

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.664/2012

Order Reserved on :21.01.2016
Order Pronounced on:09.02.2016

**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr.A.K.Belwal,
137, Sukhdev Vihar
P.O. Jamia Nagar,
New Delhi-25. Applicant
(Applicant in person)

Versus

1. Director
Labour Bureau
SCO 28-31, Sector-17A
CHANDIGARH
2. Secretary,
UPSC
Dholpur House, Shahjahan Road
New Delhi.
3. Secretary,
Department of Personnel,
North Block
New Delhi.
4. Smt. Mala Dutt
Former Director IES Cadre
Currently Director Cabinet Secretariat
Rashtrapati Bhawan
New Delhi.

5. Member Secretary
Tariff Commission,
Lok Nayak Bhawan,
7th Floor, Khan Market
New Delhi.

6. Secretary
Ministry of Law & Justice
Dept. of Legal Affairs
Shastri Bhawan
New Delhi.
(Attn: Sh. R.Raghupati,Additional Secretary,
Romm No.419, Shahstri Bhawan,New Delhi)

7. IES Cadre
Dept. of Economic Affairs
North Block
New Delhi. ... Respondents

(By Advocate: Shri R.N.Singh for R-1, Shri Rajinder Nischal for R-2 and Dr.Ch.Shamsuddin Khan for R-6)

ORDER

By Hon'ble Shir K.N.Shrivastava, M(A)

This OA has been filed under Section 19 of Administrative Tribunal Act, 1985 against the OM No.79/7/2011-Adm.I dated 20.10.2011(Annexure A-1)issued by respondent No.1 and letter No.F.No.11024/12/03-IES dated 10.8.2005 issued by respondent No.4 to respondent No.3. The specific reliefs sought in the OA read as under:-

"a) Immediate Encashment of Half Pay Leave taking the applicant's date of joining Govt. Service as 22.11.1966.

b) *Give up the request for alleged recovery due to over payment of Encashment of Earned Leave.*

c) *Page-2 of Labour Bureau OM No. 79/7/2011 ADM-1 dated 20.10.2011 reads as follows:*
'Unauthorised absence from duty from 1.10.2003 to 13.7.2005 was inadvertently taken while affording advance credit of Half Pay Leave for the aforesaid period. The applicant-in-person challenges this statement which is against CAT orders and Delhi High Court order placed at Annexure-IV (Colly). In fact Mrs. Mala Dutt Former Director, IES Cadre has obtained the approval of UPSC by giving a false and incorrect statement that Delhi High Court has orally ask to take disciplinary action against the applicant.'

d) *Anything oral has no meaning in law as such the impugned order placed at ANNEXURE-II may kindly be quashed and set aside and all subsequent action taken on the basis of this letter may also be quashed and set aside. The period from 1.10.2003 to 13.7.2005 may kindly be treated as duty and fully salary may pleased be paid with penal interest and legal costs.*

e) *Regularization of the period from 01.10.2003 to 13.07.2005 will also undergone a change due to recasting of the Leave Account.*

f) *Period from 04-08-2003 to 31-08-2005 may please be regularized as duty with all consequential benefits as desired by CAT and Delhi High Court.*

g) *The applicant's salary 04.08.2003 to 31.08.2005 may please be released by treating it as duty with all consequential benefits Leave Earned Account for payment of*

Encashment of Earned Leave and as well as Half Pay Leave.

- h) All impugned orders mentioned in Labour Bureau letter dated 20.01.2011 may kindly be produced in the court.*
- i) Legal costs may please be paid;*
- ii)*
- j) Penal Interest, damages etc. may please be paid.*
- k) Responsibility for concealing papers, delaying and misuse of prerogative of the Department, misuse of official position and Government machinery may please be fixed on Smt. Mala Dutt Former, Director, IES Cadre and the defaulters may please be brought to book Second Impugned order.*
- l) The officers of Labour Bureau Shimla are willfully delaying the payment of encashment of earned as well as half pay leave to the applicant.*
- m) Penal Interest @ 18% compounded every month may please be paid to the Applicant.*
- n) Any other relief which the Hon'ble Tribunal think fit in the interest of justice.*
- o) ANNEXURE-V is a copy of CAT order in Prem Mateyani Case imposing a cost of Rs.25,000/- on the Respondents for harassing the Government Servant."*

2. The brief facts of the case are as under:-

The applicant joined Indian Economic Services (IES) on 01.11.1971 through a competitive examination held by UPSC. Prior to joining IES, the applicant was selected for

