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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**



No. O.A. 528 of 2011

Present: Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Biswanath Sarkar,
Son of Late H.K. Sarkar,
Aged about 45 years,
Working as Sr. Auditor,
Ishapore Rifle Factory,
Ishapore,
Dist. 24 Parganas (N),
Residing at 61, Sitalatala Street,
P.O. & P.S. – Belghoria,
Calcutta – 700 056.

.. Applicant

- VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Defence (Finance),
North Block,
New Delhi – 110 011.
2. Principal Controller of Accounts (Factories),
'AYUDH BHAWAN', 10A, S.K. Bose Road,
Calcutta – 700 001.
3. Additional Controller of Finance & Accounts
(Factories), Accounts Office,
Rifle Factory Ishapore,
P.O. Nawabgung,
Dist. 24 Parganas (N),
Pin – 743 144.

.. Respondents

For the Applicant : Mr. M.K. Bandyopadhyay, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

Order dated: 20.12.2016

ORDER

Per Ms. Jaya Das Gupta, Administrative Member:

The applicant has approached Central Administrative Tribunal under

Section 19 of the AT Act, 1985 seeking the following reliefs:-

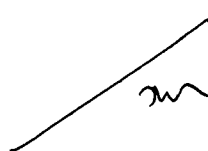
"a) Direction to set aside and cancel the impugned memo / office order No. 638/AN-DG/Leave/RFI dated 7.6.2010 and N9. 638/AN-IX leave RFI dt. 2.8.10 issued by the office of Principal Controller of Accounts (FYS) and not to treat the balance of Earned Leave of the applicant as nil and/or not to disturb the earned leave account to the applicant since 1.1.2005."

2. It is the case of the applicant that he was transferred from Rifle Factory at Ishapore to another wing i.e. Air Force at Barrackpore vide transfer order dated 16.7.2004. Challenging the above transfer order he had moved an O.A. No. 423/2004 allegedly against the said illegal and malafide transfer. While the O.A. was being heard he did not join the transferred post at Air Force. It is his submission that subsequently the Air Force authority transferred him back on release from Air Force w.e.f. 1.1.2005 and his period of absence was treated as Earned Leave and leave salary for the said period was also made. It came as a shock to him that after a long period of about five year i.e. on 7.6.2010 he was informed by an Office Order that his balance of Earned Leave as on 31.12.2004 was 'nil'. It is his grievance that he was never informed of his leave position before 2010 and he was under the impression that he had Earned Leave on his credit for 141 days or more since 1.1.2005. Accordingly, it is wrong for the administration to treat his balance of Earned Leave as 'Nil' as on 31.12.2004. Hence, for redressal of his grievance he has approached the Central Administrative Tribunal seeking the aforesaid reliefs.

3. Per contra, it is the case of the respondents that there is no merit in this case which will be clear from the facts in their reply. Hence, the O.A. deserves to be dismissed.

4. Heard both and consulted the records.

5. The applicant who was an Auditor in the Accounts Office of Rifle



Factory, Ishapore was transferred vide order dated 16.7.2004 to a different wing i.e. from Rifle Factory, Ishapore to Air Force Wing at Barrackpore. The said transfer order is extracted below:-

"CONFIDENTIAL

NO. G-I-XIV
O/O THE DCFA (FYS)
AO, RFI
DT. 16.07.2004

To

THE LOCAL AUDIT OFFICER
AIR FORCE BARRAKPORE

SUB: TRANSFER : DAD ESTT.

REF: C of F&A (Fys) letter No. CA/BGF/AN/RFI/4-(BNS)/PARTdt. 16.07.2004 & PC of A (Fys) letter No.26/AN/Order/ II dt. 8.7.2004 & PCA(Fys) Fax message No. 206/AN/II/Transfer dt. 15.07.2004.

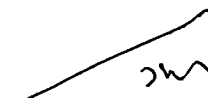
As per the C of F & A (FYS) letter cited above Shri B. N. Sarkar, Auditor, A/c No. 8336813 has been relieved of his duties w.e.f. 16.7.2004 (AN) with the direction to report at your office at local expense.

Leave balance of the said individual will be intimated later on.

Accounts Officer(Fys)"

6. Being aggrieved with the above transfer order the applicant has approached the Central Administrative Tribunal previously in O.A. No. 423 of 2004. The final order was passed in the O.A. on 6.9.2004. The operative portion reads as under:-

"15. After careful consideration of facts and circumstances, although we are not inclined to interfere with the impugned transfer of order, but at the same time we are of the view that the competent authority should decide on the recommendation of the Asstt. Controller of Accounts (AN) dt. 12.5.2004 (Annexure E to rejoinder) as stated above and take a decision regarding continuance of the applicant in the Factory Command at Ishapore, within two months from the date of communication of this order and till such time the applicant may not be



released from his parent post.

