

Reserved
(On 13.04.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 26th day of April 2018

Original Application No 330/01115 of 2015

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

Dr. Avinash Chandra Mishra, S/o Late Raghu Chandra Mishra, R/o E – 305, Ansal Priyadarshini Apartments, 28, Sarojini Naidu Marg, Allahabad – UP. Retired voluntarily from the post of Senior Divisional Medical Officer/NCR/Agra Cant. (SAG).

. . . Applicant

By Adv: Shri Shyamal Narain

V E R S U S

1. The Union of India, through the General Manager, North Central Railway, Allahabad – UP.
2. The Chief Medical Director, North Central Railway, Headquarters Office, Subedarganj, Allahabad – UP.
3. The Divisional Railway Manager, North Central Railway, Agra.

. . . Respondents

By Adv: Shri Pradeep Chandra & Shri S.K. Rai

O R D E R

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- (a) Allow this OA and issue an appropriate time-bound order or direction to the respondents to release the wrongly deducted amount of Rs. 2,63,575/- in applicant's favour, along with penal interest, calculated at such rate as might be found just and proper by this Hon'ble Tribunal, w.e.f. the date the said payment fell due, till the time the payment is actually made to the applicant.***
- (b) Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the present case.***
- (c) Award the cost of this Original Application in favour of the applicant, throughout.”***

2. The brief facts of the case as stated in the O.A. are that the applicant was initially appointed as Assistant Divisional Medical Officer on 21.10.1986 at Moradabad. He was promoted as Divisional Medical Officer

and, thereafter, as Senior Divisional Medical Officer from which he was voluntarily retired on 09.06.2011. While posted at Agra as Senior Divisional Medical Officer, the applicant developed cataract in his left eye for which he was on medical leave w.e.f. 29.01.2011. A medical sickness certificate was issued in favour of the applicant by Chief Medical Superintendent, North Central Railway, Allahabad. Thereafter, the applicant underwent a cataract surgery and was referred to Priti Hospital, Allahabad. The sickness period of the applicant was extended from time to time, at due intervals due to some post-surgical problems of a persistent nature for which he was also referred to the State Eye Institute. Finally he was advised to join his duties at Agra. The applicant joined his duties w.e.f. 06.06.2011 and on the same day he moved an application for commutation of his sick leave w.e.f. 29.01.2011 (Afternoon) to 06.06.2011 (Forenoon) with the sickness and fitness certificates dated 06.06.2011 (Annexure A-2).

3. It is further submitted in the OA that the applicant had earlier submitted his request for voluntary retirement on 30.09.2010 before the competent authority and, thereafter, reiterated the said request on 09.03.2011 again. The aforesaid request of the applicant was duly processed and finally vide order dated 06.06.2011 (Annexure A-3) the applicant was deemed to have retired from Railway service w.e.f. 09.06.2011. But an amount of Rs. 2,63,575/- was deduced from the settlement dues on account of overpayment and the applicant was orally informed by the Senior DPO, Agra that the said deduction had come about due to delay in finalization of his application for commutation of LHAP (sick leave) to full pay leave and the same shall be paid to him after his application was approved. On persistent efforts made by the applicant, the DPO, Agra sent a letter dated 12.08.2011 to the Chief Medical Director, Allahabad asking for clarification regarding sick leave period of the applicant. In response to the letter dated 12.08.2011 the applicant

sent a letter dated 27.09.2011 to the CMS, Allahabad explaining the nature of the entire sick period and reiterating that the same was covered under sick leave and necessary reply may be sent to the DRM (P), Agra Cantt. at the earliest. The Chief Medical Director replied to the query dated 12.08.2011 of DPO, Agra vide letter dated 18.10.2011 (Annexure A-7), verifying the period of sickness and its genuineness. Another letter dated 15.11.2011 was sent by the DRM (P), Agra to the Chief Medical Director, Allahabad asking for opinion whether 129 days sick period of the applicant was justified. In response to the letter dated 15.11.2011 the Chief Medical Director, Allahabad wrote back to the DRM (P), Agra recalling his earlier letter dated 18.10.2011 and reiterating the sick leave period w.e.f. 29.01.2011 to 06.06.2011 of the applicant was justified vide his letter dated 28.11.2011 (Annexure A-9).

