

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/662/2018

Date of CAV: 30.01.2019

Date of Pronouncement: 31.01.2019

Between:

P. Appalachary, S/o. late Sriram Murthy, Group B,
Age 60 years, Occ: Retired Employee,
R/o. Flat No. 204, Maruti Residency,
Road No.5, S.V. Nagar, Nagaram,
Keesara (M), RR Dist-500083.

... Applicant

And

1. The Union of India, Rep. by its Secretary,
Department of Atomic Energy, Anushakti Bhavan,
CSM Marg, Mumbai – 400 001.

2. The Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
ECIL PO, Hyderabad – 500 062.

3. The Assistant Personnel Officer,
Establishment – III,
Nuclear Fuel Complex,
Department of Atomic Energy,
ECIL PO, Hyderabad – 500 062.

... Respondents

Counsel for the Applicant ... Mrs. Anita Swain

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA has been filed by the applicant being aggrieved by the rejection of his request for encashment of 234 days of earned leave valued at Rs.7,16,087/- without any reason.

2. Brief facts of the case are that the applicant was appointed as Tradesman B on 03.03.1982 at Bhabha Atomic Research Centre, Mumbai (in short "BARC") which comes under the aegis of the Department of Atomic Energy. The applicant, on his own request, got transferred to the Nuclear Fuel Complex, Hyderabad (in short "NFC") ON 14.11.1998. Thereafter, at NFC, he was promoted as Tradesman F, Tradesman G and further promoted and converted to Supervisory category i.e. Foreman A w.e.f. 01.08.2001. When the applicant was transferred from BARC to NFC, BARC issued a letter dated 19.11.1999 wherein an endorsement was made to the Asst. Personnel Officer, NFC stating that necessary entries may be made in the service book of Sri P. Appalachary regarding encashment of EL/HPL, to watch the encashment of EL so that it does not exceed 300 days at the time of his retirement or resignation from service. The endorsement further says that that encashment of HPL may pleased be recovered in full if Shri Appalachary is again appointed to regular establishment wherein CCS Leave Rules, 1972 apply. The 3rd respondent failed to act as per the cited endorsement despite repeated representations on 29.11.1999, 16.3.2015 and 14.08.2017. The applicant retired on 28.02.2018. Just before retirement, on 05.02.2018, the respondent rejected the request of the applicant to encash the earned leave of 234 days. Hence, the OA.

3. The contentions of the applicant are that the NFC is one of the constituent units under the Department of Atomic Energy, Mumbai. Majority of the employees of the NFC are in scientific and technical streams. While the applicant was transferred from BARC to NFC, he had 184 days EL and 152 days HPL to his credit which were encashed as evidenced from the letter of the BARC dt. 19.11.1999. The said letter clearly states that necessary entries be made in the

service book of the applicant so that the encashment of EL does not exceed 300 days at the time of his retirement. The applicant repeatedly represented to the NFC authorities to receive Rs.7370 towards encashment of HPL so that he can encash the balance of EL to his credit at the time of superannuation. Information was furnished to him under RTI Act, vide letter dated 30.04.2018, which is filed as Annexure 8 to the OA indicating that he has 234 EL and 73 HPL to his credit as on 28.02.2018 and the value of 234 days of EL comes to Rs.7,16,087/-. Thus, even after deducting Rs.7370/- paid to him by BARC Mumbai, he should still be paid Rs.708717/-. The applicant claims that as per Rule 39(2)(a) of CCS (Leave) Rules, 1972, 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. The respondents have not acted as per this Rule, which is violative of Article 21 of the Constitution of India. The applicant has also cited the judgment of the Hon'ble Supreme Court in *Vijay L. Mehrotra Vs. State of UP & Ors*, reported in 2001 (9) SCC 687, wherein interest @ 18% p.a. was granted on delayed payment of leave encashment. Similarly, the Hon'ble Delhi High Court ordered interest to be paid on delayed payment of leave encashment in *NCT of Delhi Vs. S.K. Srivastava* in WP (C) No. 1186/2012, vide judgment dated 29.02.2012. The action of the respondents is violative of Article 300-A of the Constitution since the leave encashment amount is to be treated as property. The respondents never informed the applicant that since he has sought transfer on his request, he is ineligible for encashment of EL. Therefore, taking such a plea now in the OA is incorrect.

4. The respondents state that the applicant was appointed as Tradesman B on 31.03.1982 which is a technical post. He was governed by CCS (Leave) Rules, 1972. He sought transfer to NFC located at Hyderabad which is an industrial unit, governed by Factories Act, 1948. Leave will be credited annually if they had worked for more than 240 days. However, Supervisor (including Foreman/ Scientific Assistant) and officers, who are borne on the regular establishment are covered by CCS (Leave) Rules, 1972 and are entitled for earned leave, which is credited in advance i.e. 15 days in January and 15 days in July. The applicant was transferred to NFC on 13.10.1998 as per his own request. The NFC authorities vide fax message dt. 27.10.1998 sent to BARC has intimated that the applicant be informed that he will be governed by Industrial Service Conditions and his leave entitlement would be as applicable to industrial employees. BARC vide letter dt. 06.11.1998 informed the applicant accordingly. The respondents also claim that under Rule 6 of the CCS (Leave) Rules, 1972, the applicant shall be eligible for leave encashment equivalent to leave salary payable under Rule 39 only if he were to return to a post or service to which the CCS (Leave) Rules apply. The said provision reads thus:

