

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3820 OF 2013

New Delhi, this the 5th day of February, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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O.P.Nahar,
S/o late Sh.Dev Karan,
R/o F-30A, South Ext.Part I,
New Delhi 110049 Applicant

(In person)

Vs.

Law Secretary,
Department of Legal Affairs,
Ministry of Law & Justice,
Shastri Bhavan,
New Delhi 110001 Respondents

(By Advocate: Shri Rajesh Katyal)

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ORDER

The brief facts of the applicant's case are that while working as Legal Adviser & *ex officio* Additional Secretary (Conveyancing), Department of Legal Affairs, Ministry of Law & Justice, he was given an offer of appointment as Chairperson, Appellate Tribunal for Foreign Exchange (hereinafter referred to as 'ATFE') in the pay scale of Rs.26000/- (fixed), vide letter dated 16.6.2005. It was stipulated in the letter dated

16.6.2005, *ibid*, that the terms and conditions of service as Chairperson would be governed by the Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and other Conditions of Service of Chairperson and Members) Rules, 2000 (hereinafter referred to as 'ATFE Conditions of Service of Chairperson and Members Rules') read with Department of Personnel & Training's O.M.No.3/6/97-Estt.(Pay II) dated 29.1.1998. Accepting the offer of appointment, he joined as Chairperson, ATFE, on 1.7.2005, after his deemed retirement from the post of Legal Adviser & *ex officio* Additional Secretary (Conveyancing), Department of Legal Affairs, Ministry of Law & Justice. Accordingly, the notification dated 5.7.2005 was issued by the Department of Legal Affairs notifying his appointment as Chairperson of ATFE with effect from 1.7.2005 in the scale of pay of Rs.26000/- (fixed) until he attained the age of sixty-five years or until further orders, whichever was earlier. He retired from the post of Chairperson, ATFE, on 13.11.2009 afternoon, on attaining the age of 65 years, and after rendering service for 4 years, 4 months, and 13 days as Chairperson, ATFE. During the period of his service as Chairperson, ATFE, he earned 132 days of leave, and he never availed of earned leave for any day. As per paragraph (m) of Annexure to the DoP&T's O.M. dated

29.1.1998, *ibid*, he was entitled to encashment of 50% of earned leave to his credit at any time. Therefore, encashment for $132/2=66$ days of earned leave ought to have been paid to him on the date of his retirement from service as Chairperson, ATFE, or soon thereafter. As the leave encashment for 66 days was withheld and/or not paid, the applicant, vide his letter dated 11.2.2013 (Annexure D) requested the respondent to release the same in his favour. There being no response, the applicant filed the present O.A. seeking the following reliefs:

- “(i) direct the respondent to pay the amount of encashment of $\frac{1}{2}$ earned leave 132 days along with interest @ 24% from the date of demand letter dated 11/2/2013;
- (ii) direct the respondent to pay an amount of Rs.1,50,000/- as compensation for harassment and mental agony to the consumer due to deficiency in service on his part;
- (iii) direct the respondent to pay Rs.63,000/- as costs of litigation;
- (iv) pass such and other orders, as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. In the counter reply, filed on behalf of the respondent, it has, *inter alia*, been stated that the AFTE Conditions of Service of Chairperson and Members Rules do not contain any specific provision regarding entitlement of Chairperson and Members of ATFE for encashment of any leave by them. The DoP&T’s O.M.No.12016/2/99-Estt.(L),

dated 12.7.1999, stipulates that the ceiling of 300 days for encashment of earned leave will be subject to the condition that the total number of days of earned leave a Central Government employee is allowed to encash on termination of contract together with the number of days of earned leave for which encashment had been allowed in previous appointments, if any, under the Government, should not exceed 300 days. The applicant was paid a sum of Rs.4,29,980/- as leave encashment equivalent to 300 days of earned leave at the time of his retirement from Government service as Legal Adviser and *ex officio* Additional Secretary (Conveyancing) in the Ministry of Law & Justice, Department of Legal Affairs, on 30.6.2005, prior to his appointment as Chairperson, ATFE, with effect from 1.7.2005. The DoP&T's O.M. dated 29.1.1998, *ibid*, relates to perquisites and other terms and conditions of service for the Chairpersons and Members of the Regulatory Authorities. ATFE is not a Regulatory Authority.

3. No rejoinder reply has been filed by the applicant controverting the stand taken by the respondent.

4. I have carefully perused the records, and have heard the applicant in person, and Shri Rajesh Katyal, the learned counsel appearing for the respondent.

5. During the course of hearing, the applicant produced before this Tribunal a copy of the letter dated 19.11.2015 issued to him by the Under Secretary to the Government of India, Department of Legal Affairs, rejecting his representation dated 11.2.2013, *ibid*. The relevant portion of the letter dated 19.11.2015, *ibid*, is reproduced below:

“I am directed to refer to your letter dated 11.2.2013, regarding disbursement of the amount equivalent to 50% of the unavailed earned leave to your credit for the period of your service as Chairperson, ATFE, as per the Annexure to DoPT’s O.M.No.3/6/97-Estt.(Pay-II) dated 29.1.1998.

