

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1222 of 2018

This the 8th day of August 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Dr. Madhu Dalela, aged 60 years,
D/o Late Shri R. N Dalela,
11 UF, Tansen Marg, Mandi House,
New Delhi-110002,
(Retired as Deputy Director, S&DD, New Delhi)

....Applicant

(By Advocate : Shri Manish Dua)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhawan,
New Delhi-110001

2. Director,
Song & Drama Division,
Ministry of Information & Broadcasting,
9th Floor, Soochna Bhawan
CGO Complex, Lodhi Road,
New Delhi-110003

.....Respondents

(By Advocate : Shri D.S. Mehandru)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following
reliefs:-

- i) To summon the service book and leave account which could only be the basis to work out leave at credit/balance on the date of superannuation retirement of applicant for issue of sanction for payment of leave encashment.

- ii) To set aside the impugned letter dated 01.03.2018 (Annexure A-1 supra)
- iii) To direct the respondents to make payment of 300 days of EL/HPL due to the applicant on the date of superannuation retirement.
- iv) To grant costs of this OA to the applicant herein, and
- v) To pass such other order or orders as may be deemed fit and proper in the interests of justice.

2. Brief facts of the case are that the applicant was employed in Song & Drama Division (hereinafter referred to as the “S&DD”) now a part of Bureau of Outreach and Communication of Ministry of Information & Broadcasting, Government of India and retired as Deputy Director on 30.06.2017 from S& DD.

2.1 The applicant is aggrieved by the impugned order dated 1.3.2018, the contents of the same reads as under:-

“Kindly refer to your letter dated 15/2/18 addressed to the Director, Song and Drama Division.

2. In para 2 you’ve desired that the details of calculation regarding Earned Leave and Half pay leave. The following is the position as per available records:

a) Bio-metric attendance records for the period July, 2015 to May, 2017 shows that you did not mark attendance on the bio-metric system from July, 2015 to May, 2016 and July, 2016 to Dec, 2016. In the remaining months beginning June, 2016 and from January, 2017 to May, 2017 you had marked your attendance on the bio metric system only on 8 or 9 days in a month that too your duration in office as per your opening and closing time is very short. Therefore, even

during the days when you marked your attendance because of it being less than even 4 hours in a day your attendance cannot be counted.

b) As per record during the period under reference the total number of working days excluding gazette holidays and Saturdays and Sundays comes to 493 days. During this period you had availed Medical leave on 7/2/17 to 17/2/17 (11 days) 22/3/17 to 10/4/17 (20 days) and 15/5/2017 to 2/6/2017 (19 days) totaling to 50 days.

c) As per leave records obtained from PAO, IRLA you've total of 126 EL and 143 HPL at your credit as on 30.06.2011. Thereafter, they do not have any leave sanction for the officer for which they have asked for an update. On scrutiny of your personal file it is seen that there is no leave application of the officer except for the medical leaves as detailed in **para b** above. As there is no leave application, it is presumed that the officer was not on leave. Thereafter, following leave will have to be credited to your leave record:

Sl. NO.	Period	Earned Leave	HPL
1.	1/7/2011 – 31/12/2011 (6 months)	15	10
2.	1/1/2012 – 31/12/2012 (12 months)	30	20
3.	1/1/2013 – 30/06/2013 (6 months)	15	10
4.	1/7/2013 – 30/09/2013 (3 months)	8	5

(You were under suspension w.e.f. 13/10/2013 to 2/5/2015. The suspension was revoked w.e.f. 22/5/2015 vide order C-13011/6/2013-Vig. (Vol.II) dated 9/6/2015. Subsequently, the officer was imposed major penalty vide order No. -13011/6/2013-Vig. (Vol.II) dated 8/8/2016. The period of suspension has not been treated as DUTY. Therefore, no increment of pay or leave will accrue to her during the period of suspension of the officer).

d) Thus totaling the above leave she gets credited 131 EL and 87 HPL to her leave account of 30/6/2011. Her leave as on 30/6/17 will be 257 EL and 100 HPL (out of 230 HPL the officer has availed medical leave of 50 days as detailed in sub para "b" at pre page, thereafter, twice the medical leave that is 100 days will be debited from HPL leaving 130 HPL at your credit).

e) As per the tabulated summary of her attendance from July, 2015 to May, 2017 obtained from biometric record her attendance is not full even for a single day. The period from 1/7/15 to 30/5/17 has 493 working days (excluding Saturday's and Sundays and the gazette holidays). During this period she marked attendance only on 47 days and 446 days were marked on biometric system. Even the marked days have an in time of less than 5 hours per day. This entire period of 493 days is to be treated as non-attendance.”

