

A

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 515/2018

Air Cmde Anirben Bhatrtacharyya (Retd) Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Varun Chugh, Advocate with
Mr. Rahul Kumar, Advocate
: Mr. Pradeep Sharma, DAV in-charge Legal
Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

Dated: 24th September, 2025

ORDER

By way of this OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has impugned the order dated 25th August, 2017 of AF Central Accounts Office, Subroto Park, New Delhi, denying him and restricting encashment of annual leave to 215 days against permissible entitlement of 300 days. The prayer made in para 8 reads as under:

- “(a) To declare the action of the respondents as unjust, arbitrary and illegal.*
- “(b) To direct the respondents to grant encashment of full 300 days of accumulated annual leave as per rules.*
- “(c) To grant interest of 12% on the delayed payment of encashment of accumulated annual leave from date of*

accrual that is 31.08.2017.

(d) To award exemplary costs upon the respondents in the facts and circumstances of the record; and

(e) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. Briefly stated facts are that the applicant was commissioned in the Indian Air Force on 22nd August, 1983 and superannuated on 31st August, 2017. On 30th September, 1996 he was seconded to the Government of Botswana (borrowing government) vide an agreement entered into between the Government of India and the borrowing government with the sanction of the Hon'ble President of India accorded on 24th September, 1996. As per the terms and conditions of offer of appointment, the applicant was put under the administrative control of the borrowing government during his period of secondment and his salary and other allowances were to be paid by it after deduction of applicable income tax. As per the terms and conditions of appointment, the applicant was entitled to five days of normal leave for each month of service and the leave thus earned, if not taken, was allowed to be accumulated upto a maximum of 90 days and paid for at the end of the tour. Alternatively, an option was also available with

the individual to take the leave at the end of each tour. The applicant had to his credit 85 days of such leave at the time of termination of his period of deputation and before coming back to India all his accounts were settled by the borrowing government including payment of accumulated normal leave of 85 days. It is further submitted that the leave accrued and encashed during secondment period was not governed by Indian Service Rules but by terms and conditions of deputation contract with the borrowing government. It is inter alia contended that at the time of his superannuation in 2017 when the applicant checked the website of the Personnel Branch of the Air Force, a total of 785 days of accumulated annual leave was shown to his credit out of which, as per leave rules, he was entitled to leave encashment of 300 days (**Annexure A-2**). However, vide Appendix F to DACL 14/2001, giving break down of total leave earned, it was conveyed to the applicant that he was entitled to leave encashment of only 215 days of accumulated annual leave. (**Annexure A-3**).

3. It is the contention of learned counsel for the applicant that in response to the applicant's representation dated 14th August, 2017 (**Annexure A-4**), against denial of

payment of leave encashment for a maximum period of 300 days as provided under the Rules, the respondents vide their letter dated 25th August, 2017 conveyed to him that once the payment of accumulated leave (normal leave of 85 days) has been made by the borrowing government, the same has to be accounted/deducted from the maximum period of 300 days. The learned counsel for the applicant further contends that the payment made by the borrowing government under a separate contract is legally distinct from leave encashment admissible under Government of India rules and the applicant's leave account maintained by the Air Force itself reflected 785 days and eligibility for 300 days encashment indicating recognition of full entitlement. Distressed of this decision, for the redressal of his grievance, the applicant has come before this Tribunal.

4. The respondents have filed the counter affidavit and vide **Annexure R-1** have placed on record the terms and conditions and entitlement of the applicant while on deputation to the borrowing government. As regards the leave entitlement, as per the terms and conditions of secondment, it is submitted that the applicant is entitled to five days of normal leave for each month of service with maximum accumulation of 90 days paid at the

end of the tour or in the alternative could be taken at the end of every tour. It is further stated that the period of secondment to borrowing government for all purposes will be counted as Indian Air Force service and the individual shall be entitled to all pensionary benefits as admissible under the Air Force Rules. It is further stated that as per the terms and condition, the leave encashment would be calculated as per Air Force Service Rules with a maximum cap of 300 days of earned leave or accumulated annual leave. In terms of the letter Air HQ/21957/124/7/PO-1(Dep), **(Annexure R-2)** it is submitted that the accumulated leave paid by the foreign government is to be accounted against the maximum permissible leave encashment of 300 days. It is further submitted that merely changing the nomenclature as 'Normal Leave' in place of 'Annual Leave' and splitting the yearly entitlement into monthly entitlement does not necessarily mean or authorize any additional entitlement as claimed by the applicant. It is further contended that the ceiling of 300 days must be strictly enforced to maintain parity and uniformity among all officers. Allowing the applicant to claim 300 days in addition to 85 days already encashed would result in 385 days of leave encashment which

is expressly impermissible. Therefore, leave encashment received from a foreign government must be accounted for within the maximum permissible limit fixed by the Government of India, i.e. 300 days.

5. We have heard learned counsel for the parties and perused the records made available to us.

6. To decide the issue before us Para 12 of the Terms and Conditions of Service for loan of Indian Air Force Officers to the Government of Botswana which deals with the subject 'Leave', is of relevance. This para reads as under:

"Leave

12. The Government of Botswana will grant leave to the individual on Full Pay and allowances on the following basis:-

(a) Normal Leave : Five days for each month of service during secondment, leave thus earned and not taken may be accumulated upto a maximum of 90 days and paid for at the end of the tour. Alternatively, the accumulated leave may be taken at the end of each tour.

(b) Sick Leave : A sick leave is to be certified by a medical officer and it is to be at the rate of one day for every 12 days of service on secondment, subject to a maximum of 30 days in a year. In the event of individual remaining ill beyond the period of leave granted to him, the Government of Botswana may, in consultation with the Government of India return him to India. In this case the individual shall be entitled to free transport back to India for himself and his family along with their baggage on such terms as are admissible on the termination of the period of secondment of individual.