“...Provided that in the event of his return to a post or service to which the Central Civil Services (Leave) Rules, 1972 apply, the benefit of cash equivalent of leave salary payable under Rule 39 shall be modified as under-

(a) On superannuation- encashment of leave shall be subject to the condition that the number of days of both earned leave and half pay leave for which encashment has already been allowed under this rule and the number of days of earned leave and half pay leave to be encashed on superannuation does not exceed 300 days; ”

The applicant got relieved from BARC to NFC and gave an undertaking that he shall be governed by industrial service conditions applicable to NFC. The applicant was paid a sum of Rs.45,086/- towards encashment for 184 days EL,

and Rs.7370/- towards encashment of 152 days of Half Pay Leave. BARC Mumbai has also informed that encashment of HPL has to be recovered in full if the applicant is appointed to a regular establishment. On 28.07.2000 the applicant represented that he would repay the leave encashment, despite giving an undertaking that he is governed by the terms and conditions applicable to industrial employees. His request was rejected based on Rule 6 of CCS (Leave) Rules. The applicant was promoted on 01.08.2001 as Foreman A, which is supervisory post and is governed by CCS (Leave) Rules, 1972. The applicant on being promoted as Foreman C has again represented on 16.03.2015 and 14.07.2017 requesting to recover the leave encashment of 152 days of HPL amounting to Rs.7370/- and allow encashment of balance EL at the time of his superannuation. Since this was against his undertaking given at the time of his transfer to NFC, his request was rejected. The respondents also cited that in identical case, the Hon'ble Chandigarh Bench of this Tribunal in OA 311/2011 has decided that when the applicant has already got benefit of leave encashment, he is not entitled for further encashment. In the present case, the applicant has already encashed 184 days EL and thus, he is covered by the said law. Further, the Hon'ble Punjab & Haryana High Court in LPA No. 1745/2012 has decided that encashment of unutilized EL would only flow from the instructions upon the policy of the government (in the present case CCS (Leave) Rules) and thus the applicant is not entitled for further encashment against the law.

5. Heard both the counsel and perused the documents and other relevant materials submitted.

6. The applicant worked in BARC as Tradesman B. BARC Mumbai is a non-industrial unit. Thereafter, he sought transfer to NFC, Hyderabad which is an industrial unit. The applicant did give an undertaking that he shall be governed by industrial service conditions. After joining NFC, he was promoted as Foreman A, which post is governed by CCS (Leave) Rules, 1972. Rule 39 of the said Rules provides for leave encashment. Had the applicant not been promoted as Foreman A, then the provisions of the industrial service conditions would have been applied to the applicant. Now, since he is promoted to Foreman A, which is a supervisory category coming under the ambit of the CCS (Leave) Rules, 1972 the provision of leave encashment at the time of superannuation has to be invoked. Learned counsel for the respondents made a relevant observation during the course of hearing, which need to be answered. He has pointed out that under CCS (Leave) Rules, 1972 the employees who join industrial unit shall be allowed to encash leave due at the time of superannuation provided they return to the same post or service. The point which the learned counsel for the respondents was driving home was that the applicant did not return to BARC Mumbai and therefore, he is not eligible. It needs to be mentioned at this juncture that the Rule says that he may return to the post or service. In the present case, the applicant has returned to the post of Foreman A on promotion. This post is governed by CCS (Leave) Rules and therefore, Rule 6 is fully complied with. The judgments cited by the respondents in regard to the Hon'ble Chandigarh Bench of this Tribunal does not apply since in the said case, the applicant has availed full 300 days of earned leave and that he was again seeking encashment in the new establishment. Obviously, this cannot be entertained and we agree with the findings of the Chandigarh Bench. Coming to the observations of the Hon'ble Punjab & Haryana High Court, which observed

that Government policy has to be followed. The Government policy in regard to the post of Foreman A is that the CCS (leave) Rules shall apply to the said post. Accordingly, the applicant is entitled for leave encashment as per Rule 39 of CCS (Leave) Rules. However, the applicant has sought encashment of 234 days of Earned Leave at his credit in NFC. This is incorrect. The applicant has already availed 184 days of EL at BARC Mumbai. The applicant will be eligible for encashment of only the balance of 116 days of EL, provided the applicant refunds the amount received at BARC Mumbai towards encashment of 152 days HPL to the tune of Rs.7370/-. Therefore, the applicant should credit a sum of Rs.7370/- at NFC, Hyderabad. After doing so, the respondents, after due verification as per CCS (Leave) Rules, need to consider allowing encashment of balance 116 days of EL at the time of his superannuation.

7. Based on the aforesaid, the respondents are directed to consider as under:
 - (i) To issue notice to the applicant to remit the sum of Rs.7370/- towards encashment of HPL;
 - (ii) After remittance of the said amount by the applicant, respondents to verify the EL account and allow encashment of balance EL available at the time of superannuation;
 - (iii) Time permitted to the respondents to implement the directions at (i) & (ii) supra is (3) months from the date of receipt of amount of Rs.7370/- from the applicant;
 - (iv) The OA is accordingly allowed, with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 31st day of January, 2019

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