

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR

ORIGINAL APPLICATION NO.746/2014.

Ashok Tanbaji Chaware,
Aged about 47 years,
Occ- Service,
R/o Mahesh Apartment, Plot No.360,
Shrinagar, Nagpur-15.

Applicant

-Versus-

1. State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
2. The Additional Director General of Police and
Director of Police Wireless, (M.S.),
Dr. Homi Bhabha Road, Chavan Nagar, Pune.
3. The Director General of Police (M.S.),
Shahid Bhagatsingh Marg, Mumbai-1.
4. The Assistant Commissioner of Police,
(Wireless), Nagpur City.

Respondents.

Shri D.S. Sawarkar, Advocate for the applicants.
Smt. M.A. Barabde, P.O. for the respondents.

CORAM: S.S. Hingne, Member (J)

Date:- 12th August, 2016.

Oral order

The applicant, a Police Constable has filed this O.A. to set aside the order dated 28.6.2014 by which the permission is refused to allow suffixing the holidays to his leave application dated 27.6.2014 (A.13, P.30).

2. Heard Shri D.S. Sawarkar, the learned counsel for the applicant and Mrs. M.A. Barabde, the learned P.O. for the respondents.

3. The applicant working as Police Head Constable (Wireless), has applied for casual leave of 27.6.2014 with a request to suffix the date 28.6.2014 i.e. the second Saturday (Govt. holiday) and 29.6.2014 i.e. Sunday (public holiday). His application came to be rejected by the Assistant Commissioner of Police (Wireless), Nagpur (R.4) with an endorsement which runs as under:

“पोलीस खात्यात शासकीय सुटटी देण्यात येत नाही. फक्त किरकोळ रजा व सुटटी देण्यात येते“, which is impugned in this O.A.

4. The learned counsel for the applicant submitted that several other officers are enjoying such facility. But the applicant is denied the same. There are no reasons to reject the request of the applicant. The learned counsel for the applicant relied on the G.Rs dated 20.3.1981 (A.4, P.20), 24.3.1982 (A.5, P.21), 21.12.1998 (A.3, P.18) and a G.R. of Home Department dated 23.3.2000 (A.2, P.17).

5. The respondents filed reply (P.33) and submitted that the G.Rs are not applicable to the Police Department. The services of the police personnel fall under the emergency service. They are on duty for 24 hours. In the emergency, the police personnel can be

called any time on duty. Even after duty hours, they have to work on gazette holidays and, therefore, the applicant is not entitled for prefixing and suffixing any Sunday or public holidays to his casual leave. Not only that, vide G.R. dated 4.9.1979 (A.1, P.37), additional 15 days earned leave with a facility to surrender it and encash the same is given to the police personnel in the State of Maharashtra. The police personnel get 12 days' casual leave as per G.R. dated 20.3.2000. Therefore, they cannot avail the facility of prefixing and suffixing any Sunday or public holidays to the casual leave. There is no practice to allow such prefixing and suffixing in the department. The applicant cannot claim parity with the employees in other departments of the State of Maharashtra.

6. The learned P.O. at the outset urged that the applicant has also filed the O.A. contending that the present claim is barred by principles of *res judicata* and estoppel, since earlier the O.A. No. 568/2014 is rejected on 22.8.2014 (P.57.). It reveals from that order that the applicant had not produced any documents, directions or circulars and, therefore, this Tribunal observed that for want of production of such documents and as reliance was placed on the G.Rs issued more than 30 years back, it was rejected in limini. Thus, the O.A. was not decided on merit. It was rejected in limini, since no supporting documents were filed. Thus, there was no

adjudication of the matter on merit so as to debar the applicant to file the O.A. on the principles of res judicata or estoppel. The learned P.O. relied on the observation made in O.A. No. 159/2009 decided by this Tribunal on 9.3.2012 wherein the applicant's claim was for interest is not maintainable, since he had earlier filed O.A. No. 629/2003 and had not claimed interest. In the said case, the applicant has waived the claim, though aware. However, in the case in hand, the O.A. is decided because he has not filed relevant and material documents on record. There is no waiver on his part. On this ground, the O.A. cannot be thrown away.

7. The G.R. dated 20.3.1981 (P.21) is issued by the Finance Department which relates to grant of casual leave. Para 2 runs as under:

“2. The question of removing these restrictions was under consideration of Government for sometime past. Government is pleased to direct the Government servants may be permitted to prefix and / or suffix any number of Sundays and / or public holidays to casual leave. They may also be permitted to interpose a holiday or a series of holidays between the periods of casual leave. However, he existing condition that the total period of casual leave and holidays enjoyed in continuation at one time should not

exceed 7 days, save only in exceptional circumstances when it may be extended upto 10 days, will continue as before.”