3. Pursuant to notice issued to the respondents, they have filed their counter reply in which they have stated that as per order of Government of India, bio-metric attendance system was introduced in all Government Ministries/Departments in 2014/15 and it was made mandatory to mark the attendance through bio-metric system. However, the applicant did not follow the required bio-metric system of attendance intentionally just to avoid her presence in the office and to attend the allotted work honestly. It was a clear case of violation of Government of India orders thus inviting disciplinary action. However, S&DD took a lenient view in her case for not marking attendance on bio-metric and instead of initiating disciplinary proceedings against her, the calculation of leave were made on the basis of bio-metric attendance marked by the applicant from the date of introduction of bio-metric system of attendance in S&DD. Accordingly, the encashment of leave due was done and the payment was made to the applicant.

3.1 They further stated that the S&DD in response to her applications of 26.10.2017 and 15.02.2018 made to S&DD had clarified to the applicant the total calculation of leave due vide letters dated 26.10.2017 and 01.03.2018 (Annexure- 1 & Annexure-4 referred by the applicant) as per record of attendance marked by her through bio-metric system. Marking of attendance by an official/officer in the department is mandatory for showing his/her presence in the office and attending the work for which the official/officer is paid.

3.2 Further as per record of attendance of the applicant in S&DD, her leave have been calculated and encashment of the same has been done at the time of her retirement from S7DD. Nothing illegal or biased has been done by S&DD against the applicant and the applicant has no cause of action to file the present case. The applicant, retired as Deputy Director from S&DD, now a part of Bureau of Outreach and Communication, Ministry of Information & Broadcasting, Government of India on 30.06.2017, has no cause to file the present OA. The calculation of leave of the applicant due has been done as per rules and records of her attendance marked in the bio-metric system in S&DD and accordingly the payment of Rs.2,21,802/- has been made to the applicant as encashment of leave for total leave due vide order No. 19011/1/2012-S7DD/Admn. I/Pen dated 27.10.2017 (Annexure-4 as referred by Applicant).

3.3 It is further stated that bio-metric system of attendance in all government departments was introduced as per order of Government of India in 2015 and it was mandatory for all the employees to mark their attendance in the bio-metric system. However, the applicant did not follow the government order and instead followed the different path to avoid her presence in the office and attend the allotted work. The letter No. 23017/1/2017-Admn.-I dated 23.06.2017 (referred by applicant as Annexure-2) was issued to the applicant for not marking her attendance in the bio-metric system, which has been mandatory for all employees. The calculation of attendance of the applicant has been communicated to the applicant vide this above referred letter. S&DD took a lenient view in her case and instead of initiating disciplinary proceedings against her, the encashment of leave due has been done to the applicant at the time of retirement.

3.4 The respondents have denied that the respondent no 2 without considering and disposing the applicant's letter dated 26.10.2017 issued letter dated 20.12.2017. It is submitted that, the S&DD disposed off her applications vide letters dated 27.10.2017 & 01.03.2018. The leave due has been calculated as per record of leave of the applicant. Accordingly, the payment of leave as per her entitlement has been done to the applicant as per rules. They further specifically denied that impugned letter dated 01.03.2018 has been issued

without considering all the relevant facts and circumstances. They further stated that the calculation of leave of the applicant as per record of her attendance in the bio-metric system has been done and the same has been communicated to her vide letter dated 01.03.2018 disposing of her letter dated 15.02.2018.

4. During the course of hearing, counsel for the applicant submitted that the impugned order is wrong and illegal as they have not taken into account the leave due and availed by the applicant during her service career and further submitted that action taken by the respondents is not based on the basis of upto date entries in the service book and leave account of applicant for the entire service period from 7.6.1982 to 30.6.2017. Counsel for the applicant further submitted that balance of leave calculated as mentioned in the impugned order for making the payment of leave encashment is without issuing leave sanction Memoranda and making entries in the service book and as such the impugned order is not bonafide and sustainable.