2. The matter has been considered in consultation with the Department of Personnel & Training. The Chairperson and Members of ATFE are governed by the provisions of the Appellate Tribunal for Foreign Exchange (Recruitment, Salary & Allowances and other Conditions of Service of Chairperson and Members) Rules, 2000. These Rules do not contain any specific provision regarding entitlement and/or encashment of leave by the Chairperson and Members of ATFE. These Rules state that the conditions of service of the Chairperson and Members of ATFE in respect of matters for which no provision is made in these Rules, shall be the same as may for the time being be applicable to other such persons of a corresponding status.

3. The provisions contained in the O.M. of DoPT dated 21.1.1998 are applicable to the Chairpersons and Members of the Regulatory Authorities. Since the ATFE is not a Regulatory Authority, these provisions are not applicable to the Chairperson or Members of ATFE.

4. Rules 39(6) (a)(iii) of the CCS (Leave) Rules, 1972, inter alia, states that 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.

5. Perusal of your service records indicates that an amount of Rs.4,29,980/- was paid to you, vide Bill No.22/05-06(Gol/LA dated 1st August, 2005, on account of leave encashment for 300 days.

6. In the circumstances, your request for encashment of 66 days of earned leave being 50% of the total earned leave of 132 days during the period of your service as Chairperson, ATFE, cannot be accepted as you have already been allowed encashment of leave for 300 days in August, 2005.”

6. It is indisputable that the ATFE is not a Regulatory Authority. The ATFE Conditions of Service of Chairperson and Members Rules do not contain any provision under which Chairperson or a Member of ATFE is entitled to encashment of earned leave to his credit at any time.

7. In the letter dated 16.6.2005 issued by the Department of Legal Affairs, whereby appointment was offered to the applicant as Chairperson, ATFE, it has been stated that the terms and conditions of service as Chairperson will be governed by the ATFE Conditions of Service of Chairperson and Members Rules read with DoP&T's O.M. dated 29.1.1998. Referring to paragraph (m) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*, the applicant has contended that he is entitled to encashment of 50% of earned leave to his credit at the time of his retirement.

8. It was submitted by the applicant that in terms of the letter dated 16.6.2005, i.e., the offer of his appointment as Chairperson, ATFE, which stated that the terms and conditions of his service would be governed by the ATFE Conditions of Service of Chairperson and Members Rules read with DoP&T's O.M. dated 29.1.1998, *ibid*, he was entitled to encashment of 50% of the learned leave to his credit at the time of his retirement. In this connection, he invited my attention to paragraph (m) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*.

9. The ATFE Conditions of Service of Chairperson and Members Rules speak about short title and commencement of the Rules (Rule 1), qualification for recruitment as Chairperson and Members (Rule 2), method of recruitment (Rule 3), medical fitness (Rule 4), composition of the Appellate Tribunal (Rule 5), classification of service of Chairperson and Member (Rule 6), pay of Chairperson and Member (Rule 7), terms of office of Chairperson and Members (Rule 8), date of retirement (Rule 9), CPF, Pension and Gratuity (Rule 10), accommodation (Rule 11), Re-employment of Chairperson or Member (Rule 12), other conditions of service of Chairperson and Members (Rule 13), and interpretation of the Rules (Rule 14).

10. The DoP&T's O.M. dated 29.1.1998, *ibid*, was issued on the subject of "Perquisites and some important terms and conditions for Chairpersons and Members of the Regulatory Authorities and allied matters – Policy regarding". By the said O.M. dated 29.1.1998, the Government of India decided to prescribe uniform guidelines on the aforesaid subject as per Annexure thereto. Annexure to the O.M. dated 29.1.1998, *ibid*, speaks about Tenure of Chairperson and Members of Regulatory Authorities [paragraph (a)], Eligibility for re-employment of Chairperson and Members [paragraph (b)], Pay of Chairperson and Members [paragraph (c)], GPF/CPF, Pension and Gratuity for Chairperson and Members [paragraph (d)], DA & CCA admissible to Chairperson and Members [paragraph (e)], TC, TA & DA admissible to Chairperson and Members [paragraph (f)], Abroad visits by Chairperson and Members [paragraph (g)], Accommodation for Chairperson and Members [paragraph (h)], Sumptuary Allowance [paragraph (i)], Medical Facilities [paragraph (j)], Transport [paragraph (k)], Status [paragraph (l)], Leave [paragraph (m)], and Administrative & other residuary matters [paragraph (n)].

11. Paragraph (m) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*, is reproduced below:

“(m) LEAVE: A Chairperson or Member would be entitled to 30 days of Earned Leave for every year of Service. The payment of leave salary during leave shall be governed by Rule 40 of CCS (Leave) Rules, 1972. A person would be entitled to encashment of 50% of Earned Leave to his credit at any time.”

11.1 In Rule 11 of the ATFE Conditions of Service of Chairperson and Members Rules, reference has been made to the DoP&T's O.M. dated 29.1.1998, *ibid.* Rule 11 (*ibid.*) is reproduced below:

“Accommodation.

