

Central Administrative Tribunal
Principal Bench, New Delhi.

OA 602/90

13.07.92

Shri Baldev Raj Sachdeva

...Applicant

Vs.

Union of India and Ors.

...Respondents

CORAM :

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

For the Applicant

...Sh.Ravi Verma

For the Respondents

...None

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

The applicant took premature retirement which was granted w.e.f. 16.7.1988 when the applicant was working as Foreman Maintenance at the Railway Station Bandi-Qui, Jaipur. The grievance of the applicant is that on retirement, he was not given the full benefits of leave encashment and only leave encashment of 89 days was allowed. He has also averred that even if the period from 1973-1977 is excluded for which period record is not available, then he has to his credit 246 days of Earned Leave and as per the recommendations of the 4th Pay Commission, leave accumulated to the extent of 240 days could be encashed, so he should have been given that benefit. The applicant has prayed that he has to his credit a total period of 230 days of Earned Leave and he should be paid the encashment value of the remaining period which comes to Rs.16443.84 being the commutative value of the leave of 150

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days. He also claimed interest @ 18% p.a. on the amount of Rs.9660 being the value of commuted leave of 88 days after his retirement w.e.f. 16.7.1989, i.e., after one year. He also claimed interest on Rs.16443.84 till the date of payment. He has also claimed Rs.15,000 as damages, Rs.5,000 compensation for loss of time and another Rs.5,000 spent on the treatment of his eyes and Rs.50,000 as compensation for loss of his left eye.

The respondents contested this application and filed the reply stating therein that the record for the period from 1974 to 1977 was not available and the applicant was directed to file an affidavit which he sworn on 7.9.1988, but that was found false as per the records available with them. So the credibility of the applicant was lowered in the eyes of the respondents and they did not act on the affidavit deposed to by the applicant. However, the respondents denied the various averments made in the application and stated that only 89 days' leave was to the credit of the applicant on the date of his voluntary retirement w.e.f. 16.7.1988.

From the records, it appears that Shri O.N. Moolri, Counsel for the respondents filed the counter. The order sheet further shows that for the first time on 4.5.1992, Mrs. Raj Kumari Chopra and on 8.5.1992, proxy counsel for Mrs. Raj Kumari Chopra appeared and again the same counsel appeared as proxy counsel on 13.5.1992. The case was called in pre lunch

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session today, but none was present on behalf of the respondents. The case is now being taken up at 2.45 p.m. and none is present to press the counter or place arguments to rebut the claim referred by the applicant. In view of this, the learned counsel for the applicant has been heard at length and the pleadings of the parties have been perused along with the various annexures enclosed therein. The applicant has clearly stated in this application that before 10.11.1973, he had to his credit a leave account of 109 days. This fact is not sufficiently rebutted in the counter and it has been reiterated in the rejoinder giving the full facts in detail of the place of working by the applicant. When a fact is not specifically denied and the records are not placed to show what is averred, is not according to the records, then the contention of the applicant cannot be overlooked as an incorrect statement of facts. The applicant has also stated in this application that since the record from 1973-77 was not available, he does not press any claim for any relief which may have fallen during this period. This cuts both edges. If the applicant availed of leave much in excess, then the balance he got deposited earlier in pre 1973 period might have been got washed off. But since there is none from the side of the respondents nor there is any document evidenced by any record maintained by the respondents, the contention of the learned counsel cannot be brushed aside on surmises and conjectures.



Regarding the period from 1977 to 1988 till the applicant was given voluntary retirement, there is a definite record showing that the applicant has 137 days' leave to his credit. Here it is disputed by the learned counsel for the applicant that the deduction of 48 days during which period the applicant, though remained out of duty but because of sickness, that should not have been deducted. I am not convinced with this argument. This runs for a number of years. Thus these 48 days' leave may have been taken by the applicant. It is not evidenced that the applicant has at any relevant time represented to the respondents that this leave which he calls the sick leave, should not be treated as Earned Leave of the applicant. Thus I am not convinced with this leg of argument that record maintained by the respondents which is maintained in due course of business is not a correct statement of facts recorded therein. There is a presumption of correctness of the official records only and it is categorically shown that the record has been prepared not at the relevant time and that it is forged. In view of this fact, the applicant's total leave account after due calculation comes to $109+89= 198$ days. It is not evident whether 13 days' leave which has come during the course of hearing has been availed of by the applicant besides these 48 days which has already been deducted after taking note of the leave file of the applicant of his place of posting at Bandi-Qui in Jaipur. In view of the above, it is evident that the applicant has been paid less commuted value

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of encashment of leave. The application is, therefore, disposed of with the following directions :-

(a) That the respondents shall recalculate the actual leave due to the applicant for the period from 1977 till the date of retirement on the basis of the record and if the commuted leave goes to show that 13 days more leave was taken by the applicant, then that shall be deducted from this account. If the applicant has not availed 13 days' leave at the relevant time, then the total accumulated leave of the applicant shall remain 89 days.

(b) Leave from the period upto 1973 shall be again checked by the respondents and if it comes to 109 days, then the applicant is entitled to the commuted value of leave whatever be the amount on the basis of the last pay drawn by the applicant.

(c) The applicant has been paid the encashment value of 88 days after one year and normally it should have been paid within a period of six months, so the applicant is entitled to interest @10% p.a. on the amount of Rs.9660 for six months only.

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(d) The leave for the period prior to 1973, if by calculation comes to 109 and no leave by the applicant is found due of 13 days after 1977 till the date of retirement, then the whole of this commuted value shall be paid to the applicant. However, in the circumstances, I do not find that the applicant is entitled to any interest on this amount which still remains unresolved. As regards reliefs at (e), (f) and (g), the same are disallowed.

(e) The respondents shall comply with the above directions preferably within a period of three months from the date of receipt of a copy of this judgement.

(f) In the circumstances, the parties shall bear their own costs.

J. Sharma

(J.P. SHARMA) 13.7.92

MEMBER (J)

13.07.1992