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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00913/2015**

**Monday, this the 18<sup>th</sup> day of March, 2019**

**CORAM:**

**HON'BLE Mr.E.K.BHARAT BHUSHAN,** ...ADMINISTRATIVE MEMBER  
**HON'BLE MR.ASHISH KALIA,** ...JUDICIAL MEMBER

Shri Jolly Cyriac,  
Puliukeel, No.203, SCT Nagar,  
Pattom Palace P.O.,  
Thiruvananthapuram-695004. ....Applicant

**(By Advocate Mr.T.C.Govindaswamy)**

## Versus

1. The Union of India  
represented by its Secretary,  
Ministry of Labour,  
New Delhi – 110 001.
2. The Central Provident Fund Commissioner,  
New Delhi 66.
3. The Additional Central Provident Fund Commissioner,  
South Zone, Employees Provident Fund Organization,  
Regional Office, “Bhavishyanidhi Bhavan”,  
Royalapetta, Opp.Pragath Hotel, Chennai.
4. The Regional Provident Fund Commissioner I,  
Employees Provident Fund Organization,  
Ministry of Labour, Government of India,  
Regional Office, Kerala,  
“Bhavishyanidhi Bhavan”, Pattom,  
Thiruvananthapuram. Pin 695 004.
5. The Assistant Provident Fund Commissioner (Administration),  
Employees Provident Fund Organization,  
Ministry of Labour, Government of India,  
Regional Office, Kerala,  
“Bhavishyanidhi Bhavan”, Pattom,

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Thiruvananthapuram Pin 695 004.

....Respondents

**(By Advocate Mr. S.Sujin for Respondents)**

This application having been heard on 14<sup>th</sup> March, 2019, the Tribunal on 18<sup>th</sup> March, 2019 delivered the following :

**O R D E R**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER**

OA No.913/2015 is filed by Shri Jolly Cyriac, retired Section Supervisor in the Employees Provident Fund Organization. He seeks the following reliefs:

- (i) Cancel the order of the fifth respondent rejecting the applications for commuted leave for periods less than three days in 10 occasions from 29.12.2011 to 15.01.2013.
- (ii) Direction may be issued to the fifth respondent to grant commuted leave applied for by the applicant without medical certificate for less than three days in 10 occasions from 29.12.2011 to 15.01.2013.
- (iii) Issue direction to the fifth respondent to reimburse the amount of Rs.8,175/- (Rupees Eight Thousand, One Hundred and Seventy Five only) with interest recovered from the applicant from Half Pay Leave for encashment in connection with retirement.
- (iv) Cost may be ordered from the respondents for the hardship caused to the applicant.
- (v) And such other relief that may be granted as this Hon'ble Tribunal deems fit.

2. The applicant retired as Section Supervisor in the respondent organisation on 28.02.2013. Being a chronic allergy patient during his service the applicant had availed commuted leave for less than three days during the period from 29.12.2011 to 15.01.2013, on 10 occasions. True copies of the commuted leave applications are produced and marked as Annexure A1 to A10. The leave sought for 29.12.2011 and 23.06.2012 was

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sanctioned by the 5<sup>th</sup> Respondent. On being granted 2 days commuted leave on 29.12.2011, the applicant made a specific request to waive the production of medical certificate. He had no further information about sanctioning or rejection of the leave requested. Salary for all months from 29.12.2011 to 15.01.2013 were fully disbursed to the applicant with no further information on the applications for commuted leave that he had made.

3. The 5<sup>th</sup> Respondent, Assistant Provident Fund Commissioner, vide note No.KR/Adm.1(4)2013 dated 07.01.2013 rejected the leave sought for including the applications for the periods 29.12.2011 and 26.03.2012 which had already been sanctioned. The copy of the order dated 07.01.2013 is at Annexure A11. In consequence, an amount of Rs.8,175/- was recovered from the entitled Half Pay Leave available for surrender at the time of retirement.

4. It is maintained by the applicant that the rejection of his leave applications was illegal and perverse. The leave sanctioning authority is fully empowered to grant leave, waiving the condition of production of medical certificate under Serial No.51 of the Schedule of Administrative and Financial Powers of Employees Provident Fund Organization. The applicant filed a representation on 13.02.2013 before the 4<sup>th</sup> Respondent seeking reconsideration of the rejection of his commuted leave application (Annexure

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A12). The said petition also came to be rejected (Annexure A13). An appeal was filed on 25.07.2013 by the applicant before the 3<sup>rd</sup> Respondent explaining the situation in detail. The said appeal (Annexure A14) was rejected as per letter at Annexure A15 dated 05.12.2013. The applicant maintains that the rejection of his leave application refusing to waive the condition for production of medical certificate and the inordinate delay in rejecting the same is unjust and out of jurisdiction of the authorities.