16. With the above observation/direction the application is disposed of. No costs."

7. However, this final order was preceded by an order of the Tribunal in M.A. No. 448 of 2004 in O.A. No. 423 of 2004 and an order dated 30.7.2004 in the M.A. is set out below:-

" Since the matter has already been fixed on 18.8.2004, we do not feel it appropriate to pass any order regarding prayer made in the M.A. Let status-quo continue till next date. In the meanwhile, if the respondents fail to file reply, no further chance to file reply shall be given to them. M.A. is accordingly disposed of."

8. We note that status quo as on 30.7.2004 was allowed to continue till the next date of hearing i.e. 18.8.2004.

9. From the reply at para 6.1 it appears that the applicant Shri Biswanth Sarkar was relieved from Accounts Office, Rifle Factory, Ishapore which is under the administrative control of the Principal Controller of Accounts (Factories), Kolkata on 16.7.2004 with a direction to report to Local Accounts Office (Air Force) Barrackpore under administrative control of the Principal Controller of Defence Accounts (Air Force), Dehradun.

10. Therefore, as per the order given by Central Administrative Tribunal in M.A. No. 448/2004 in O.A. No. 423/2004 on 30.7.2004 for maintaining status quo till 18.8.2004 would mean that he cannot be counted against the post he had held at Ishapore as he was already relieved on 16.7.2004 i.e. before the status quo order of 30.7.2004.

11. From para 6.2 of the reply we find that instead of reporting for duty at Local Accounts Office (Air Force), Barrackpore the applicant absented himself from duty since 17.7.2004 and finally joined the Local Accounts Office (Air Force), Barrackpore on 14.12.2004 without prejudice to his rights

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and contentions. Therefore, as per the status quo order he was on leave being attached neither to Rifle Factory, Ishapore or Local Accounts Office (Air Force) at Barrackpore. He joined at Barrackpore on 14.12.2004 for duty. That is why his period of absence from 17.7.2004 to 14.12.2004 i.e. 149 days had to be regularised to maintain continuity in service. This leave was regularised by being counted as Earned Leave with a result that as on 31.12.2004 there was no Earned Leave to his credit.

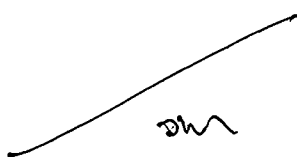
12. Finally O.A. No. 423 of 2004 was disposed of on 6.9.2004 as stated supra. M.A. No. 448 of 2004 was disposed of on 30.7.2004, CPC No. 106 of 2004 was disposed of on 13.1.2006 and M.A. No. 646 of 2004 was disposed of on 7.1.2005. The order given in M.A. No. 646 of 2004 dated 7.1.2005 is set out below:-

" Heard Mr. T.K. Banerjee, Ld. Counsel appearing for the applicant and Mr. P. Chatterjee, Ld. Counsel appearing for the respondents. The respondents are directed to allow the applicant to continue in his earlier post at Rifle Factory, Ishapore. But inspite of our order the respondents did not permit the applicant to continue at Rifle Factory, Ishapore. As a result he was forced to join at LAO (AF) Air Force, Barrackpore without prejudice to his rights and contentions.

2. On being asked to Mr. Chatterjee, Ld. Counsel appearing for the respondents as to why the respondent authorities defied to carry out our order, he could not readily answer, but wanted some more time to take instruction in the matter. We are told that there has been a separate application for taking appropriate action in contempt of court which is pending against the present respondents. We do not want to deal with such application at this stage. If the applicant had joined at Barrackpore without prejudice to his rights and contentions the respondent authorities may issue a fresh order by asking the applicant to continue at Rifle Factory Ishapore instead of LAO (AF), Air Force, Barrackpore in compliance with the order passed by the Tribunal within two weeks from the date of communication of this order.

3. With the above observation the application is disposed of."

As per the directions of the Hon'ble Court dated 7.1.2005 Shri Biswanath Sarkar was again transferred from Local Accounts Office (Air



Force) at Barrackpore to Rifle Factory, Ishapore on 31.1.2005 and finally the applicant joined at Rifle Factory, Ishapore on 1.2.2005. The said order of transfer from Local Accounts Office (Air Force) at Barrackpore to Rifle Factory, Ishapore issued from the office of Dehradun is set out below:-

No. LA/BKP/Con-I/Vol-XVI
O/o. The LAO (AP)
Barrackpore

Dated: 31.1.2005

To
The CFA (FYS)
Bengal Group of Factories, AO, RFI,
Nawabganj, Dist. 24 Parganas (N),
West Bengal

Sub: Transfer of Shri Biswanath Sarkar, Auditor
A/C No. 8336813 : Original Application
No. 423/2004 filed by Shri Biswanath
Sarkar v. Union of India & others.

Ref: CGDA New Delhi Confidential/FAX No.
AN/X/10027/5/05/Vol.I dated 27.1.2005
Received on 31.1.2005, addressed to the
PCDA(AF) Dehradun and copy endorsed
To you amongst others.

