IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6311 OF 2023

Smt. Jyoti Dnyanoba Dhayarar … Petitioner

V/s.

The Head Climate Research
& Services & Anr. … Respondents

Mr. D. S. Dhayarkar for the Petitioner.
Mr. R. R. Shetty a/w Vivit Jain for the Respondents.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

DATED : 26th FEBRUARY, 2024

P.C. :

1. The present Petition impugns an order passed by the Central Administrative Tribunal (CAT), Mumbai Bench dated 3rd February, 2023, dismissing the Original Application (being Original Application No.303 of 2021) filed by the Petitioner.

2. The Petitioner had in the Original Application sought the following prayers, viz.

"(a) *The order No.GE-01691/JDD/Pen dated 15.10.2019 passed by K.N. Mohan, Scientist 'F' office of the Head Climate Research & Service, India Meteorological Department, Shivajinagar, Pune-411005 may please be quashed and set aside.*

(b) *The respondent No.1 may please be directed to grant encashment of EL 300 days as per credit balance of the applicant as on 31.7.2019 and difference of encashment of earned leave of Rs.1,05,446./- to be paid to the applicant.*

(c) *The respondent No. 1 may please be directed to pay the interest at the rate of 9 % on the encashment of earned leave amount of Rs.1,05,446/- from 15.10.2019 to till the date of payment.*

(d) *The cost of this present application be awarded to the Applicant.*

(e) *The applicant may please be permitted to amend the application.*

(f) *Any other just and equitable order may kindly be passed in the interest of justice."*

3. The short point involved in this Writ Petition is whether the Petitioner is entitled to claim leave encashment for a period of 300 days as per the credit balance of the Petitioner appearing in the Petitioners Leave Account as on 31st July 2019 i.e. the date on which Petitioner attained superannuation as also the difference of encashment of earned leave of Rs. 1,05,446/- despite the fact that such

entry was a mistake which was discovered by Respondent No. 1 only when the Petitioner had attained superannuation, and was rectified by Respondent No. 1 vide office letter dated 15th October 2019 accordingly.

4. Mr. Dhayarar, learned counsel appearing on behalf of the Petitioner, submitted that the error in the leave account was an error committed by Respondent No.1 which had remained unrectified for over 27 years. He submitted that such error could not be unilaterally corrected by Respondent No. 1 and that too after a period of 27 years and without following the due procedure for rectification of such error. He submitted an error in the Petitioner’s Leave Account could have only been rectified by Respondent No.1 by an order of the Competent Authority which admittedly, Respondent No. 1 did not have. He then pointed out that Respondent No. 1 having not followed due procedure and carried out the rectification of the Petitioner’s leave account in the manner so done by Respondent No. 1, was clearly an administrative lapse on the part of Respondent No. 1. Basis this, he submitted that the Petitioner was entitled to be paid the

amounts as reflecting in the Petitioner's leave account as on 31st July, 2019 i.e. the date of the Petitioner's superannuation.

5. Mr. Dhayarar additionally submitted that Respondent No. 1 had not conducted an internal audit as per provisions in Civil Account Manual issued by Department of Expenditure nor was the Petitioner ever informed as to how the balance 225 earned leave credits was worked out and/or computed. Mr. Dhayarar placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***H. L. Trehan and Ors. Vs. Union of India and Ors.***[1] to submit that such revision could not have been done without affording the Petitioner an opportunity of hearing. Basis the above, Mr. Dhayarar submitted that the Petitioner was entitled to the EL of 300 days as appearing in the Leave Account of the Petitioner as maintained by Respondent No. 1 as on the date the Petitioner attained superannuation.

6. *Per contra*, Mr. Shetty, learned counsel appearing on behalf of Respondent No.1 submitted that what the

1 AIR 1989 SC 568

Petitioner was attempting to do was to take advantage of a mistake and nothing more. He pointed the Petitioner did not nor could have disputed the fact that the Petitioner had infact availed of earned leave for 83 days from 3rd February 1992 to 25th April 1992 and that on 30th June, 1992, the Petitioner had signed against entry in the Service Book of the Petitioner duly acknowledging this fact. Mr. Shetty then submitted that the entries of the leave balance and earned leave in the service book were shown to the Petitioner every year for verification and that the Petitioner had infact duly signed the same. He submitted that in addition to this the Petitioner had verified the correctness of each entry of the service book on 3rd April, 2012, including the leave record.

7. Basis the above he submitted that the Petitioner having expressly acknowledged the fact that the Petitioner had availed of EL for 83 days in the year 1992, was well aware that the period of 300 days as reflected in Leave Account on the date the Petitioner attained superannuation was clearly an error on the part of Respondent No. 1. He submitted that it was therefore wholly inequitable for the

Petitioner to have on the one hand acknowledge that the Petitioner had availed of the 83 days of EL and yet on the other, to make a claim on the basis that the Petitioner had not.

8. Mr. Shetty then invited our attention to the Impugned Order and pointed out that the CAT, Mumbai had after noting the conduct of the Petitioner made strong observations against the Petitioner but had refrained from imposing cost upon the Petitioner. He thus submitted that there was absolutely no merit in the Petition and the same was required to be dismissed with costs.

9. We have heard learned counsel, perused the record and after doing so, find the conduct of the Petitioner as regrettable as the Petitioner’s claim is untenable. What the Petitioner seeks to make capital of, is an admittedly a mistake and/or an inadvertent error on the part of Respondent No. 1 and nothing more. It is not even the Petitioner’s case that on account of such mistake and/or error the Petitioner has been deprived of some benefit to

which the Petitioner would have otherwise been entitled to. The record bears out that the Petitioner was aware of the mistake and equally did not take any steps to have the record corrected. It is apposite at this stage to note that Hon'ble Supreme Court in judgement of ***Ajai Pal Singh and Ors Vs. State of Uttar Pradesh Anr.***[2] has held that nobody can be permitted to take benefit of a mistake made either by Court or any party which occurred inadvertently and without noticing peculiar facts.

10. Thus, we find the Petitioner's claim to be as unfortunate as it is untenable. It is indeed regrettable that a claim is made purely on the ground of what is admittedly a mistake, the result of which has not occasioned any loss whatsoever to the Petitioner. We are thus in complete agreement with the findings recorded by the CAT, Mumbai in the Impugned Order which are as follows, viz.

> *"4(i). After having considered the rival submissions of the parties, it is clear that the office of Respondent No.1 as well as applicant both were responsible for making mistake in the balance of earned leave of the applicant in*

2 (2022) 15 SCC 442

> *the Service Book and leave account and for its continuation till the record was scrutinized before retirement of the applicant. However, because of this error on the part of the Respondent No.1 when the applicant herself was aware of the mistake, the applicant cannot claim any benefit because of that mistake in balance of her earned leave. Instead of appreciating the correction of her leave record during scrutiny before her retirement by the office of Respondent No.1, the applicant has un-necesarily indulged in carrying out a totally frivolous and wasteful litigation through this O.A. In the O.A., the contentions of the applicant have no merit and those of the respondents hare justified. Hence the O.A. deserves to be dismissed with cost. However, I am restraining from imposing cost considering the fact that the applicant is a lady, who retired on 31.07.2019."*

11. Considering the reasoning in the Impugned Order mentioned hereinabove and the judgement in the case of ***Ajai Pal Singh and Ors.*** (supra) we find no infirmity in the Impugned Order.

12. The Writ Petition is rejected and disposed of being thoroughly misconceived.

(ARIF S. DOCTOR, J.) (CHIEF JUSTICE)