5. The respondents have filed a reply statement, where they have disputed the contentions made in the OA on two counts. Firstly, it is stated that the delay in filing the OA, which is sought to be condoned through MA No.711/2016, is inordinate and unjustified. Altogether there is a delay of 679 days in filing the OA. After accepting Annexure A11 order on 07.01.2013, the applicant makes a case that he was busy in the meanwhile submitting representations and appeals to the authorities. The Hon'ble Supreme Court in **C.Jacob Vs. Director of Geology & Mining - 2008 (10) SCC** has deprecated the practice of filing repeated representations for circumventing the limitation of delay and latches. Again, in **P.K.Ramachandran Vs. State of Kerala and another (AIR 1998 SC 2276)**, the Hon'ble Apex Court had held that the law of limitation is to be applied with full vigour when the statute prescribes so. As regards the merits of the case, the respondents quotes CCS (Leave) Rules, Rule 30 of the said Rules to state that commuted leave not exceeding half the amount of Half Pay Leave

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due may be granted on production of medical certificate to a Government servant subject to the following conditions:

- (a) The authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry;
- (b) When an employee is sanctioned commuted leave, double the number of leave availed shall be debited against the half pay leave due.

The CCS (Leave) Rules specifically states the circumstances on which commuted leave can be taken without production of medical certificate. They are

Rule 30(1-A) upto a maximum of 90 days in entire service if utilized for approved course of study certified to be in public interest.

Rule 43(4) Up to a maximum of 60 days by female Government servants if it is in continuation of maternity leave.

Rule 43-B up to a maximum of 60 days by a female Government servant with less than two living children if she adopts a child less than one year old.

6. The applicant had retired from service on 28.02.2013 and during his service extending beyond 35 years, he had availed different types of entitled leave in full. Towards the fag end of his service, he had applied for commuted leave of 3 or 4 days on different occasions but did not produce a medical certificate. He used to simply scribble a request at the bottom of the leave application that the condition of production of medial certificate may be waived.

7. Under Sub-rule 6 of Rule 19 of CCS (Leave) Rules, it is stated that "*the authority competent to grant leave may, in its discretion, waive the*

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*production of a medical certificate in case of an application for leave for a period not exceeding three days at a time".* On no occasion did the applicant produce a medical certificate and seems to have believed that waiving the condition of medical certificate would be done in a matter of routine course. This was not possible, the respondents state.

8. We have heard Shri T.C.Govindaswamy, learned Counsel for the applicant and Shri S.Sujin, learned Counsel for the respondents. On the question of delay, Shri Govindaswamy had the only defence that the delay occurred as the applicant was continuously addressing representations to the authorities and was waiting for positive response. Besides he submits that leave application for its part, was not decided until 07.01.2013. While we appreciate the argument that the respondents are also guilty of delay in deciding the leave application, there is no doubt that the OA is badly hit by limitation and on that count itself deserves to be dismissed.

9. In so far as the merits made out in the OA are concerned, the applicant was well aware that application for commuted leave was to be accompanied by a medical certificate. This being so, it was clearly wrong on his part to assume that the respondents would automatically waive the condition for production of medical certificate. Although there has been delay on the part of the respondents in communicating the rejection of leave, that does not take away the responsibility of the applicant to adhere to the conditions

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contained in CCS (Leave) Rules. He has retired from service and is pursuing the case before the Tribunal seeking to convert Half Pay Leave to commuted leave so that he can claim the additional financial benefit of Rs.8,175/-. But he has failed in putting forward a valid case. The OA deserves to be dismissed on the issue of inordinate delay as well as on merits. Accordingly, OA and MA No.711/2016 for condonation of delay are dismissed. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A. No.180/00913/2015**

- 1. Annexure A1:** True copy of the commuted leave application dated 29.12.2011.
- 2. Annexure A2:** True copy of the commuted leave application dated 26.03.2012.
- 3. Annexure A3:** True copy of the commuted leave application dated 01.05.2012.
- 4. Annexure A4:** True copy of the commuted leave application dated 30.07.2012.
- 5. Annexure A5:** True copy of the commuted leave application dated 07.09.2012.
- 6. Annexure A6:** True copy of the commuted leave application dated 17.09.2012.
- 7. Annexure A7:** True copy of the commuted leave application dated 06.11.2012.
- 8. Annexure A8:** True copy of the commuted leave application dated 26.11.2012.
- 9. Annexure A9:** True copy of the commuted leave application dated 10.01.2013.
- 10. Annexure A10:** True copy of the commuted leave application dated 15.01.2013.
- 11. Annexure A11:** True copy of the note dated 07.01.2013.
- 12. Annexure A12:** True copy of the petition dated 13.02.2013.
- 13. Annexure A13:** True copy of the letter No.KAR/Adm.1(4)Leave/13 dated 28/03/2013 by the 4<sup>th</sup> respondent rejecting the review.
- 14. Annexure A14:** True copy of the appeal petition dated 25.07.2013 before the 3<sup>rd</sup> respondent.
- 15. Annexure A15:** True copy of the letter No.KR/Tvm/Adm/1(4)2013 dated 05/12/2013 rejecting the appeal.
- 16. Annexure A16:** True copy of the Order No.HRMV/Misc/SS/2013/11640 dated 11.08.2014.

**17. Annexure A17:** True copy of representation by the EPF Pensioner's Association dated 01.12.2014.

**18. Annexure A18:** True copy of the letter dated 06.05.2015 communicated to the EPF Pensioner's Association rejecting the representation.

**19. Annexure MA1:** True copy of the relevant pages of Schedule (Sl No.44 and 51) under the head "Schedule of administrative and financial powers".

**20. Annexure R1 :** True copy of the relevant page of the service book of the applicant.

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