

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00675/2016

DATED THIS THE 27TH DAY OF JANUARY, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Uma Ramakanth,
W/o Shri K. Ramakantha Pai,
Aged about 54 years,
Senior Telecom Office Assistant (G), Gr.II/
Assistant Office Superintendent,
Marketing Section,
O/o the Chief General Manager,
BSNL, Karnataka Telecom Circle,
No.1, Swamy Vivekananda Road,
Bangalore – 560 008.
Res: No. 81,
Vandana Grand,
Flat No. 207, 13th cross,
Venkatapura Extension,
Bangalore – 560 034.

... Applicant

(By Advocate Shri K. Hanifa)

Vs.

1. The Chairman and Managing Director,
BSNL Corporate Office,
Bharath Sanchar Bhavan,
Janpath,
New Delhi – 110 001.

2. The Chief General Manager,
BSNL, Karnataka Telecom Circle,
No.1, Swamy Vivekananda Road,
Bangalore – 560 008.

3. The Deputy General Manager (HR/ADMN),
BSNL, Karnataka Telecom Circle,
No.1, Swamy Vivekananda Road,
Bangalore – 560 008.

4. The Deputy General Manager (P & EF),
BSNL, Karnataka Telecom Circle,
No.1, Swamy Vivekananda Road,
Bangalore – 560 008. ...Respondents

(By Shri V.N. Holla, Counsel for the Respondents)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- i. Call for the relevant records leading to the issuance of the impugned Letters No. AP-II/CCL/42 dated 13.01.2016 & dated 01.2016 at Ann-A6 series, NOTES dated 22.02.2016 at Ann-A11, No. Staff/15-198804311/215 dated 12.04.2016 at Ann-A13 and No. Staff/15-198804311/220 dated 07.05.2016 at Ann-A16 issued by the R-2 on perusal quash the impugned Letters & NOTES as arbitrary, unjust, unfair and against the clause (ii) of Leave Rule 25 of CCS (Leave) Rules 1972 and not a reasoned and speaking Letters and Notes,
- ii. Direct the Respondent-2 to regularize the absence of the Applicant from 18.06.2014 to 26.07.2014 by granting any kind of leave i.e., EL or HPL at the credit of the Applicant as on date the Applicant is having 276 days of EL and 79 days of HPL at her credit,
- iii. To refund excess recovered pay and allowances and recovered HRA of March 2016, April 2016 & May 2016 according to the regularization of her absence,
- iv. To update her Service Book with entries of leave w.e.f 18.06.2014 to 26.07.2014 to avoid any complications during her retirement time.

2. The applicant who is working as a Sr. Telecom Office Assistant Gr. II (presently Assistant Office Superintendent) in the office of Respondent No. 2 had initially applied for 61 days of Child Care Leave (CCL) from 10.03.2014 to 09.05.2014. When her request was rejected by the respondents, the applicant approached this Tribunal in OA No. 486/2014 which was allowed vide order dated 28.03.2014 (Annexure-A1). Immediately thereafter the applicant wanted

to extend her CCL for further 78 days from 10.05.2014 to 26.07.2014 which was rejected by the respondents. Again the applicant approached this Tribunal in OA No. 663/2014. The Tribunal vide order dated 14.09.2015 in OA No. 663/2014 at Annexure-A3 held that the examination of the applicant's son came to an end on 17.06.2014 and as such the applicant had reason to claim CCL till then but not beyond that. Therefore the Tribunal ordered that the respondents shall grant CCL till 17.06.2014 and the rest is absence. It is mentioned that on earlier order in OA No. 486/2014, the respondents filed a Writ Petition before the Hon'ble High Court of Karnataka but that was dismissed as withdrawn giving liberty to the petitioner to file the Review Petition. The respondents also filed a Review Petition which was disposed of in view of the order passed in OA No. 663/2014. Thereafter the applicant submitted a representation to the respondents on 28.12.2015. However the respondents vide order dated 13.01.2016 informed that the period of absence 18.06.2014 to 26.07.2014 is being treated as 'dies non' without break in service. Thereafter the applicant submitted representation dated 14.01.2016, 03.02.2016 and 06.02.2016 submitting that the Tribunal only directed to treat the remaining period from 18.06.2014 to 26.07.2014 as absence and not unauthorized absence. Moreover she was sanctioned 13 days of Commuted Leave with medical certificate from 27.07.2014 to 08.08.2014. Therefore, the above period of absence precedes and succeeds sanctioned CCL and Commuted Leave respectively. Therefore such intermittent period of absence cannot be considered as 'dies non' but can only be regularized by grant of HPL or EOL. Further as per Rule 32(6) of CCS (Leave) Rules, 1972 (Annexure-A18), EOL may be granted to regularize period of absence without

leave retrospectively. Therefore the applicant requested to grant the remaining 39 days from 18.06.2014 to 26.07.2014 as HPL or EOL.

