

Reserved
(On 06.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **09th** day of **October** 2018

Original Application No. 330/01809 of 2010

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Mahesh Chandra Updhayay, S/o Sri S.N. Updhayay, Secretary, Process and Product Development Centre Employees Association, PPDC Foundry Nagar, Agra through its Secretary.

. . . Applicant
By Adv: Shri Rakesh Verma

V E R S U S

1. Union of India through its Secretary, Ministry of Micro Small and Medium Enterprises (M.S.M.E.) Udyog Bhavan, New Delhi – 110011.
2. Additional Secretary and Development Commissioner (Micro, Small and Medium Enterprises) 7th Floor, Nirman Bhavan, Amulana Azad Road, New Delhi – 110108.
3. Governing Council, (Process and Product Development Centre, Agra) through its Chairman Office of the As & DC (M.S.M.E) 7th Floor, Nirman Bhavan Maulana Azad Road, New Delhi – 110108.
4. Process and Product Development Centre, Ministry of M.S.M.E. Foundry Nagar, Agra, through its Principal Director.

. . . Respondents
By Adv: Shri Vinod Swroop

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant has filed this OA seeking the following reliefs:-

“8.1. issue an order or direction calling for original records including the impugned direction dated 17.10.2007 (annexure No. 1) passed by respondent No. 2 as well as the impugned rejection of representation of the applicant by respondent No. 2 dated 19.05.2008 (annexure No. 2) and the order dated 16.06.2008 passed by respondent No. 4 rejecting the representation of the applicant (annexure No. 3) and further the approval granted by the Governing Council to the withdrawal of annual leave encashment facilities in its 40th meeting dated 09.08.2008 (annexure No. 4) and the resolution of the Governing Council dated 30.09.2009 (Annexure No.

5) by which it has been held that annual leave encashment facility is not permissible under the rules.

8(i)(a) to issue a writ, order or direction in the nature of Mandamus directing the respondents not to implement and give effect to the impugned direction dated 17.10.2007 (Annexure A-1) and withdrawal of the facility of annual leave encashment in 40th Meeting dated 09.08.2008 (Annexure A-4) and the resolution of the Governing Council Meeting dated 30.09.2009 (Annexure A-5) retrospectively and the same may be directed to apply with prospective effect.

8.2. issue a further direction directing the respondent Nos. 1 to 4 to immediately restore the facility of annual leave encashment to the employees of PPDC, Agra, with immediate effect or in the alternative direct the respondent No. 1 to withdraw the PPM in toto and apply the Government of India Rules in entirety to the employees of PPDC, Agra.

8.3. in addition to or substitution of above, any other suitable direction or order may kindly be issued in favour of the applicant, under the circumstances of the case.

8.4. to award costs."

2. This OA has been filed by Mahesh Chandra Upadhyay, Secretary, Process and Product Development Centre, Agra (in short PPDC) Employees Association as its Secretary, challenging the withdrawal of the benefit of annual encashment of leave through approval of the Personnel Policy Manual (in short PPM) applicable for the PPDC. There are a number of other centers in different parts of the Country like PPDC, in which the PPM was also adopted. The facility of annual encashment of leave was proposed to be withdrawn vide the Agenda item No. 40 (8) on the subject which was approved in the Councils' meeting held on 09.08.2008 (Annexure A-4). Even though the rules made effective through earlier decision of the Governing Council have been withdrawn w.e.f. 09.08.2008 by the impugned decision and the respondents did not pass any specific order effecting recovery of payment of annual leave encashment availed by the employees prior to 09.08.2008. But the respondents applied the said decision prior to 09.08.2008 and started recovery of such payments after their retirement from the payment of terminal benefits.

3. In this regard, a model PPM was earlier circulated by the respondent No. 2 vide letter dated 15.12.1993 (Annexure A-9) for consideration of the Governing Council of different centers including

PPDC, Agra. This model PPM included the facility of annual leave encashment, which was adopted for PPDC and withdrawn vide the decision dated 09.08.2008 (Annexure A-4) of the Governing Council of the PPDC.

4. Main grounds taken by the applicant in the pleadings for the OA are the followings:-

- Withdrawal of the benefit on the ground that the employees of Government of India are not allowed such benefit, as stated in the letter dated 17.10.2007 (Annexure A-1) is illegal and arbitrary as there are a number of difference in the service conditions and facilities between employees of PPDC and the Government of India.
- Action to withdraw the benefit with retrospective effect i.e. from 21.06.1997 is arbitrary.
- PPM was adopted as a package, its one component cannot be withdrawn. PPM was adopted inspite of resistance of the employees who had suggested for adoption of the rules applicable for the Government of India employees.

