appointment dated 20.02.1998 as Civil Staff Group 'C' (Annexure A-3). The applicant joined as LDC on 02.03.1998, he was promoted as UDC and Assistant thereafter and on completion of the term of engagement in the NCC retired after having rendered 14 years and 05 months of service on 31.07.2012. The applicant was issued PPO No.C/Misc/17637/2012 dated 03.08.2012 (Annexure A-6).

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The applicant was given various benefits but the benefit of leave encashment was curtailed in the case of the applicant. In this regard the applicant got the necessary record from the NCC Directorate, Chandigarh, vide Part-II order dated 28.09.2012 (Annexure A-7) wherein as per the record the entitlement of the applicant for encashment of leave was given as Earned Leave 287 days and Half Pay Leave 13 days.

3. The PCDA Western Command raised objections on the encashment of leave of the applicant and relied on the PCDA Western Command letter dated 08.08.2012 in reference to Rule 39 of CCS (Leave) Rules, 1972 wherein it was provided that the re-employed defence personnel on superannuation will get the maximum leave encashment of 300 days including the period for which encashment was availed in previous service (Annexure A-9).

4. In the grounds for relief, it has been stated that the denial of the claim of the applicant for the grant of leave encashment for leave accumulated in service is based on the premise that since the applicant was re-employed, therefore, he is not entitled to get the leave encashment beyond the period of leave encashment already availed by him while serving under the NCC Directorate from year 1998 to year 2012 for which the pension under the provisions of Central Civil Services (Pension) Rules has been provided. The Central Civil Services (Leave) Rules, 1972 deals with the provisions regarding the leave and incidental provisions regarding

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the leave under the Central Civil Services. In the Rules, Rule 39 deals with Leave / Cash Payment in lieu of leave. In the provision under Rule 39 it is provided under Sub Rule 6 (a) (iii) that a Government servant who is re-employed after retirement may upon termination of his re-employment be granted cash equivalent of earned leave at his credit subject to a maximum of 300 days including the period for which encashment was allowed at the time of retirement. The content of Rule 39 Sub Rule 6 (a) (iii) shows that it deals with the Government servant who is re-employed after retirement. However, in the case of the applicant, his service under the NCC Directorate as per the letter of recruitment dated 10.09.1987 was employment on a fresh post and against the existing vacancy and could not be treated as re-employment. Thus, the objection raised by the respondents was not sustainable in the eyes of law. Hence this OA.

5. In the counter reply filed on behalf of the respondents, the facts of the matter have not been disputed. It has been stated that the order issued vide PCDA Western Command, Chandigarh vide their letter No.P/IV/Chd/NCC dated 05.07.2013 is correctly issued as per rule and existing orders on the subject. An employee who has en-cashed the Annual / Earned leave in his previous service is not entitled to encash full 300 days of leave at the time of retirement of his last service at the age of 60 years. He is entitled to encash only the balance of leave if he has not encashed total 300 days during his previous service. In the instant case

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the employee has encashed 210 days of leave, during his previous service hence he is entitled to only 90 days of leave for encashment. It is further mentioned that the appointment of the applicant was against the Ex-Serviceman quota and hence he was to be treated as having been re-employed.

6. It is further stated that in the appointment letter (para 3 (viii) (Annexure III)) it is clearly mentioned that if the appointee is an Ex-Serviceman, he will be required to exercise an option within a period of one year from the date of his re-employment for counting of his past military service, if any, for pension in the post in accordance with the existing Govt. orders in this regard. As per requirement of para 3 (viii) of appointment letter, the applicant gave his option vide which he himself admitted that he is re-employed and does not want his previous qualifying service to be counted under Rule 18 and 19 of CCS (Pension) Rules, 1972. The entitlement of the employee on retirement is given as per rules and regulations of GOI. If he is entitled for pension of re-employment service and accordingly paid then his entitlement of leave encashment would also be paid accordingly as per entitlement under existing rules only.

7. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant placed reliance on the content of Rule 39 (6) (a) (iii), to press his claim that the applicant was entitled to encashment of the full 300 days to his credit for the period that

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he served in the NCC as LDC, UDC and Assistant, which reads as follows:-

"(6) (a) (iii)

A Government servant, who is re-employed after retirement may, on termination of his re-employment, be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of termination of re-employment subject to a maximum of 300 days including the period for which encashment was allowed at the time of retirement."

Learned counsel also reiterated the claim made in the OA that the applicant had not been re-employed, but was a fresh appointee in the NCC.

9. Learned counsel for the respondents reiterated the content of the counter reply and stated that as per the Rules, the maximum encashment of Earned Leave allowed was for 300 days and since the applicant had already encashed 210 days of leave when he retired from the IAF, he was entitled to encashment of only 90 days leave which had been allowed to him at the time of his superannuation from his job in the NCC.

10. We have given our thoughtful consideration to the matter. The applicant was appointed as LDC in the NCC Directorate against a vacancy reserved for Ex-Serviceman and hence his claim that his appointment as such had to be treated as a fresh one and not "re-employment" is not tenable. Even in the PPO No.C/MISC/17637/2012 it is mentioned that

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'Family pension not notified being re-employed case'. The provision of Rule 39 (6) (a) (iii) of the Central Civil Service (Leave) Rules, 1972 deals with Leave / Cash Payment in lieu of leave and the ceiling prescribed is that of 300 days. Since the applicant had already encashed 210 days of leave standing to his credit when he retired from the IAF, he could only seek encashment of balance 90 days earned leave at the time of his superannuation from his job in the NCC. This has already been allowed to him. Hence, we conclude that there is no merit in this OA and the same is rejected. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 19.12.2014

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