4. Thereafter, the applicant moved two separate applications dated 14.03.2012 under RTI, Act, 2005 before the General Manager, Allahabad. By one application the applicant request to be informed as to the nature of the overpayment of Rs. 2,63,575/- from his settlement dues and the relevant Railway Rules under which the said deduction was made and by means of second application the applicant requested to be informed as to the action taken on his application for commutation of LHAP to Full Pay Leave dated 06.06.2011. In response to the first application the applicant was informed vide reply dated 11.04.2012 (Annexure A-12) that he had been paid the salary for the period from 29.01.2011 to 06.06.2011 provisionally, since the said period had not been regularized by the competent authority, the same was treated as Half Pay Leave and accordingly, half salary for the said period had been deducted as overpayment.

5. The respondents have filed counter reply in which it is stated that the payment to the applicant was made for the period of sick leave. It is further submitted that initially full payment of salary instead of half salary was made inadvertently and when it came to the notice, the excess the same was deducted from the settlement dues of the applicant as the commutation of sick leave was not approved by the competent authority. It is further submitted that the commutation of sick leave was to be sanctioned by the competent authority and the same was not sanctioned and since no approval was accorded, and excess amount already paid to the applicant was rightly deducted.

6. The applicant has not filed any rejoinder reply to the counter reply. The counsels of the parties were heard and the pleadings have been considered in the case.

7. Learned counsel for the applicant was heard in the matter. He emphasized on the following points apart from reiterating the grounds taken by the applicant in the OA:-

- Before deduction of Rs. 2,63,575/- from the retiral dues of the applicant, no opportunity was given to him to be heard in the matter. Hence, this action of the respondents violates the principles of natural justice.
- No specific order has been communicated to the applicant about the reason for deduction, except the reply he received under RTI Act vide letter dated 11.04.2012 (Annexure A-12), informing the applicant about excess disbursement of pay for the period covered under sick leave, i.e. from 29.01.2011 (afternoon) to 06.06.2011 (forenoon), when he was entitled

for half of the salary as his commutation of leave was not regularized or sanctioned by the competent authority.

- On being moved by the DRM, the Chief Medical Director had recommended that the sick leave of the applicant during the above period was justified vide letter dated 18.10.2011 (Annexure A-7) and 28.11.2011 (Annexure A-9). Inspite of receiving opinion of Chief Medical Director, sanction of the commutation of the sick leave has not yet been approved by the competent authority (Respondent No. 3), rather a copy of the note sheets (Annexure A-14) received by the applicant under RTI Act, 2005 shows that vide the order of the DRM (Respondent No. 3) the commutation of the leave has been regretted on the ground that it is not justified, reasons for such a decision inspite of the opinion of the Chief Medical Director, Allahabad, has not been intimated to the applicant.

8. Learned counsel for the applicant respondents that the sanction of the commutation of sick leave from half pay to full pay for the period from 06.06.2011 to 11.04.2012 has not been approved by the competent authority because of lack of justification. This amount in question has to be deducted from the applicant's, since he was paid full salary for the period in question inadvertently instead of half salary to which he is entitled.

9. In this case there is no dispute on facts. It is not the case of the respondents that the applicant was given an opportunity of being heard before taking the decision to deduct Rs. 2,63,575/- from the retiral dues of the applicant, or the reasons for such deduction was communicated to the applicant at the time of such deduction. In this context the question is

whether the deduction of Rs. 2,63,575/- from the retiral dues of the applicant is in accordance with law on the ground that the commutation of leave of the applicant has not been sanctioned by the competent authority.