8. This G.R. was issued for a period of one year. But it is continued on permanent basis vide G.R. dated 24.3.1981 (A 5, P.21). The G.R. of 1998 lays down the facility of the casual leave for eight days instead of 12 days. The G.R. dated 23.3.2000 (A 2, P.17) reduces the facility of causal leave to 12 days. According to the respondents, there is no practice to avail prefixing and suffixing and interposing the holidays in the leave period. However, the above referred G.Rs of 20.3.1981 and 24.3.1982 are applicable to all the Government servants. It is not the case that the police personnel are not governed by the said G.Rs or they are excluded. On the contrary the Home Department under whom the police personnel work, has also issued the G.R. dated 23.3.2000 (P.23). The material portion therein regarding leave period runs as under:

नैमित्तिक रजेवरील निर्बंध

- (1) एकावेळी सात दिवसापेक्षा जास्त दिवस नैमित्तिक रजा घेता येणार नाही अत्यंत अपवादात्मक परिस्थितीत ही मुदत ८ दिवसांपर्यंत वाढविता येईल .
- (2) नैमित्तिक रजा आणि सुट्टी जोडून घेतली जाईल तेव्हा एका वेळी हा कालावधी एकूण ७ दिवसापेक्षा जास्त वाढता कामा नये . फक्त अपवादात्मक परिस्थितीमध्ये नैमित्तिक रजा देय असल्यास ८ दिवसांपर्यंत वाढविता येईल .

- (3) नैमित्तिक रजेच्या मागे आणि / किंवा पुढे कितीही रवीवार आणि / किंवा सार्वजनिक सुटटया जोडून तसेच नैमित्तिक रजांच्या मध्ये येणारया एक किंवा अधिक सुटटया नैमित्तिक रजांना जोडून घेता येतील . तथापि एका वेळेस नैमित्तिक रजा व सुटटया मिळुन होणारा एकुण कालावधी ७ दिवसांहून अधिक होता कामा नये . अपवादात्मक परिस्थितीच केवळ ही मर्यादा १० दिवसांपर्यंत वाढवुन देता येइल .”

9. Thus, this G.R. does not debar the police personnel to avail such benefit.

10. As against this, the learned P.O. relied on the provisions in the Bombay Police Manual-I (P.61). Clause 360 which runs as under:

“**360. Casual Leave.**—(1) Casual leave is extended to meet special circumstances for which provisions cannot be made by exact rules. Ordinarily not more than seven days causal leave should be enjoyed at one time, to be extended by three days in most exceptional circumstances and the amount of Casual Leave enjoyed by a Government servant in one calendar year should not exceed fifteen days.

(2) Save in avoidable circumstances a Government servant should apply for casual leave, at least one week in advance.

(3) (a) Not more than two holidays can be enjoyed in conjunction with any spell of casual leave whether by prefixing or suffixing or by both. The total period of casual leave and holidays in continuation enjoyed at

one time should not, however, exceed 7 days, save in exceptional circumstances when it may be extended upto 10 days.

(b) Sundays and holidays interposed between two periods of casual leave should be treated as part of casual leave.

(c) District Officers whose presence in Head Quarters is generally required, are not entitled to prefix and suffix more than one day's holiday i.e. Sunday or public holiday to their casual leave.

(4) During casual leave, a Government servant is on duty but casual leave cannot be prefixed or suffixed to any kind of leave or to joining time. A Government servant approaching the age of superannuation, or who intends to resign very shortly can take casual leave just prior to such date.

(5) Casual leave cannot be accumulated and therefore the balance of unutilized casual leave in a previous year cannot be carried forward to the next year.”

11. From sub-clause (3) (a) of Clause 360, the bar is that more than two holidays cannot be enjoyed in conjunction with any spell of casual leave either by prefix or suffix. The applicant has claimed two days only. Therefore, rejection of his claim cannot be said to be valid.

12. Earlier one O.A. No. 42/1992 was filed which is decided by this Tribunal on 2.4.1992 in which Police Wireless Operator has applied for casual leave for four days with permission to suffix Sunday falling and prefix second Saturday with permission to interpose a weekly holiday falling on one day. That request was turned down and hence he has filed the O.A. The O.A. was rejected on 2.4.2013. But in review, vide order dated 19.7.1994 the O.A. was allowed irrespective of the effect of circular issued on 15.3.1984 by Director General of Police (M.S.), Mumbai (P. 62 to 67).

13. The respondents have not filed any document to support the contention that there is no practice to extend such benefit of prefixing and suffixing and interposing. It is submitted that the police personnel are on duty for 24 hours, as their services fall under the emergency category. It is also contended that the police personnel get additional benefit as per the G.R. dated 4.9.1979 (R.1, P.53). This G.R. is issued by the Home Department. It gives additional benefit to the police constabulary and they are allowed additional 15 days earned leave per annum to be earned at the rate of one day for each spell of duty period of 24 days with a facility to surrender and encash it. The G.R. also further says that special duty allowances are admissible to the police constabulary. This additional benefit reveals that this special facility is given, considering their along

and arduous hours of duty not only on normal working days but also on gazette holidays, which are notified as public holidays. Thus, it is manifest that these additional benefits are given for that type of work. That does not mean that they cannot avail regular benefit of enjoying the earned leave and other benefits of prefixing and suffixing. The general G.Rs issued by G.A.D. are applicable to all Government servants and the same are reiterated in the provisions of Police Manual referred to above.

14. In that view of the matter, rejection of applicant's application dated 26.6.2014 is not proper and correct. Consequently the order dated 26.6.2014 rejecting applicant's application is quashed. No order as to costs.

(S.S.Hingne)
Member (J)

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