

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

**OA-1547/2017**

**Reserved on : 27.09.2018.**

**Pronounced on : 01.10.2018.**

**Hon'ble Ms. Praveen Mahajan, Member (A)**

Dr. (Ms.) Kamlesh Kalra,  
Medical Commissioner,  
ESIC (Retired)  
R/o A-38, Double Storey,  
Ramesh Nagar,  
New Delhi-110 015.

.... Applicant

(through Dr. K.C. Rakesh, Advocate)

Versus

Employees State Insurance Corporation  
Through the Director General  
ESI Corporation, Panchdeep Bhawan,  
C.I.G. Road, New Delhi-110 002.

..... Respondent

(through Sh. Mohit Kukreja, Advocate)

**ORDER**

Brief facts of the case are that the applicant superannuated as Medical Commissioner from Employees State Insurance Corporation (ESIC) on 30.06.2008. The applicant was sanctioned and paid the leave encashment of 240 days earned leave as per her leave account. The applicant states that on the recommendations of the 6<sup>th</sup> Central Pay Commission, the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training vide

O.M. No. 14028/3/2008-Estt.(L) dated 25.09.2008 allowed the Central Government Civil Employees, the encashment of both earned leave and half pay leave subject to over all limit of 300 days. Half pay leave of 702 days was in her account at the time of her superannuation.

2. The O.M. dated 25.09.2008 of Government of India was made effective from 01.09.2008. ESIC implemented the above mentioned O.M. for its employees vide O.M. No. A-27/17/6thCPC/4/2008-EIII dated 24.12.2008. Another O.M. No. 14028/3/2008-Estt.(L) dated 16.11.2009 was issued by Department of Personnel & Training stating that the date of effect of O.M. dated 25.09.2008 has been changed from 01.09.2008 to 01.01.2006 (Annexure A-12).

3. Since the applicant superannuated on 30.06.2008, she also got covered by O.M. dated 25.09.2008. Accordingly, she made a representation to the respondents vide her letter dated 11.05.2010 requesting the respondents to sanction encashment of additional 60 days leave from her un-availed half pay leave account in view of O.M. dated 16.11.2009. However, vide letter dated 02.07.2010, the respondents informed the applicant that the recommendations of O.M. dated 16.11.2009 have not been adopted by the Corporation, as such, her request for grant of additional 60 days leave cannot be acceded to (Annexure A-14).

4. The applicant avers that a similarly situated employee, Dr. (Mrs.) Nirmal Singh, holding the post of Director, ESIC, was initially denied similar benefit by the respondents. Aggrieved, Dr. Singh filed OA-781/2013 before the Central Administrative Tribunal, Principal Bench, which was decided in her favour on 12.05.2014. The said order was challenged by the respondents before the Hon'ble High Court of Delhi in W.P.(C) No.1081/2015, which was disposed of without any interference on 18.03.2015. The applicant seeks similar benefit, as sought and allowed to Dr. (Mrs.) Nirmal Singh of enhanced limit of leave in respect of leave encashment. The applicant has enclosed a copy of Office order No. 825 of 2015 (M) dated 10.09.2015 wherein approval has been accorded by the respondents to revise the sanction of encashment (provisional) of un-utilized earned leave and half pay leave in respect of Dr. (Mrs.) Nirmal Singh.

5. After getting to know about the benefit provided to Dr. (Mrs.) Nirmal Singh, the applicant again represented to the respondents on 23.05.2016 and 21.09.2016 in support of her claim. Her request was, however, rejected vide the impugned order dated 14.10.2016 (Annexure A/3). The applicant has also relied upon on the orders passed by Hon'ble Supreme Court in the case of **Sant Lal Gupta & Ors. Vs. Modern Co-operative Group Housing Society Ltd. & Ors.,** (2010) SCC 336 and **Rajasthan Public Service Commission Vs. Hrish Kumar Purohit** wherein it has been held that orders of co-ordinate

Bench are binding. Aggrieved, the applicant has prayed for the following relief:-

“(i) to pass the similar order/judgment as has been passed by the Co-ordinate Bench comprising of Hon'ble Mr. A.K. Bhardwaj, Member J. in the identical O.A. No.781/2013 “titled Dr.(Mrs.) Nirmal Singh V/s. ESIC on 12.05.2014;

(ii) to pass direction to the Respondent for sanction and release of payment of the additional leave for 60 days beyond 240 days i.e. upto the limit of 300 days in compliance of Office Memorandum No. 14028/3/2008-Estt.(L) dt. 25.09.2008 & O.M. No.14028/3/2008-Estt.(L) dated 16.11.2009, in the interest of justice, fair play and equity.”