5. The respondents have filed the Counter Affidavit (in short CA) stating that the PPDC is a society which avails grants of Government of India to practically meet its expenditure including the salary. Hence, PPDC has to follow the financial discipline as notified by Government from time to time. It is further submitted that PPDC has been following Central Government pay scales and allowances for its employees and other service conditions are more or less similar. Governing Council in its meeting dated 21.06.1997 had decided to allow encashment of leave annually, which was not approved by Government. Hence, it has been withdrawn vide the decision of the Governing Council on 09.08.2008. It is further submitted in para 2 (f) of the CA that as per existing order of the Ministry of Finance dated 15.10.1984, all proposals including emolument structure and allowances of PPDC would require approval of Government in consultation with the Ministry of Finance.

6. The applicant has filed Rejoinder generally denying the averments in the CA. In reply to para 2 (f), it is stated that averments are not denied. In other words, no change in emoluments stricture of the PPDC employees cannot be effected without approval of Government of India.

7. We heard learned counsels for both the parties and also perused the record. Learned counsels have filed written arguments broadly reiterating the respective stands taken in the pleadings. The applicant's counsel in his written arguments highlighted the plight of the employees due to retrospective implementation of the decision to withdrawn the leave encashment benefit and submitted that even if the impugned orders are upheld, but the withdrawal should be effective from 09.08.2008 so that there will be no recovery from the staff who had earlier availed the benefit.

8. The written argument submitted by the learned counsel for the respondents stated the following in respect of the averments of the applicant regarding retrospective implementation of withdrawal of leave encashment benefit PPDC:-

- “13. *That the Government of India never raised any objection to the encashment of the earned leave which was taken by the employees of PPDC from 1994 to 2007.***
- 14. *That in the year 2008 the Governing Council of the PPDC passed a regulation that the encashment of the earned leave shall not apply from the year 2008. The resolution did not provide that the leave already encased by the employees should be refunded by them.***
- 15. *That the right of encashment of earned leave as per the provisions of PPM is a substantive right given to the persons Governed by PPM and the regulation of the Governing Council passed in the year withdrawing this facility cannot operate retrospectively so as to require the employees who have taken advantage of encashing earned leave up to 2007 cannot be required to refund the money paid on leave-encashment.”***

9. In view of the classifications furnished by the learned counsel for the respondents, there is no proposal for retrospective implementation of the decision of the Governing Council dated 09.08.2008 (Annexure A-4).

Hence, no question of any recovery from the employees will arise. Further, the agenda note No. 40 (8) which was approved by the Governing Council stated as under:-

***“Agenda Item No. 40 (8)
Annual Leave encashment:***

The Personnel Policy Manual, which was implemented in the Central vide Chairman's office letter No. 4(1)/93-ABC dated 15th December 1993 having a provision for annual leave encashment and as per it an Employee could encash maximum 30 days EL after taking an equal amount of leave and subsequently following amendment were made in 21st Governing Council meeting held on 21.06.2007,

“In a year, the maximum amount of leave encashed shall be half the amount of the leave at credit as on 31st December, of the previous year of 30 days whichever is less without insisting the employees from being proceeded on earned leave.”

Based on the above amendments the employees of the Central were availing the above facilities since 1998.

Recently we have received a letter No. 21/03/PPDC/PD/2007/TR-I dated 17.10.2007, from the Chairman's office stating that “the decision of GC in its meeting held on 21.06.2007 to allow encashment of EL without insisting the employees to proceed on leave, is not in accordance with the spirit of Govt.'s decision, and should have to be withdrawn with the approval of GC in its next meeting”. The copy of the letter is enclosed vide Appendix-VI.

GC may kindly consider.”

From the above, it is quite clear that the decision of the Governing Council on the agenda item No. 40 (8) is prospective and is not retrospective.

10. We do not find sufficient justification to interfere with the decision of the respondents, who are competent to decide the service conditions of the employees of the PPDC. On the other hand, there is justification for the decision to withdraw leave encashment facility in view of the reasons furnished in the agenda item No. 40 (8) (Annexure A-4) for the Governing Council meeting held on 09.08.2008, particularly in view of the fact that the PPDC has adopted Central Government pay scales for the employees, which has not been denied by the applicant.

11. In view of the decision above, we are of the considered opinion that the applicants have not furnished adequate justification for any interference by this Tribunal in the matter. Regarding the apprehension

of the applicant about retrospective implementation of the decision dated 09.08.2008, the submissions of the respondents' counsel as discussed in para 8 of this order are sufficient to show that there should not be any apprehension about retrospective implementation of the decision dated 09.08.2008. Hence, we are unable to allow any of the relief prayed for in the OA and dispose of the OA with observation that if the decision to withdraw the leave encashment benefit of the employees of the PPDC with effect from 09.08.2008 (Annexure A-4) is implemented retrospectively, then the affected employee will be at liberty to take appropriate legal steps as per law. There will be no order as to costs.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)