Central Information Service in which he worked from 22.11.1966 to 01.11.1971. He retired from service after attaining the age of superannuation on 31.8.2005; his last posting being Director, Labour Bureau, Simla. While working as Advisor (Economics) in Tariff Commission, New Delhi, he was transferred to the Labour Bureau, Simla by his cadre controlling authority namely, Ministry of Finance, Department of Economic Affairs vide order No.13017/1/2003-IES dated 4.8.2003. He was relieved from his duties in the Tariff Commission, New Delhi on 30.09.2003. He did not join his new posting immediately. He came to this Tribunal by filing OA-1114/2004 against the said transfer order. The said OA was disposed of on 06.5.2004 directing him to join his new posting as Director, Labour Bureau, Simla within two weeks. Against the said order of the Tribunal, the applicant went before Hon'ble High Court of Delhi in W.P.(C) No. 10978/2005 which was disposed of on 08.07.2005. The operative part of the said order reads as under:

" Dr.A.K.Belwal, the petitioner who appears in person, states that he would comply with the orders of the Central Administrative Tribunal but with certain reservations. He shall accordingly be allowed to join in terms of the order of the Tribunal and thereafter in case he seeks for leave the same shall be sympathetically

considered and granted to the extent admissible, in accordance with the provisions of the Rules. After his joining, necessary orders for regularization of his services for the period of his absence shall be passed in accordance with law and the order in that regard shall also be placed on record within three weeks from the date of his joining. The matter shall be listed on 1st August, 2005."

3. Soon after joining at Simla, he applied for 40 days of leave from 18.7.2005 to 26.8.2005 which was duly sanctioned by the authority concerned. He worked in the Labour Bureau for a very short period of 5 days.

4. His absence from duty from 1.10.2003 to 13.7.2005 was treated as unauthorized absence for which disciplinary proceedings against him under Rule 14 of CCS (CCA) Rules, 1965 were started. In the meanwhile, consequent to his retiring from service on superannuation on 31.8.2005, he was sanctioned 100% provisional pension w.e.f. 01.9.2005 in terms of Rule 69 of CCS(Pension) Rules, 1972. His other retiral pension viz., gratuity, commuted of pension etc. were withheld until the conclusion of the disciplinary proceedings and passing of the final orders thereon. Important to mention that while calculating the provisional pension of the applicant, his past service from 22.11.1966 to 31.10.1971 in the Central Information Service was taken into account.

5. On 06.2.2007, the disciplinary authority imposed the penalty of withholding 25% of his monthly pension for a period of 5 years. After the said order of disciplinary authority, his other entitlements viz. retirement gratuity, commuted value of pension, EL encashment, Group Insurance Scheme, interest on delayed payment, GPF and arrears of pension/Dearness relief of pension were settled and paid to him. He was not allowed encashment of HPL & EL in his account. The applicant approached this Tribunal in OA-569/2008 seeking a direction that, encashment of his HPL and EL due to him, must be allowed and paid. The said OA was disposed of on 19.09.2008 directing the respondents to settle these issues and pay him the amounts due. The respondents complied with the said order of the Tribunal. After looking into the applicant's service record, it was found that he was entitled for encashment 405 days of HPL and 78 days of E.L. and the total amount payable to him on this account would come to Rs.25,973/- . Later, it was found that while calculating the HPL and EL of the applicant, his unauthorized absence from 1.10.2003 to 13.07.2005, for which disciplinary proceedings had been initiated against him and he was punished, has also been considered and that the said period is required to be discounted. Accordingly the

necessary correction was done and his HPL was finally settled at 392 days instead of 405 days. Accordingly the applicant was intimated by the respondents vide letter dated 20.3.2009.

6. The applicant filed a Contempt Petition No.746/2010 in OA-569/2008 and MA-2711/2010 before this Tribunal for non-compliance of the Tribunal's order dated 19.9.2008 in OA-569/2008 regarding release of payment towards encashment of HPL due to him. The said CP was disposed of vide order dated 12.11.2010.

7. The applicant filed another OA No.4259/2010 seeking release of payment towards the encashment of Half Pay Leave. The said OA was disposed of by the Tribunal on 12.07.2011. The operative part of the said order reads as under:-

"... The Respondents to re-examine the Applicant's EL and HPL account and issue a fresh notice to the Applicant clearly indicating: (i) number of days of HPL to the Applicant's credit on the date of his retirement and the HPL to the Applicant's credit on the date of his retirement and the HPL encashment the Applicant is entitled to; (ii) number of days EL for which the excess payment has been made to the Applicant; (iii) to

provide to the Applicant in the said notice the details of the accounts on (i) and (ii) and (iv) the manner in which the excess payment, if any, is intended to be adjusted/recovered. This notice shall be issued within 4 weeks from the date of receipt of a certified copy of this order. On receipt, within 4 weeks thereafter the Applicant shall submit his response and in 4 weeks time after receipt of his reply the Respondents will issue a speaking and reasoned order."