4.1 Counsel for the applicant also submitted that the period spent on duty by the applicant cannot be treated as leave of the kind due on the plea that there is no biometric attendance. There was no proper implementation and monitoring of biometric attendance in the office of the respondents and therefore, applicant cannot be made to

suffer if there was no proper implementation and monitoring of biometric attendance since 2015 to 2017 by the respondent no.2.

4.2 Counsel for the applicant placed reliance on the decision of the Hon'ble High Court of Punjab and Haryana in CWP NO.13709/2014 (O/M) dated 5.10.2016 in the case of ***Shri Jaipal Phogal and another Vs. State of Haryana and Others*** in support of the claim of the applicant.

5. On the other hand, counsel for the respondents submitted that the calculation of leave of the applicant has been done as per her attendance marked in the bio-metric system. The leave have been calculated for encashment as per leave due and leave availed by the applicant and accordingly the payment has been made to her. As per rule of the Government, the Earned Leave is not carried forward when it reached to 300 mark. Beyond 300 leave, these are not carried forward in the next calendar year. Encashment of Earned Leave is done for a maximum of 300 days leave only. No biased action against the applicant has been taken by S&DD.

5.1 Counsel further submitted that the entries of leave in the service book of the applicant has been done as per her leave due and taken during her service in S&DD. Further the leave calculated and communicated to the applicant vide letter of 01.03.2018 by S&DD is as per record of leave

available in the office. Nothing illegal and biased action has been taken by S&DD against the applicant.

5.2 Counsel for the respondents further submitted that there was proper implementation and monitoring of bio-metric attendance in the office of the respondent. All government employees are bound to mark their attendance in the office through the implemented attendance marking system. The government in the year 2015 introduced the bio-metric system of attendance making mandatory for all employees of the government to mark their attendance in bio-metric system only hereby proving their presence in the office for attending the allotted work for which they are appointed and paid for. She violated the government order and rule as well. S&DD instead of initiating disciplinary proceedings against her took a lenient view for not marking her attendance in the bio-metric system.

5.3 Counsel further submitted that letter of 20.06.2017 is the sanction order for payment of encashment of leave as calculated on the basis of record of leave in S&DD. However, the letter of 01.03.2018 is communicating the calculation of total leave due to the applicant and leave availed by her during the mentioned period on the basis of record in S&DD. The entire leave (Casual leave, Restricted leave, Earned leave and HPL including holidays (Gazetted and Restricted) have been taken into account while calculating the leave of the

applicant and accordingly encashment of leave has been done by S&DD.

5.4 Counsel further emphasized that proper monitoring of bio-metric attendance of all employees of S&DD, including the applicant, has been done and on the basis of the record of bio-metric attendance of applicant, leave have been calculated for encashment as per rules. Counsel lastly contended that none of the actions of S&DD with respect to the applicant are discriminatory or unjust and all the actions taken by the respondents are as per rules of the government. There is no violation of rule, article or law in the case of applicant.

6. Having heard learned counsel for the parties and after having careful perused the records of the case, it is observed that this Tribunal does not find any illegality as the applicant has not refuted the fact that he has not marked her attendance on biometric attendance machine and as such all the actions taken by respondents with regard to calculation of leave and encashment of leave in the case of the applicant are as per rule and the same is demonstrated to be based on the record of bio-metric attendance system including leave availed by the applicant. Further from the perusal of the judgment of Hon'ble High Court of Punjab & Haryana in the case of **Shri Jaipal Phogal** (supra), it is evidently clear that the same is not applicable to the facts of the case of the present case as in that case the issue is entirely different

whereas in this case there is no denial of the fact that applicant has not marked her attendance in the biometric attendance machine and due to this reason, the respondents have passed the impugned orders. Rather the case of the applicant was of a case where there could have been initiated disciplinary proceedings against her but the respondents for reasons best known to them, were lenient in her case, and only deducted the period of her absence from her leave account.

7. In the result, and for the foregoing reasons, this Court finds that the present OA deserves to be dismissed as the grounds taken by the applicants in the OA are bereft of merit to grant the relief as claimed by the applicant in this OA. Hence, the present OA is dismissed. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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