

27.8.21

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A.350/01069/ 2017.



Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Biswanath Banerjee,
Late Durga Das Banerjee, C/o. Pranab Chatterjee,
Aged about 65 years, AMAL NAGAR,
P.O. Chandrahati, District : Hooghly,
West Bengal; PIN : 712504.

..... Applicant.

Versus

1. Union of India,
Ministry of Railways,
Government of India,
Railway Bhawan,
New Delhi, Pin 110001;
2. The General Manager,
Northeast Frontier Railway,
Maligaon, Guwahati – 11.
3. The Addl. General Manager,
Northern Frontier Railway,
Maligaon, Guwahati – 11.
4. F & C AO, / ADM. Maligaon,
Northeast Frontier Railway,
Guwahati – 11.
5. Workshop Accounts Officer,
Controlling Officer,
Northeast Frontier Railway,
New Bongaigaon, P.O. – New Bongaigaon,
District : Bongaigaon, ASSAM – 783381.

..... Respondents.

For the applicant : Mr. B. Chatterjee, Counsel
Mr. A.K. Saha, Counsel

For the respondents : Ms. D. Ghosh Dastidar, Counsel

Date of Order : 27.8.2021

4

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.(a) To direct the concerned respondent authority to set aside impugned office order dated 7.12.2014, 16.12.2013 and 12.5.2014 and direct the respondent no. 5 to issue afresh office order as per relevant documents;

(b) I) To direct the concerned respondent authority to disburse the payment of full leave salary of 300 days i.e. 10 months salary since your applicant completed his 30.5 years of qualifying service without any break or unauthorized absent or LWP (Leave without pay).

II) To direct the concerned respondent authority to disburse the payment of penal interest for delay of all final settlement dues and direct the concerned respondent authority to disburse the appropriate compensation from Railway authority for mental torture and intentional harassment upon the applicant from the date of retirement to till date.

And pass such other order or orders or order may deem fit and proper."

2. The grievance of the applicant in a nutshell is as under:

The applicant retired from Railway service on 31.1.2012. The authorities have claimed, that just before 76 days of his retirement from service, his leave record went missing from their custody. No intimation was given to the applicant about not paying his final settlement dues on the day of retirement. The applicant has alleged that a false and fabricated report was prepared by the JA grade committee and that the Committee made a false report of unauthorized absence in the month of July / 2011, October / 2011 and November / 2011 and December / 2011. That the 300 days of earned leave on average pay (LAP) has accrued after retirement that amounts to Rs. 3,00,000/- with usual penal interest. It has not been paid due to such fraudulent report of the JA Grade Committee. Aggrieved he has preferred this O.A.

3. The respondents have depicted his leave record as under:

Regarding LHAP of Shri B.N. Banerjee, Ex. AA

(1) Shri B.N. Banerjee, Ex. AA was reported railway sick on 15.12.2006 and joined his duty on 23.12.2006.

Total sick period = 15.12.2006 to 22.12.2006 = 8 days.

By reviewing attendance reg. of 2006, it is seen that the above sick period regularised into LAP&LHAP

LAP = 15.12.2006 to 16.12.2006 = 2 days.

LHAP = 17.12.2006 to 22.12.2006 = 6x2 = 12 days.

From the above regularisation it is cleared that due LHAP at that time was 12 days only.

B

- (2) Shri B.N. Banerjee, Ex. AA was on railway sick w.e.f. 19.6.2007 to 25.6.2007 s.e. total sick period = 7 days.

By reviewing attendance reg. of 2007, it is seen that the above sick period regularised into LAP&LHAP as follow:

LHAP = 19.6.2007 to 23.6.2007 = 5 days x 2 = 10 days.

LAP = 24.6.2007 to 25.6.2007 = 2 days.

It is cleared that due LHAP at that time was 10 days only. Again, Shri Banerjee was railway sick list w.e.f. 13.12.2007 to 19.12.2007 = 7 days. This period also regularised into LAP&LHAP.

LHAP = 13.12.2007 to 17.12.2007 = 5 days x 2 = 10 days.

LAP = 18.12.2007 to 19.12.2007 = 2 days.

It is cleared that due LHAP was only 10 days at starting of 2nd half of 2007.

Thus due LHAP at the end of 2007 becomes nil.

- (3) By crediting LHAP for 2008 (1st & 2nd half) = 10+10 = 20

Due LHAP at the end of 2008 = 20 days – (a)

- (4) By crediting LHAP for 2009 (1st & 2nd half) = 10+10 = 20 – (b)

Due LHAP at the end of 2009 = 20+20 = 40 days – (a+b) – (c)

- (5) By crediting LHAP for 2010 (1st & 2nd half) = 10+10 = 20 – (d)

Due LHAP = 40+20 = 60 days – (c+d) – (e)

Taken LHAP = 28.8.2010 to 06.09.2010 = 10 days x 2 = 20

Taken LHAP = 25.10.2010 to 02.11.2010 = 9 days x 2 = 18

Total taken LHAP = 20+18 = 38 – (f)

Due LHAP at the end of 2010 = e – f = 60 – 38 = 22 days – (g)

- (6) By crediting LHAP for 2011 (1st & 2nd half) = 10+10 = 20 days – (h)

Due LHAP at the end of 2011 = g + h = 22+20 = 42 days – (i)

- (7) By crediting LHAP for Jan/2012 (as he is retired on 31.01.2012

= 1.6 rounded of 2 days – (j)

Due LHAP at the end of Jan/2012 = (i) + (j) = 42+2 = 44 days.