(c) Casual leave : Up to 20 days in a calendar year. Balance of casual leave will not be carried over

to the next year.

(d) Emergency leave : In the event of a domestic emergency defined below, an individual shall be entitled to leave and air passage of the cheapest class available. The cost of such passage to India and back shall be paid by the Government of Botswana and period of leave being debited to the 'normal leave' (due to the officer concerned vide Clause (a) above).

(i) Serious illness of an individual's wife, son or son-in-law, daughter or daughter-in-law, his/his wife's parents or brother or sister.

(ii) The death of any of the relations mentioned in clause (1) above provided that the individual or a member of his family arrived in India within one month of such death."

7. It is not disputed that during the period of deputation from 1996 to 1999, the applicant was placed under the administrative control of the borrowing government and from Para 12 of the terms and conditions of deputation, quoted hereinabove, it is seen the kind of leave to which the applicant, during his period of deputation, was entitled to are (a) Normal leave of five days for each month of service to a maximum of 90 days for the whole tour; (b) Sick leave of one day for every 12 days of service on secondment, subject to a maximum of 30 days in a year; (c) 20 days of casual leave for every calendar year with 'no carry forward' condition and (d) emergency leave. We here are concerned only with the 'Normal Leave', which as per

the terms and condition of secondment could be accumulated to a maximum of 90 days. There is no mention in Para 12 of the terms and conditions that if normal leave not availed or paid at the end of the tour, it could be credited to any other leave account, i.e., 'Annual Leave' to which he is entitled being an Indian Air Force Officer and governed by Indian Service Rules. It is specifically mentioned that the leave (Normal leave) either has to be availed at the end of each tour/completion of the period of secondment or in the alternate, if not availed, there is an option for its encashment at the end of the tour/completion of period of secondment to a maximum of 90 days.

8. The argument of learned counsel for the respondents that 'Normal Leave' is only a change of nomenclature and splitting the yearly entitlement into monthly entitlement cannot be accepted as a reason for giving two encashments without reducing the 85 days already encashed while on secondment to Botswana. The 'Annual Leave' as the nomenclature itself suggests is earned yearly and is as per the Indian Service Rules whereas Normal Leave is earned monthly is as per the terms and conditions of Botswana Government and is a kind of leave which became available to the applicant only because the officer

was on secondment to the borrowing government otherwise he would have continued to get the Annual Leave entitled to him as an Air Force Officer. If the applicant had not claimed encashment of Normal Leave at the end of the secondment, it would certainly have lapsed. It could not have been added to the Annual Leave account of the officer to claim at a later stage, i.e. at the time of retirement.

9. The Government of India, Ministry of Defence letter Air HQ/C 21957/124/7/PO/ (Dep)/13239/US/D(Air-III) dated 24th September, 1996 clearly states that during the period of deputation the applicant will be governed by the terms and conditions issued in this regard and shall be under the administrative control of the borrowing government, i.e., Government of Botswana. The terms and conditions very specifically spell out that five days of 'Normal Leave' earned by a individual for each month of service and accumulated to a maximum of 90 days can either be paid at the end of the tour, i.e., on completion of period of secondment or can be taken at the end of each tour. The applicant at the end of his tour had to his credit 85 accumulated days of Normal Leave which, in terms of Para 12 of the Terms and Condition, was claimed as leave

encashment by the officer.

10. The above facts clearly bring out that Annual leave given to the officer by the parent service is distinct from the Normal Leave granted by the borrowing Government and there is no reason to establish any connect between the two. Normal leave cannot be credited to Annual Leave account and thus has no impact on the leave encashment available to the officer as per the Indian Service Rules at the time of retirement. We, therefore, find no force in the argument of learned counsel for the respondents.

11. During oral submissions, it was also brought out that during the period of three years (1996-1999) when the applicant was on deputation, the annual leave which would have normally accumulated to the officer every year was not credited to his Annual Leave account. Even if it is presumed that the same was erroneously credited and needs to be deleted from the 785 days shown to his credit at the time of retirement, still the officer has more than 300 days of earned leave available to his credit for claiming Annual Leave encashment at the time of his superannuation and should be granted the same ignoring the fact that he has already been paid 85 days of accumulated

leave during the period of secondment. Moreover the expenditure on account of encashment of normal leave was paid by the borrowing government as were all other expenditure incurred on the officer during his secondment and were not debited to the Ministry of Defence (Government of India).

12. Hence the encashment of 85 days of leave paid by the borrowing government to the applicant during secondment cannot be adjusted against the statutory entitlement of 300 days of leave encashment under Government of India rules; thereby the action of the respondents in restricting the leave encashment claim of the applicant to 215 days in place of 300 days is illegal and the applicant is entitled to leave encashment of full 300 days of accumulation of annual leave. The impugned order dated 25th August, 2017 is thus quashed.

13. The OA is accordingly allowed and the respondents are directed to grant leave encashment of maximum period of 300 days as prescribed under the Rules subject to the fact that more than 300 days leave were available in the Annual Leave account of the officer at the time of retirement. Since the applicant has already been paid leave encashment for 215 days and hence shall now be paid for the remaining 85 days of leave

encashment within a period of three weeks hence. Failure will invite interest @ 8% per annum from the date of receipt of a copy of this order till payment.

Pronounced in open Court on this 24th day of September, 2025.

[JUSTICE NANDITA DUBEY]
MEMBER (J)

[RASIKA CHAUBE]
MEMBER (A)

/vks/