10. The contention of the learned counsel for the applicant in the OA that the impugned deduction is opposed to the principles of natural justice has not been specifically denied by the respondents. From the material on record, it is clear that no show cause notice was issued by the respondents before deducting Rs. 2,63,575/- from the retiral dues of the applicant. Hence, there is a violation of the principles of natural justice, for which the impugned deduction by the respondents is bad in law and it cannot be sustained. It is also submitted that rule 527(e) of the Railway Leave rules, which was cited by the respondents, is not applicable in this case, since the applicant had returned to duty on 06.06.2011 and he was deemed to have retired from Railways with effect from 09.06.2011. There is nothing in the Counter to specifically contradict this contention. The rule 527 of Indian Railway Establishment Manual (in short IREM) states as under:-

"527. Commuted leave. Commuted leave not exceeding half the amount of leave on half-average pay due may be granted on medical certificate to railway servant to the following conditions:--

- (a) the authority competent to grant leave is satisfied that there is reasonable prospect of the railway servant returning to duty on its expiry;***
- (b) when commuted leave is granted, twice the amount of such leave shall be debited against the leave on half-average pay due;***
- (c) there is no limit to the number of days of commuted leave to be availed of during the entire service;***
- (d) leave on half average pay upto a maximum of 180 days shall be allowed to be commuted during the entire service where such leave is utilised for an approved course of study which is certified to be in the public interest by the leave sanctioning authority;***
- (e) where a railway servant who has been granted commuted leave and resigns from service or at his request is permitted to retire voluntarily without returning to duty, the commuted***

leave shall be treated as leave on half average pay and the difference between the leave salary in respect of commuted leave and leave on half average pay shall be recovered.

Provided that no such recovery shall be made if the retirement is compulsorily thrust upon him by reason of ill health incapacitating the railway servant for further service or in the even of his death.

(f) *commuted leave may be granted at the request of the railway servant even when leave on average pay is due to him."*

11. It is obvious from the rule 527 of the IREM that there is no provision for refusal of sanction of commuted leave by the authority competent to sanction the commuted leave if the concerned employee resumed duty after the commuted leave period and if the reason for commuted leave is for genuine medical reason, which is the case of the applicant. Generally such leave is to be sanctioned and if the government servant resigns or takes voluntary retirement without returning to duty, then the commuted leave period is to be treated as half pay and the excess salary paid if required to be recovered from the government servant as per the rule 527 (e), which is not applicable to the case of the applicant as he had admittedly joined after availing the sick leave period. Further, in this case, the applicant's sick leave has been viewed as genuine as per the letter dated 18.10.2011 and 28.11.2011 of the Chief Medical Director. Hence, there was no occasion for the competent authority not to sanction the commuted leave for the sick leave for the period from 29.01.2011(AN) to 06.06.2011(FN) as applied by the applicant in terms of the rule 527 of the IREM. Further, the applicant has resumed duty before proceeding on voluntary retirement. Hence, on the date of retirement, the applicant was on duty, for which the rule 527(e) is not applicable in this case and hence, the recovery of half of the salary paid from the applicant is not in accordance with the rule 527(e) of the IREM.

12. From above grounds, it is clear that the action of the respondents to deduct Rs. 2,63,575/- from the applicant without giving any opportunity violates the principles of natural justice, as no show cause notice was

given before deduction of the amount in question and no opportunity to be heard was given to the applicant before such deduction. The said deduction of Rs. 2,63575/- is also not in accordance with the rule 527 of the IREM as discussed in the para 11 of this order. Hence, such deduction from the applicant's retiral dues is illegal and cannot be sustained under law.

13. In the circumstances, the OA is allowed and the respondents are directed to refund the deducted amount of Rs. 2,63,575/- to the applicant alongwith a simple interest at the rate of 8% per annum from the date of deduction of this amount till the date of actual payment to the applicant. There is no order as to costs.

(Gokul Chandra Pati)
Member (A)

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