6. In their counter, the respondents state that O.M. dated 16.11.2009 passed by Government of India providing that date of effect i.e. 01.09.2008 was changed to 01.01.2006 has not been adopted by the respondent organization. Therefore, the applicant is not entitled to the claim of reimbursement of leave encashment. The respondents have relied upon Section 17(2)(a) of the ESI Act, 1948, which states that:-

“The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scale of pay:

Provided that where the corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.”

They submit that in accordance with the above mentioned provision, the respondents Corporation sought and received

approval of Government of India on leave encashment policy, which is different from that of Central Government.

7. During the course of hearing, the learned counsel for the respondents Sh. Mohit Kukreja reiterated the contentions already mentioned in the counter-affidavit and stressed that the claim of the applicant is hopelessly time barred. He drew my attention to letter dated 02.07.2010 of the respondents vide which the request of the applicant was rejected and argued that though the cause of action for the applicant arose in 2010, the O.A. was filed seven years later on 25.04.2017. No plausible explanation for seven years delay has been given by the applicant. He also referred to Annexure R-2, which is a letter dated 28.06.1980 from Ministry of Labour informing the respondents the approval of Central Government for encashment of leave on conditions, reportedly different from the one adopted by the Central Government.

8. I have gone through the facts of the case carefully and considered the rival submissions made by both sides.

8.1 It is not disputed that the respondents adopted the O.M. dated 25.09.2008 for their employees. However, they did not adopt the subsequent O.M. dated 16.11.2009 regarding change of date, from 01.09.2008 to 01.01.2006. The fact that the respondents adopted the first O.M. dated 25.09.2008 shows that in principle, they accepted

the recommendations of encashment of earned leave and half pay leave subject to over all limit of 300 days. The only amendment in the next O.M. was regarding the date of the applicability of the earlier O.M.

8.2 It is also a fact, borne out from the record, that in the case of a junior colleague of the applicant, similar benefit of 60 days of leave encashment consequent to judgment dated 12.05.2014 in OA-781/2013 was ordered and sanctioned, by the respondents vide their order dated 10.09.2015, to Dr. (Mrs.) Nirmal Singh. Even the appeal filed by the respondents against this order was not interfered with by the Hon'ble High Court of Delhi.

9. In the case of **Rajasthan Public Service Commission** (supra), Hon'ble Supreme Court has held that:-

"In Rajasthan Public Service Commission V/s. Harish Kumar Purohit, this Court held that a Bench must follow the decision of a coordinate Bench and taken the same view as has been taken earlier. The earlier decision of the coordinate Bench is binding upon any latter coordinate Bench deciding the same or similar issues. If the latter Bench wants to take a different view than that taken by the earlier Bench, the proper course if for it to refer the matter to a larger Bench."

Similar view has been taken by Hon'ble High Court in the case of **B.B. Chibber Vs. Anand Lok Coop. Group Housing Society Ltd.** Wherein it was held that:-

"wherein the same provision had been considered and it had categorically been held that deeming approval was not legally permissible. In view of the above, it was neither desirable nor permissible by the coordinate Bench to disapprove the earlier

judgment and take view contrary to it. More so, extension of the period from 6 months to 1 year amounts to legislation."

10. In view of the aforementioned discussions, respectfully following the same reasoning as detailed in the case of Dr.(Mrs.) Nirmal Singh (supra) in OA-781/2013 on 12.05.2014, I direct the respondents to sanction and release payment of additional leave for 60 days beyond 240 days i.e. upto the limit of 300 days to the applicant in compliance of O.M. No. 14028/3/2008 dated 29.05.2008 and O.M. No. 14028/3/2008 dated 16.11.2009. This exercise must be completed within three months from the date of receipt of a certified copy of this order. No costs.

**(Praveen Mahajan)**  
**Member (A)**

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