8. The applicant had filed another Contempt Petition No.879/2011 in OA-4259/2010 which was disposed on 22.11.2011. The operative part of which reads as under:-

"A close scrutiny of the order passed by the respondents vide their Office Memorandum dated 20.10.2011 would disclose that after putting the applicant on notice and considering his representation a speaking and reasoned order has been passed by the competent authority indicating that the applicant's request cannot be considered and his application has been disposed of accordingly. We find that there has been reasonable compliance of our above directions in the Office Memorandum dated 20.10.2011 issued by the respondents Office Memorandum dated 20.10.2011 issued by the respondents. Thus, no contempt is made out and the Contempt Petition is, therefore, liable to be dismissed. We order accordingly. However, if the applicant is not satisfied with the decision of the respondents conveyed him in the Office Memorandum dated 20.10.2011, he is granted liberty to challenge the same before the Tribunal in the original side."

9. The applicant filed a Review Petition seeking review of this Tribunal's order dated 12.7.2011 in OA-4259/2010. The Tribunal, however, declined to review the said order. Thereafter, the applicant filed the present OA-664/2012 praying for immediate release of payment towards encashment of his HPL.

10. Pursuant to the notice issued, the respondents entered appearance and filed their reply.

11. The case was taken up for final hearing on 21.01.2016. The applicant, as party in person and Shri R.N. Singh, learned counsel for respondent No.1, Shri Rajinder Nischal, learned counsel for respondent No.2 and Dr. Ch. Shamsuddin Khan, learned counsel for respondent No.6 argued the case.

12. The applicant besides reiterating the points raised by him in the OA submitted that respondent No.4 wrongly and mischievously vide impugned communication (Annexure A-II) dated 10.8.2005 wrote to respondent No.3 that the Hon'ble High Court had orally told to the Govt. counsel during the course of hearing of WP (C)No.10978/2005 that the department should finalize the disciplinary enquiry against the applicant and take a final decision with regard to

regularization of his period of unauthorized absence from 1.10.2003 to 31.7.2005. The applicant submitted that a plain reading of the High Court's order dated 08.7.2005 in the said WP(C) would indicate that no such direction has been given by the High Court and that no order is given orally by any court. It was also submitted that anything oral has no meaning in the eyes of law and hence impugned communication at Annexure A-II is liable to be quashed and set aside. Concluding his argument, the applicant submitted that the reliefs prayed for in the OA may be allowed which would, *inter alia*, include regularization of his unauthorized absence from 1.10.2003 to 13.7.2005 by way of sanctioning of appropriate leave to him.

13. Per contra, Shri R.N. Singh, learned counsel for respondent No.1 submitted that from the face of the records, it is clear that the applicant was unauthorizedly absent from 1.10.2003 to 13.7.2005, for which he has been punished by an order passed by the disciplinary authority. It was also submitted that the period of unauthorized absence cannot be taken into account for calculation of HPL and EL. The amount towards encashment of HPL and EL due to the applicant has already been paid to him by the respondent No.1 in compliance of this Tribunal's order dated

12.7.2011 in OA-4259/2010 and hence this OA is barred by res-judicata. Concluding his argument, learned counsel prayed that the OA may be dismissed as it is devoid of any merit.

14. The learned counsel for respondent No.2 and respondent No.6 endorsed the arguments put forth by learned counsel for the respondent No.1.

15. We have considered the arguments put forth by the applicant as party in person and learned counsel for the respondents and have also perused their pleadings. The impugned communication from respondent No.4 to respondent No.3 (Annexure A-II) primarily seeks an advice from the UPSC with regard to imposing of penalty on the applicant in connection with the disciplinary proceedings initiated against him under Rule 14 of CCS Rules. However, it does mention that Hon'ble High Court had orally told the Govt. counsel that the department should finalize the disciplinary enquiry against the applicant and take a final decision with regard to regularization of the period of absence of the applicant. It is quite normal that during the course of hearing of cases, the courts orally give some suggestions to the litigants on certain aspects of their cases

which are not necessarily recorded in the written orders. Even if, para 4 in the communication from respondent No.4 to respondent No.2 was not to be there, no material difference would have occurred. As per Rule 9 of CCS (Pension) Rules, 1972, a Disciplinary Authority is obliged to obtain the advice of UPSC before taking any disciplinary action against a retired govt. servant. Annexure A-II basically seeks to comply with the said statutory requirement. As such, we do not find any infirmity in Annexure A-II. So far the impugned OM dated 20.10.2011 (Annexure A-I) is concerned, we find that this has been issued in compliance with the Tribunal's order in OA-4259/2011 dated 12.7.2011; and is perfectly in order.

16. From the above discussion, we come to the conclusion that there is no merit in the OA and hence the OA is dismissed. No order as to costs.

(K.N.Shrivastava)
Member(A)

(Dr.Brahm Avtar Agrawal)
Member(J)

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