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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 974/1990. DATE OF DECISION: 18 -1-1991.

Shri Madan Singh Applicant.

V/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Shri B.S. Sekhon, Vice Chairman (J).
Hon'ble Shri P.C. Jain, Member (A).

Shri Rajan Sharma, counsel for the applicant.

Shri C.N. Moolri, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member (A))

JUDGMENT

The applicant, while working as Driver, Grade-A, in the Delhi Division of Northern Railway, retired on superannuation on 31.12.1987. In this application under Section 19 of the Administrative Tribunals Act, 1985, his only grievance is that he has not been paid encashment of the leave at his credit. He has prayed for a direction to the respondents to pay to him leave encashment for 8 months and interest at the rate of 12 per cent per annum on the amount due from the date of retirement till the date of payment.

2. We have perused the material on record and have also heard the learned counsel for the parties. According to the applicant, his representations in this regard did not yield any result. He had been verbally told that the balance of leave at his credit as on 31.12.1987 was still to be worked out. He has pleaded that non-payment of the amount of leave encashment for 8 months to him for such a long period is nothing but malafide, arbitrary and discriminatory. According to the reply filed by the respondents, sanction for leave encashment for 10 days, which alone was due to him, was authorised by the competent authority vide Printed S.No. 7049. This communication is dated 27.10.87 (Annexure R-1). In his rejoinder, the

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applicant admits having received the amount of Rs.1077/-, but has stated that this amount was in respect of the 10 days' journey time not availed of by him at the time of his transfer from Shakurbasti to Jind. It is also stated that he has not been paid anything towards leave encashment. It is further stated by him that the copy of the leave account filed by the respondents "is a forged one." According to him, he was directly under the control of Loco Foreman, Northern Railway, Delhi and whenever he applied for leave, it was sanctioned by the Loco Foreman. He has filed a copy of the statement showing the leave availed of by him from 1984 to 1987 sent by the Loco Foreman, Delhi to the D.P.O., Northern Railway, New Delhi (P-4). In his rejoinder, he has prayed for a direction to the respondents to produce the leave applications on the basis of which entries have been made in the leave account.

3. As per the leave account maintained by the D.R.M. office, a copy of which has been filed by the respondents with their reply (R-2), the applicant had earned 145 days' leave and had availed 135 days' leave while in service, leaving a balance of 10 days only. The learned counsel for the respondents informed us at the bar that encashment of the aforesaid period of 10 days has been paid to the applicant. On the other hand, as per the leave account stated by the applicant to have been maintained by the Loco Foreman, he availed of only 59 days' leave during the period 2.5.85 to 7.7.87 and as such, the balance at his credit was 86 days' leave. The respondents have also produced before us the relevant departmental record in which the leave account of the applicant had been maintained. This is for the entire service period of the applicant while the aforesaid statement of leave account maintained by the Loco Foreman, a copy of which has been filed as Annexure P-4 to the rejoinder, is only for the period from 24.6.84 to 23.12.87. The two accounts are, therefore, not comparable. Our attention was drawn to the

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discrepancies in the two so-called leave accounts for the period 2.5.85 to 7.7.87. For example, according to the official leave account, the leave availed of by the applicant during May, 1985 was only 5 days, while according to the leave account said to have been maintained by the Loco-Foreman, it was 6 days. There is no difference in the period of leave availed of during December, 1985, November, 1985, 30.4.86 to 29.5.86 and in July, 1987. However, the official leave account shows availment of leave for 30 days for the period from 24.2.87 to 23.3.87, which the Loco-Foreman's statement does not show. Similarly, according to the official leave account, the applicant availed of 15 days' leave during April, 1987, while according to the Loco-Foreman's statement, the applicant availed of only 12 days' leave in that month.

4. Leave account of a Government servant is maintained by the competent authority in the conduct of normal business and unless there is evidence to the contrary, it is not to be ignored. The statement of leave account maintained by the Loco-Foreman cannot be relied upon as evidence to the contrary inasmuch as there is nothing before us to show that the Loco-Foreman was the competent authority to maintain the leave account of the applicant. Further, merely because the Loco Foreman's so-called leave account is different in respect of some periods, the official leave account cannot be discarded as incorrect. The contention of the applicant that the leave account furnished by the respondents is a forged one, is not tenable in the absence of any authentic and reliable evidence to the contrary. Even otherwise, the discrepancies as discussed above, make for a difference of only 32 days while the learned counsel for the applicant urged at the bar that the difference was of 86 days. In his application, the applicant has claimed encashment for a period of 8 months' leave, but he has not

furnished any proof whatsoever in support of that claim. His prayer in the rejoinder that the respondents be directed to produce his leave applications cannot be accepted for the simple reason that perusal of such applications would not fall within the scope of judicial review when an official record is maintained in accordance with the rules on the subject.

5. In view of the foregoing discussion, we hold that the applicant is entitled to encashment of earned leave at his credit on the date of retirement on the basis of the official record maintained in accordance with rules and not on the basis of the statement stated to have been given to the applicant by the Loco-Foreman. As such, we see no merit in this application, which is accordingly rejected. However, if the applicant has not been paid so far encashment for 10 days' leave at his credit on the date of retirement, as admitted by the respondents on the basis of leave account maintained by them, the same shall be paid to him by the respondents within 30 days from the date of receipt of a copy of this judgment. We leave the parties to bear their own costs.

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(P.C. JAIN)
Member (A)

B. S. Sekhon
(B.S. SEKHON)
Vice-Chairman (J)

18.1.1991.

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