

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

No. Of Adjournment : 12

COURT NO. : 1

13.01.2021

O.A./260/677/2015

ABANTI BARIK
-V/S-
M/O RAILWAYS

ITEM NO:23

FOR APPLICANTS(S) Adv. : Mr. N. R. Routray

FOR RESPONDENTS(S) Adv.: Mr. D.K. Mohanty-1

Notes of The Registry	Order of The Tribunal
	<p>The applicant here is a widow of an employee of Respondent Railway, who was working as Group D staff with designation Caretaker under the Crew Controller (CEW) Bhadrak under Dechanical department of the respondents. He was under medical treatment from 17th January 2009 until 11th June 2012. Unfortunately he expired on 11th June 2012.</p> <p>The applicant had approached the Tribunal seeking payment of dues as per the leave due in the leave account of the late employee, for the period 11.04.2009 to 11.06.2012 (1138 Nos of days) while the applicant was alive and under treatment. It is submitted that for the period 17.1.2009 to 10.4.2009, he has already been paid salary at that time.</p> <p>It is pleaded that leave amounting to 285 days under Leave of Average Pay and 407 days of Leave on Half Average Pay was due to him as of 11.4.2009. It is also pleaded that LAP as well as LHAP can be sanctioned to an employee who is under medical treatment and leave account debited to that extent and salary paid accordingly.</p> <p>Once the said employee had expired, as part of retirement settlement, 300 days of leave encashment (LAP for 285 days + 30 days of LHAP to make equivalent to 15 Days shortfall, in maximum 300 days leave encashment admissible), was paid to the widow of the said late employee, who is the applicant in the instant case.</p> <p>The applicant is pleading that had this due LHAP period been sanctioned at that time, when her husband was under medical treatment, which is the sated purpose of the provision of LHAP, she would have been greatly helped at that time. In the event no amount was paid to them at that time, despite leave being due.</p> <p>The applicant further pleads that treatment was under Railway Doctor only and an application for sanction of leave was also made on 15.6.2009, 25.7.2009, 17.8.2009 and 11.9.2009, but it was not sanctioned.</p> <p>With this grievance, the applicant herein had approached the Tribunal earlier also by filing an OA wherein direction was given to the respondents to consider her case and pass a</p>

reasoned order. This was complied with by the respondents however the request was denied. Feeling aggrieved, this instant OA was filed.

The respondents submitted their counter reply in which a specific averment was made under para 2, which reads as under:

"That the facts leading to the present case is that the Applicant's husband late Gouranga Charan Barik while working as Care Taker under the Crew Controller (CEW), Bhadrak of Mechanical Department was under the medical treatment of Sr. Divisional Medical Officer, East Coast Railway, Bhadrak from 17.01.2009 to till his death i.e. on 11.06.2012. The copies of Medical Certificates dated 17.01.2009 and 11.06.2012 are annexed herewith as Annexure – R/1 series. The last period for which was sanctioned commutation w.e.f. 17.02.2009 to 10.04.2009 but the period from 11.04.2009 to 11.06.2012 i.e. date of death was not paid salary as he had neither applied for leave nor for commutation of the sick period. However, on humanitarian ground, in order to regularize the said period of absence and to keep the continuity of service for arranging settlement payments of the ex-employee to the legal heirs, the Sr. Divisional Mechanical Engineer, Khurda Road, the Respondent No. 3 has sanctioned "EOL" (Extra Ordinary Leave) from 11.04.2009 to 11.06.2012 as per Rule 42 of Railway Services (Pension) Rule 1993 and the said period will not count for pension. The copy of the Rule 42 of Railway Services (Pension) Rule 1993 is annexed herewith as Annexure R/2"

The respondents pleaded that had the late employee submitted his application in time for sanction of leave, the same would have been considered by the administration especially given the humanitarian approach because of the illness of the late employee. The averments made by the employee that he submitted his leave application on 13th June 2009, 25th July of 2009, 17th of August 2009 and 11th of September, 2009 are actually not fact and it is only being averred now as an afterthought. In this context it was also brought out that the late employee was suffering from Mental disease and it may not have been possible for him to apply for leave.

The respondents also pleaded that once the salary was not paid in September 2009 the applicant had liberty to approach the Railway Administration as well as Tribunal all these years and not wait until the year 2015 to lay claim upon such dues.

The matter has been heard at length. Mr. N. R. Routray, learned counsel represented the applicant and Mr. D. K. Mohanty -1 appeared on behalf of the respondents.

Instant case pertains to Group D employee who was ill and he was under treatment of the medical department of the respondent railway themselves during the period 17th of January 2009 until 11th of June 2012 as also admitted in the counter reply given by the respondents.

In the given set up circumstances, it stands to reasons that the absence period could have been sanctioned and paid to the

extant leave was due and the balance period regularized by granting Extra Ordinary leave as was already done and brought out in Counter reply (supra). In the instant case 285 days of LAP was due and 407 dues of LAHP was due at that point of time. Therefore, to the extent of availability, the entire LHAP would have been paid and exhausted during the period of medical treatment. in such an event, the leave encashment at the time of terminal settlement, would have been correspondingly lesser.

In the given set of circumstances, it was not very difficult to get one application from the late employee, since he was under treatment of Railway Doctor only. Be that as it may, it is clear that certain LHAP was due to the late employee at that time, and had it been sanctioned, the applicant's husband would have been paid to that extent.

The applicant has now made a claim for the same. It is considered in the interest of substantive justice, that the applicant is paid the amount which may have been paid at that time.

In view of the foregoing, the respondents are directed that the balance amount of LAHP i.e. $407-30 = 377$ days, is paid to the applicant who is the widow of the late employee.

The said amount shall be worked out as per last salary of late employee and paid to the applicant herein, within a time period of eight weeks from the date of receipt of copy of this order, under advise to the applicant. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

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