As per the directions received vide Hqrs. Orders cited at reference in pursuance to the directions contained in the Central Administrative Tribunal, Kolkata Bench Order No. 646/2004 (O.A. No. 423 of 2004) filed by the individual Shri Biswanath Sarkar Auditor A/C No. 8336813 borne on the strength of this office is hereby relieved of his duties in this office w.e.f. 31.1.2005 (AN) with a direction to report for duties in your office after availing of normal Joining Time as admissible under rules.

2. The leave availed by the individual during the period from 14.12.2004 to 31.1.2005 is furnished as follows:-

E.L. from 27.12.2004 to 31.12.2004 – 5 days

E.L. from 27.1.2005 to 28.1.2005 = 2 days

From 11.1.2005 to 12.1.2005 = 2 days

C.L. = 7.1.2005 = 1 day (Out of 2005 entitlement)

R.H. = Nil

HPL = Nil

Local Audit Officer
Barrackpore

13. The above course of events would amply indicate that the period between the date of being relieved from Ishapore i.e. 16.7.2004 and his joining at Barrackpore on 14.12.2004 when he was purported to be on leave has to be adjusted against Earned Leave to maintain continuity of service and there is no wrong on adjusting the leave against Earned Leave in his account. He had also taken Earned Leave from 27.12.2004 to 31.12.2004 which is apparent from letter dated 31.1.2005. Accordingly, his Earned Leave account became "Nil" as on 31.12.2004.

14. The impugned order dated 7.6.2010 and order dated 2.8.2010 are extracted hereinbelow:-

" FAX/Reminder
OFFICE OF THE PRINCIPAL CONTROLLER OF ACCOUNTS (FYS)
10-A, S.K. BOSE ROAD, KOLKATA - 700 001

No. 638/AN-DOLEAVE/RFI

DATE: 7/6/2010

To
 The Officer-in-Charge,
 AO, Rifle Factory,
 Ishapore - 743 144.

Sub:- Regularisation of absence in respect of Sri Biswanath Sarkar,
 SA/8336813.

Ref:- Your letter No. G/19L/III/Vol.V dated 19.5.2010.

As per audit of LAO, Barrackpore in respect of above named individual the balance of EL as on 31.12.2004 was nil after debiting 149 days E.L. w.e.f. 17.7.2004 to 12.12.2004 and 3 days EL from 27.12.2004/29/12/2004). Please correct your record accordingly and regularise his absence as per balance of EL available at his credit.

Sr. Accounts Officer (AN)"

" FAX/Reminder
OFFICE OF THE PRINCIPAL CONTROLLER OF ACCOUNTS (FYS)
10-A, S.K. BOSE ROAD, KOLKATA - 700 001

No. 638/AN/IX/LEAVE/RFI

DATE: 2/8/2010

To



The Officer-in-Charge,
AO, Rifle Factory,
Ishapore – 743 144.

Sub:- Regularisation of absence in respect of Sri Biswanath Sarkar,
SA/8336813.

Ref:- Your letter No. G/19/L/III/Vol.V dated 19.5.2010 & this office
Letter no. 638/AN-IX/Leave/RFI dtd. 7.6.2010.

As per audit of LAO, Barrackpore in respect of above named individual the balance of EL as on 31.12.2004 was nil after debiting 149 days E.L. w.e.f. 17.7.2004 to 12.12.2004 and 3 days EL from 27.12.2004/29/12/2004). Please correct your record accordingly and regularise his absence as per balance of EL available at his credit. The same has been called for vide this office FAX even no. dtd. 7/6/2010 but reply awaited till date. Please submit the same immediately by return FAX for updation of his leave account.

Sr. Accounts Officer (AN)"

15. Above impugned orders dated 7.6.2010 and 2.8.2010 are extracted above from the Office of Principal Controller of Accounts (FYS) to the Officer-in-Charge, Rifle Factory, Ishapore shows that the above impugned orders have been issued as per audit of LAO, Barrackpore under the Office of PCA (FYS), Dehradun.


16. As per para 4.7 in his pleadings the applicant has contended that after returning to Rifle Factory at Ishapore he came to know from local records that he had 141 days Earned Leave in his credit since January, 2005. This submission of the applicant is not correct as -

(a) No proof of such 141 days of Earned Leave since January, 2005 has been filed.

(b) Ultimately the leave records maintained in Rifle Factory, Ishapore had to be reconciled with leave records maintained at Air Force Office at Barrackpore which is controlled by Head Office at Dehradun.

17. In para 4.9 he has quoted the provisions of SR 202 (Supplementary Rule). He cannot take recourse to it now because he had never insisted for placement of his service records to him at the appropriate time.

18. Therefore, we find no reason to interfere with the action taken by the respondent authorities in regularising his leave against Earned Leave at his credit. The O.A. lacks merit and is hereby dismissed. There shall be no order as to costs.



(Jaya Das Gupta)
MEMBER(A)



(Vishnu Chandra Gupta)
MEMBER(J)

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