The guidelines as laid down in OM No.3/6/97-Estt.(Pay II) dated 29.1.1998 of the Department of Personnel and Training shall apply. However, if a sitting Judge of High Court is appointed as Chairperson, he shall be eligible for allotment of general pool accommodation in accordance with High Court Judges Rules, subject to availability.”

11.2 Paragraph (h) of Annexure to the DoP&T's O.M. dated 29.1.1998 reads thus:

“(h) ACCOMMODATION: The Chairperson and Members of a Regulatory Authority located in Delhi or in one of its satellite towns would be given the option of claiming House Rent Allowance @ 30% of the basic pay drawn if they stay at Delhi but no house would be hired by the Authority or allotted by the Government. Outside Delhi, Members and the Chairperson would be entitled to rented unfurnished accommodation with built-up area measuring around 300 sqm. for Members and 350 sqm. for the Chairperson with suitable open land area appurtenant as permissible under the regulations of the concerned municipal bodies. The same facility would be extended to retired Judges of the

Supreme Court and High Court as well, instead of the present facility (rent free accommodation or 12-1/2% HRA).”

11.3 From the foregoing, it is clear that the DoP&T's O.M. dated 29.1.1998, *ibid*, has been mentioned in Rule 11 of the ATFE Conditions of Service of Chairperson and Members Rules only for the purpose of determining the entitlement of Chairperson and Members of ATFE for accommodation under paragraph (h) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*, and not for determining their entitlement for other perquisites which are admissible to Chairpersons and Members of the Regulatory Authorities in terms of paragraphs (a) to (g) and (i) to (n) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*. If all other conditions of service for Chairperson and Members of the Regulatory Authorities, as mentioned in Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*, were made applicable to the Chairperson and Members of ATFE, the same would have been expressly stated in the ATFE Conditions of Service of Chairperson and Members Rules, and reference to DoP&T's O.M. dated 29.1.1998, *ibid*, would not have been made only in Rule 11 of the ATFE Conditions of Service of Chairperson and Members Rules, which deals with 'Accommodation' for Chairperson and Members of ATFE. In this view of the matter, I have no hesitation in holding that

paragraph (m) of Annexure to the DoP&T's O.M. dated 29.1.1998, *ibid*, is not applicable to Chairperson and Members of ATFE.

12. Rule 39(2) of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as 'CCS Leave Rules'), stipulates that where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall, *suo motu*, issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days.

12.1 Rule 39(6)(a)(iii) of the CCS Leave Rules stipulates that a Government servant, who is re-employed after retirement, may, on termination of his re-employment, be granted, *suo motu*, by an authority competent to grant leave, cash equivalent in respect of both earned leave and half pay 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 and cash equivalent payable shall be the same as in sub-rule (2) of Rule 39.

12.2 The DoP&T's O.M.No.12016/2/99-Estt.(L), dated 12.7.1999, stipulates that the ceiling of 300 days for encashment of earned leave will be subject to the condition that the total number of days of earned leave for which the encashment is to be allowed on termination of contract together with the number of days of earned leave for which encashment had been allowed in previous appointment, if any, under the Government, should not exceed 300 days.

12.3 Admittedly, on his retirement from Government service as Legal Adviser & *ex officio* Additional Secretary (Conveyancing), Ministry of Law & Justice, Department of Legal Affairs, on 30.6.2005, the applicant had been paid a sum of Rs.4,29,980/- as leave encashment equivalent to 300 days of earned leave. Thus, his appointment as Chairperson, ATFE, amounts to re-employment after his retirement from Government of India service as Legal Adviser & *ex officio* Additional Secretary (Conveyancing), Department of Legal Affairs, on 30.6.2005. Leave encashment is made under Rule 39 of the CCS Leave Rules. In view of the provisions contained in Rule 39(6)(a)(iii) of the CCS Leave Rules, and the DoP&T's O.M. dated 12.7.1999, *ibid*, the applicant, having already been paid cash equivalent to 300 days of earned leave at the time of his retirement from service as Legal Adviser & *ex officio*

Additional Secretary, Department of Legal Affairs, Government of India, is not entitled to further leave encashment at the time of completion of the term/tenure of his appointment and/or termination of his re-employment as Chairperson, ATFE. Therefore, there is no infirmity in the decision taken by the Department of Legal Affairs, vide letter dated 19.11.2015, *ibid*.

13. The applicant has not brought to the notice of the Tribunal any other rule or Government of India's decision in support of his claim. As the applicant was not entitled to encashment of leave at the time of completion of his term/tenure and/or termination of his re-employment as Chairperson of ATFE, the question of withholding and/or non-payment of his leave encashment by the respondent did not arise. Therefore, the decision of the Hon'ble Supreme Court in *State of Jharkhand & others v. Jitendra Kumar Srivastava & another*, 2013(10) SCALE 310, cited by the applicant, being out of context, is of no help to his case.

14. In the light of what has been discussed above, this Tribunal finds no merit in the O.A. The O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