3. The applicant further submits that having both EOL and HPL to her credit and the same could be considered by the respondents for regularizing the aforesaid leave period. The respondents however sent a note vide communication dated 12.04.2016 indicating that the period of absence of 39 days from 18.06.2014 to 26.07.2014 needs to be treated as absence and as per Rule 25 of CCS (Leave) Rules, 1972 clause (i) and (ii) the said period will be regularized by deducting 39 days of HPL from the leave credit of the official and no pay and allowances shall be drawn for the period mentioned therein. Thereafter the applicant submitted further representation dated 25.04.2016 addressed to CMD, BSNL Corporate Office (Annexure-A15) saying that it has resulted in loss of full pay and allowances including HRA from 18.06.2014 to 26.07.2014 as well as loss of HPL for the same period and loss of qualifying service for pension for the same period as the period of absence not regularized as leave with leave salary will not be counted as qualifying service as per CCS (Pension) Rules. She submits that only in the case of unauthorized absence clause (i) of CCS (Leave) Rules, 1972 is applicable when one is not entitled to any leave salary but it is not a question of unauthorized absence in this case. The applicant submits that the respondents may be directed to regularize the absence using the EL or HPL in her credit as she has sufficient leave at her credit and also to refund the excess recovered pay and allowances.

4. The respondents have filed their reply statement in which they have submitted that the applicant had initially applied for CCL for 61 days which

could not be granted by the controlling officer due to administrative constraints. The same was challenged by the applicant before this Tribunal in OA No. 486/2014 and the OA was allowed by this Tribunal vide order dated 28.03.2014. The said order was challenged by the respondents by filing a Writ Petition before the Hon'ble High Court of Karnataka but the same was subsequently withdrawn for filing a Review Petition before this Tribunal. In the meanwhile the applicant again approached this Tribunal against non sanction of further period of CCL in OA No. 663/2014. The said OA was disposed of directing respondents to grant CCL till 17.06.2014 when the examination of applicant's son came to an end and indicating the rest of the period as absence. Accordingly CCL was granted up to 17.06.2014 and the rest of the period was treated as absence. For the absence period, the competent authority invoked Rule 25 (1) of CCS (Leave) Rules, 1972 and deducted 39 days of HPL from the leave credit of the official and the pay and allowances was not drawn for the period mentioned therein. However the Sub rule (2) of the CCS (Leave) Rules, 1972 was not invoked as it was treated as mere absence and not willful absence. According to the respondents, Rule 25 of the CCS (Leave) Rules, 1972 addresses the situation where an employee overstays beyond the sanctioned leave of the kind due and admissible and the competent authority has not approved such extension. The consequences that flow from such refusal of extension of leave is covered under clause (i). Therefore he submits that the action taken by the competent authority is fully in order and there is no merit in the contention of the applicant.

5. The applicant has filed a rejoinder in which she reiterated the points made in the Original Application saying that the applicant has been subject to

multiple punitive actions such as recovery of pay and allowances for the period of 39 days, simultaneously deducting 39 days of HPL from the applicant's leave account and treating the period as non-qualifying service for pensionary benefits. Such action should be taken in case of unauthorized absence/willful absence which is not the case in the case of the applicant. She also submitted that she proceeded on CCL in 2014 on the strength of the order of stay of the said impugned letter dated 24.05.2014 passed by this Tribunal in OA No. 663/2014. The Tribunal had in the final order granted extension of 39 days CCL up to 17.06.2014 and treated the rest of the period as mere absence hence the authority should have regularized the period of absence by way of regularizing the same period by grant of either EL or HPL at the credit of the applicant. They also recovered the HRA for March, April and May, 2016 which is not fair. Therefore she prayed for granting relief as sought for.

6. Heard the learned counsel for the parties. The learned counsel for the applicant while reiterating the submissions made in the OA and rejoinder highlighted that the Tribunal had granted CCL up to 17.06.2014 treating the remaining period as absence only. Hence the said period should have been regularized by utilizing the EL/HPL at the credit of the applicant. But invoking the provision of Rule 25 of CCS (Leave) Rules, 1972 and denying her pay and allowances including HRA for the said period and simultaneously loss of 39 days of HPL for the same period and loss of qualifying service for pension is greatly unfair. The recovery of pay and allowances should be resorted to only in the case of unauthorized absence which is not so in the present case. Therefore the action taken by the respondents is grossly unfair and they

should be directed to regularize the period of absence by utilizing the leave at her credit.

