

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 960/94

M.A. 1421/94

New Delhi, the 5th September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Shri T.R. Sharma,
s/o Late Shri Dheru Ram,
Age about 61 years,
Ex. Section Officer,
Northern Railway, Baroda House,
New Delhi.

... Applicant

(Shri P.L. Mimroth, Advocate)

Vs.

1. Union of India
through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Financial Advisor & Chief Accounts Officer,
Northern Railway, Baroda House,
New Delhi.
3. The Addl. Financial Advisor
& Chief Accounts Officer (TA),
Northern Railway,
Delhi Kishan Ganj,
Delhi.

... Respondents

(Shri R.L. Dhawan, Advocate)

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant who has filed this application retired as Section Officer from the Northern Railway on 28.2.1991. The grievance of the applicant is wrong calculation of his Earned Leave due to him at the time of retirement for encashment. Before his retirement on 13.8.1987 the applicant has written to S.A.C./Admn., Baroda House, Northern Railway that he was transferred from TA/DKZ to Store Accounts

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in July 1983 and he was informed that his service record/ leave account has not been received from T.A. Branch. When he contacted Admin. Section of T.A. Branch he was informed that the same has been sent to Administration Headquarters office, Baroda House alongwith service record of Shri Kartar Singh Gill, S.O. who was also transferred from T.A. He therefore apprehended that there will be difficulty regarding his payment of retirement dues on his superannuation in February, 1991. He also informed that his accumulated LAP of approximately 165 days. He made another representation in January 1989 then in November 1990 and March 1991 regarding the complaint about short payment of emoluments of leave encashment on retirement. His grievance therefore is leave encashment of 240 days has not been paid in full due to not upto dating the leave account in time by the Administration Section. His new leave account is opened w.e.f. 2nd half of July 1982 and the credit of LAP/HAP due to him as on 30.6.1982 has not been taken into account anywhere in the leave account now prepared. He has been paid less for 68 days of leave which was due to him. In this application the applicant has prayed that the leave account of the applicant be prepared from the beginning of his service i.e. from 16.6.1953 and leave to his credit may be correctly and fully calculated and the balance payment of salary of 68 days be paid to him or in the alternative the benefit of maximum accumulated leave of 240 days be given to him.

2. The respondents contested this application taking the plea of limitation, it is stated that the leave due to the applicant was only of 170 days for which he has been paid. He was already informed by the letter dated 3.5.1991 (Annexure A-13) that the leave account was recast on the basis of collateral evidence and other official records. In view of this a credit of 172 days LAP was found due to him and he has been paid cash equivalent to the leave salary. Even if he has got some more records with him then he may furnish the same. Now after 3 years or more the applicant has awakened and filed this application. The applicant cannot get the benefit of condonation of delay prayed for in M.A.No.1421/94 because there was no sufficient and reasonable cause for coming so late before the Tribunal. On merit it is stated that on transfer of the applicant in July 1983 from the office of the FA&CAO(TA), Northern Railway, Kishan Ganj, Delhi, to Headquarters office, his service record was sent by the office to the Hqrs. office on 4.9.1984 and was duly received in that office. At the relevant time the applicant was working as Section Officer and was custodian and has been himself responsible for the safe custody of the service record. His explanation was also called for the loss of service record on 20.1.1992. His service record therefore was reconstructed on the basis of available record and collateral evidence furnished by the applicant in accordance with the relevant rules. The respondents place reliance on paras 1016 to 1021 of Manual of Railway Pensions Rules, 1950.

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3. The applicant has also filed the rejoinder and reiterated the same facts.

4. Heard the learned counsel for the parties at length and perused the records. The respondents by the letter dated 22.12.1992 informed the applicant that the case was re-examined and the leave of 112 days was correctly worked out on the basis of records available. The pay slip of July 1982 showing balance of 112 days LAP cannot be accepted as the same balance has been reflected for a number of years. In a case where the record exhausted the responsibility lies of the person who was custodian of the records. The applicant himself was the custodian of the records. This fact though denied by the applicant but he was in the same office of FA&C&O and was expected to trace out the records which he has not done before his superannuation. Now the only provision for the construction of the lost records is in Manual of Railway Pension Rules, 1956, paras 1016 to 1021. The same is reproduced below:

1016 (i) Where the Service Book is maintained and contains the certificate of verification of service prescribed in Para 1938-G.I., the service noted in the statement shall be verified with reference to the certificate(s) of (annual) verification recorded in the Service Book.

