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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1108/1996

New Delhi, this 6th day of June, 1997

Hon'ble Shri S.P. Biswas, Member(A)

Shri J.P. Kapoor
s/o Shri M.C. Kapoor
c/o Liberty Auto Stores
998B, Kashmere Gate, Zoravar Marg
Delhi .. Applicant

(By Shri G.D. Bhandari, not present)

Versus

Union of Inida, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, Bikaner .. Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER

The applicant, who retired on 28.2.1993 after having worked as Station Master of Delhi Sadar Bazar, is aggrieved by Annexure A-1 order dated 8.12.94 by which his claim for full leave encashment for 240 days has been rejected by the respondents. Consequently, he has prayed for issuance of a direction to the respondents to make full payment of leave salary for 240 days admissible under the rules alongwith interest @ 24% on the total amount till date of payment.

2. The applicant's claim is mainly based on Railway Board's circular No.8779 according to which intimation regarding balance of leave (LAP/LHAP) has to be invariably communicated to the employee in the notice of retirement, one year in advance before the date of superannuation. This provision was not complied with in his case.

3. As per the applicant, he had been paid leave salary only for 79 days and his request for treating the sick period on various occasions as LHAP instead of LAP has been illegally rejected. The counsel for the applicant argued that as the applicant had fallen sick on several occasions, he had been under treatment of authorised railway doctors and on resumption of duties after sickness, he continued submitting medical certificates through proper channel with applications for treating the said periods as LHAP. Respondents, however, did not pay any attention since the leave record was in the office of DRM at Bikaner. He had represented his case several times but without any success. The counsel further argued that a railway servant does have the option of getting the sick period treated either as LAP or LHAP. The applicant had requested for treating each spell of the periods of his absence as LHAP but the same has not been wrongly considered. This had happened because the respondents have failed to maintain the leave record properly inasmuch as (i) that there were entries contradictory to each in the relevant leave records, (ii) that there was no signature of competent authority and (iii) that the respondents have violated the instructions of the Railway Board's circular No.8779 reiterated by the General Manager/Northern Railway.

4. In the counter, the respondents have opposed the claim. As per the learned counsel, the applicant was paid all the retirement dues correctly as per rules

including encashment of leave for 79 days which was at his credit when he superannuated on 28.2.93. The applicant had represented his case to the Pension Adalat as well. With reference to his representation, the applicant was asked to produce, vide letter dated 8.12.94, any proof for the specific periods when he had asked for sick leave to be treated as commuted leave. The applicant had failed to produce any proof in support of his claim.

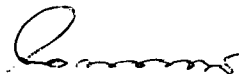
5. Respondents further contended that the request made by an employee for treating the period of absence when he/she was sick as LAP/LHAP is considered on production of medical certificate from the authorised railway doctor. Such requests are made during the service period and as far as possible immediately on resumption of duty after availing the said leave. The applicant, however, could not come with specific claims in this respect. The counsel further submitted that the request for conversion of any leave after retirement is not permissible in terms of Ministry of Railway's letter No.F(E)III-82-LEI/1 dated 24.4.82 circulated under PS No.8048. That circular mentions that "conversion of leave of one kind into leave of a different kind cannot be permitted after the employee concerned has ceased to be in service. Any sanction issued communicating one kind of leave, granted to the employee when he was in service, into any other kind of leave, after the

employee has cased to be in Railway Service will, therefore, be irregular and violative of the Provisions of the Statutory Rules".

6. The case was heard on several occasions. Neither the applicant nor his counsel were present on 19.3.97 and 23.5.97. By an order dated 19.3.97, the applicant was given the opportunity of coming up with the documents in respect of the period of sickness which could be treated as LHAP instead of LAP. Neither the applicant nor his counsel turned up with the necessary particulars. Even records available before us in the OA are also completely silent in respect of not only details of periods of sick leave the applicant had been claiming for but also of medical leave certificates or copies thereof which had been reportedly submitted alongwith applications.

7. In the absence of any relevant documents it would be hazardous for the Tribunal to draw conclusions and provide relief on the basis of averments unsupported by legally acceptable documents. In the result, the OA is devoid of merits and is accordingly dismissed.

There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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