7. The learned counsel for the respondents on the other hand submitted that the respondents had taken decision in terms of the order of the Tribunal which held that the period beyond 17.06.2014 shall be treated as absence so they had gone as per the relevant rules and that there is nothing irregular or unfair in this. Moreover the applicant though a senior official remained absent when there was urgent necessity for her presence in the office in view of workload. Hence she is not entitled to any sympathetic consideration. Therefore he submitted that there is no merit in the contention made by the applicant.

8. We have carefully considered the facts of the case and submissions made by either side. The issue pertains to treatment of the period between 18.06.2014 till 26.07.2014 which was declared by the Tribunal as absence. In this context we note that initially the applicant applied for CCL from 10.03.2014 to 09.05.2014. On being denied the same, she approached this Tribunal and got a favourable order on 28.03.2014. Encouraged by the same, she again submitted application for extension of 78 days of CCL up to 26.07.2014 even though the said examination for which she wanted CCL was over on 17.06.2014. It is also noted that she again applied for 13 days Commuted Leave with medical certificate from 27.07.2014 to 08.08.2014. It is interesting to note that even though all the leaves are in continuation to each other the respondents chose to allow Commuted Leave with medical certificate for the period 27.07.2014 to 08.08.2014. In any case on the issue of her prayer for CCL from 10.05.2014 to 26.07.2014 the Tribunal held that

her request for CCL on account of child's examination which was over on 17.06.2014 need consideration and the respondents were directed to grant CCL up to that date and the remaining period was treated as absence. We note the applicant submitted representation on 28.12.2015 again requesting for grant of 39 days of CCL from 18.06.2014 to 26.07.2014 (even though the Tribunal did not consider the said request) saying that in case the CCL cannot be granted then it can be regularized by Earned Leave for the said period. However the respondents treated the period of absence as 'dies non' without break in service. Thereafter on further representation by the applicant, the respondents stuck to their stand of having taking recourse to Rule 25 of CCS (Leave) Rules. The applicant has submitted that it will be loss of qualifying service for the same period though the respondents have mentioned as 'dies non' without break in service. She also mentioned that not only she has not been paid salary for the said period, her 39 days of HPL have also been deducted. Moreover the HRA for March, April and May also have been recovered which has put her to difficulties.

9. No doubt, the action of the applicant in proceeding on CCL on two occasions when the authorities did not agree to consider the same, moreover for a period when the examination of her son was over and thereafter proceeding on medical leave is not expected from a responsible government servant. Nevertheless the Tribunal had considered her case and directed for considering grant of CCL up to 17.06.2014, i.e., when the examination of her son was over. The Tribunal only directed that the remaining period is absence. It implies that the period of absence shall be dealt as per rules and not considered for a penal measure. We also note that when the applicant

filed OA No. 663/2014 challenging the order of the respondents dated 24.05.2014 expressing inability to sanction CCL up to 26.07.2014, by interim direction dated 02.06.2014 the communication dated 24.05.2014 was stayed. Obviously the applicant continued to remain on leave as prayed by her. Therefore such absence cannot be considered as willful absence and overstaying beyond the sanctioned leave. We also note that the respondents themselves have sanctioned 13 days of Commuted Leave from 27.07.2014 to 08.08.2014. Therefore taking recourse to Rule 25 (i) for her interim period of absence, i.e., from 18.06.2014 to 26.07.2014 appears to us as quite unfair. The Tribunal did not agree to consider this period as part of CCL. However the said period can be regularized by using the leaves at the credit of the applicant. Only if no leave was at her credit, the question of extraordinary leave without pay would have arisen. But according to the contention of the applicant she had adequate leave at her credit. Therefore in all fairness the respondents should regularize the period of absence, i.e., for 18.06.2014 to 26.07.2014 against the leave at the credit of the applicant.

10. Therefore on detailed consideration of the facts and circumstances of the case, we hold that the action of the respondents to treat the period from 18.06.2014 to 26.07.2014 as 'dies non' without break in service and also further recourse to Rule 25 (i) and (ii) of the CCS (Leave) Rules as indicated in Annexure-A13 is unjustified and the same is set aside. The respondents are directed to regularize the period of absence from 18.06.2014 to 26.07.2014 by Earned Leave/HPL available at the credit of the applicant. This shall be done within a period of 2 months from the date of receipt of a copy of this order.

11. The OA is accordingly disposed of in terms of the aforesaid direction.

No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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