(ii) If, however, the Service Book does not contain certificate(s) of (annual) verification, the service noted in the statement shall be verified with all information available in the personal files, office order books, gradation lists, pay bills and other official records. If such service was rendered by the Railway servant in another office or department, a reference shall be made to the Head of that Office or

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Department, as the case may be, in which the Railway servant is shown to have served during that period for the purpose of verification.

The information obtained from the different sources referred to above, which are relied upon for verification of service, should be recorded in verification Memo(s) and the Memo(s) duly completed and signed by the Head of the Office/Department should be attached to the statement of service, a suitable remark to that effect being made in the 'how verified' column of the statement.

1017 If it be impossible to verify (a portion of the) service otherwise, the procedure indicated in Paras 1018 to 1021 below should be followed.

1018 (i) The applicant should be asked to file an affidavit on plain paper stating that he had in fact rendered that period of service and he shall also furnish all relevant details and evidence in support of that.

(ii) The details and evidence, referred in (i) above inter-alia consist of

- (a) documents (such as appointment orders etc.) which the applicant may posses bearing on that part of his service; and
- (b) certificate, if any, such as, those given by an officer to the subordinate on leave office.

1019 The authority competent to sanction pensionary benefits of the Railway servant shall admit that portion of service after taking into consideration the statement in the affidavit and the evidence produced by the Railway servant in support of the same, if that authority is satisfied that the Railway servant had really rendered that portion of service.

1020 If the employee cannot produce any collateral evidence, or if the evidence produced by him is deemed to be unacceptable or if the employee is unable to make any statement, the matter shall be referred to a Committee consisting of the Deputy Head of the Department concerned, Deputy Chief Personnel Officer and the Deputy Chief Accounts Officer, who shall, after examination of all available evidence, determine the period of service, which should be counted as qualifying service. The decision of this Committee shall be final.

1021 The affidavit of the applicant duly accepted by the authority competent to sanction pecuniary benefits in respect of the service in question, after the check of the collateral evidence, should be placed on record in the service book, if available, in lieu of the local verification of service for the period covered by it. A summary of the collateral evidence obtained, the exact nature of the investigation made, and the conclusions arrived at, and where applicable, a copy of the orders of the Committee, shall be recorded in the 'how verified' column of the statement of service and collateral evidence in support of the service admitted attached to it.

5. Now the respondents have clearly stated that they have followed the provisions of the relevant rules. The applicant has not furnished any evidence even in this application that the leave to his credit on his superannuation was more than 172 days. Thus there is no material on record to show that the applicant has to his credit 240 days of leave on the date of his superannuation. Merely because the record is lost and the applicant alleges to have the maximum number of leave to his credit i.e. 240 days do not by itself entitle the applicant for encashment of 240 days of leave. The contention of the application that the

earlier record has not been seen ~~can~~ not be raised at this stage because by the letter dated 3.5.1961 and earlier also under the provisions of Railway Service Pension Manual 1950 he was given adequate opportunity to furnish the details of the leave to his credit. The maximum evidence which he has given has been considered by the Administration. The Tribunal cannot sit as an appellate authority again to calculate on the basis of averments made in the O.A. or arguments advanced during the hearing. In the case if the record is lost the applicant though should not suffer but it should be established beyond any reasonable doubt that the leave should be credited to the applicant as what he alleges. When the fact is not established and the respondents have given a calculation with reasons that the leave to his credit was 172 days then it has to be accepted. There is no case of interference by the Tribunal. The case has been considered on merits ^{after} condoning the delay. The application is therefore, dismissed as devoid of merit with cost on parties.

J.P. Sharma
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