

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

O.A. No.1263/1995

(7)

NEW DELHI, THIS 23RD DAY OF SEPTEMBER, 1997.

SHRI HUKAM CHAND
S/o Shri Umrao Singh
Block No.D.702
Jahangirpuri
New Delhi

...APPLICANT

(By Advocate - Shri P.M. Ahlawat)

VERSUS

1. The General Manager
Northern Railway
Baroda House
New Delhi

2. The Chief Personnel Officer
Northern Railway
Baroda House
New Delhi

..RESPONDENTS

(By Advocate - Shri O.P. Kshatriya)

ORDER (ORAL)

The applicant retired from Railway service on 31.5.1994 after rendering 37 years of service. His grievance is that the respondents have made recoveries from his gratuity for overpayment of salary for 41 days on account of excess leave taken. His case is that he had been intimated his leave credit along with his pay slips every six months and as per those statements he had 74 days, 56 days and 70 days earned leave due to him on 1.1.91, 1.7.91 and 1.1.94 respectively. In terms of that, he had taken no excess leave. Further, in respect of deductions on account of late coming, he submits that as per DOP&T instructions, late coming up to certain days could be condoned; in any case these matters pertaining to 1991 and 1992 were, under the rules, to be settled at the

relevant time and not to be reopened at the time of his retirement. He therefore seeks a direction to the respondents to pay him the amount of encashment of 70 days shown in the pay slip of 1994 and to direct the respondents to refund the amount of Rs.10,954 deducted from his gratuity, with interest.

2. The respondents in reply contend that as per rules, at the time of retirement, verification is made of the leave account for the previous three years. On such verification, it was found that the applicant did not have any leave at his credit and instead had availed excess leave of 41 days. At the same time, he had been marked for late coming on a number of days, details of which have also been furnished. Since the requisite casual leave was not available to his credit, the respondents had to deduct the equivalent earned leave and since earned leave was also not available, the excess payment for these days was deducted from his gratuity.

3. I have heard the counsel on both sides. Shri Ahlawat, ld. counsel for the applicant, submits that gratuity being a part of the pension is a private property and any deduction has ^{civil} ~~severe~~ consequences for which due opportunity must be afforded to the employee. In this case, deduction was made by the respondents without giving him any opportunity to explain the position. Further, the ld. counsel pointed out that the respondents themselves through the pay slips have been intimating the leave credit at the disposal of the applicant and they could not now suddenly change their stand and say that no leave was due at his credit. Shri Kshatriya, ld. counsel for the respondents, on the other hand has drawn my attention to the documents furnished by them regarding the leave credit and the details regarding late coming by the applicant.

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He points out that the dues of the Government have to be recovered and the only way to recover these is from the gratuity of the applicant.

5. I have considered the matter carefully. To begin with, the ld. counsel for the respondents fairly states that on checking the records, it has been found that the applicant was entitled to four days' earned leave which was wrongly deducted from his credit as well as 8 days' half pay leave. Secondly, a scrutiny of the leave account, which has been reverified at the time of retirement, indicates that the respondents have now correctly calculated the earned leave due to the applicant and the facts did not tally with the leave credit intimated to him. I therefore find that subject to the correction admitted by the respondents' counsel regarding the excess deduction of leave, the claim of the applicant regarding leave credit cannot be accepted.

5. The second question is regarding the deduction of excess payment on account of late coming. Statement at R5/1 submitted by the respondents indicates that no deduction was to be made in the year 1991. The applicant had however been marked late on a number of days during 1992 while in 1994 the days on which he had come late had been condoned. Therefore, the only period for which earned leave had to be deducted on account of late coming pertained to the year 1992. There seems to have been some mistake in this calculation as full day leave has been deducted for late coming for the periods July, August, September, October, November and December 1992. A rough calculation shows that 12 days casual leave, failing which earned leave, for that period was to be deducted. On the

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other hand, the respondents have deducted 39 days earned leave and made recoveries on that basis.

6. In the facts and circumstances of the case, I dispose of this O.A. with the following directions:-

- (i) The respondents will recalculate the earned leave to be debited on account of late coming for the year 1992. In case they find that the deduction is more than 12 days, they will give an opportunity to the applicant to explain the position and thereafter pass a speaking order before making the deductions.
- (ii) The respondents will also give credit of 4 days' earned leave excess deducted and 8 days' half pay leave due to the applicant while making their calculation regarding the recoveries made.
- (iii) The excess recoveries made from the applicant will be refunded to him within three months from the date of receipt of a copy of this order. The applicant will be entitled to 12% interest per annum from the date gratuity was first paid till the date of actual payment.

7. The O.A. is disposed of accordingly. No costs.


(R.K. AHOOJA)
MEMBER (A)

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