Certified

Sd/-

WAO/NF Rly."

The following statement has been provided:

Statement of LAP/LHAP taken by Shri Biswanath Banerjee, Ex. AA retired on 31.01.2012 during the following year

YEAR	January		February		March		April		May		June		July		August		September		October		November		December		Total		
	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	LAP	LHAP	
2012	0	0	Retired on 31st January 2012																						0	0	
2011	5	0	0	0	0	0	13	0	0	0	6	0	0	0	6	0	0	0	0	0	0	0	0	0	0	30	0
2010	0	0	2	0	0	0	0	0	0	0	0	0	0	0	4	1	6	0	7	0	2	2	0	0	5	19	0
2009	1	0	1	0	1	0	1	0	6	0	1	0	0	0	0	0	0	0	0	5	0	4	0	20	0	0	
2008	1	0	0	0	1	0	1	0	6	0	2	0	6	0	0	0	16	0	0	0	16	0	6	0	55	0	
2007	0	0	0	0	0	0	0	0	0	0	2	5	2	0	0	0	0	0	6	0	3	0	2	5	15	10	0

LWP period of Shri Biswanath Banerjee, Ex. AA during the year 2011
(Leave without intimation)

July/11 :- 09.07.2011 to 23.07.2011 - 15 days

October/11 :- 19.10.2011 & 22.10.2011 - 2 days

November/11 :- 16.11.2011 and 22.11.2011 to 29.11.2011 - 9 days

December/11 :- 29.12.2011 to 30.12.2011 - 2 days

28 days LWP

SP
5/4/12
WAO/NBQ

The respondents have, vide communication dated 1.1.20 clarified as under:



No.NBQ/WA/CAT/1069/2017/BB/AD

Date :- 01.01.2020

To
Ms Diana Ghosh Dastidar
Railway Advocate

Sub:- Regarding Leave A/C of Shri Biswanath Banerjee vide OA No.1069/2017.

The following are the few points regarding recasting of credit balance under LAP & LHAP in favour of Shri Biswanath Banerjee:-

1) Regarding re-construction of S/Book, P/Case and Leave A/C of Shri Biswanath Banerjee.

The Service Book, P/Case & Leave A/C of Shri Biswanath Banerjee was missing from this office since 16.11.2011 and the same was informed to head office of this office i.e FA & CAO/MLG to form JA Grade Committee of three members for reconstruction of the same. Accordingly the competent authority formed three JA Grade Committee (Copy enclosed as 1).

2) Service Particulars of Shri Biswanath Banerjee

Shri Biswanath Banerjee worked this office from July/1999 to 31.01.2012 i.e upto his retirement. Previously, he was working from 29.09.1981 i.e his date of appointment in Rly.Service to 26.02.1999 under Sr.DSTE/Alipurduar Jn., N.F.Rly and from 01.03.1999 to 07.07.1999 under FA & CAO/Maligaon, N.F.Rly.

3) Unauthorized absent of Shri Biswanath Banerjee

Shri Biswanath Banerjee was 28 days unauthorized absent in the year 2011. Detailed particulars are shown in the statement vide copy enclosed as 2.

4) Leave A/C of Shri Biswanath Banerjee.

Since entire Leave A/C of Shri Biswanath Banerjee was missing from this office so this office was unable to reconstruct the same. But this office was able to reconstruct the same on the basis of guideline given by the nominated JA Grade Committee vide PP-9 & 10 (Copy enclosed as 3 & 4) as per Item no.1 of Rly.Bd's R.B.E. No. 5/93 (Copy enclosed as 5 & 6). Thus, his Leave A/C reconstructed by crediting only 2.5 days LAP with 44 days LHAP (Copy enclosed as 7) and certified the same which are according to Railway Rules.

5) About Produced Pay Slip (July/2011)

The applicant joined this office in July/1999. As per Indian Railway Establishment Code (vol-I) of Para No.523 (1)-(a) (ii), the leave account of every railway servant shall be credited with leave on average pay (LAP) in advance in two instalments of 15 days each on the first day of January and July every calendar year and Para No.523(1) (d) (ii) in cases where the LAP at credit as on 1st January/1st July is 300days or less but more than 285 days, credit of LAP for 15 days may be kept separately (Copy enclosed as 8). As per Indian Railway Establishment Code (vol-I) of Para No.526 (3) (1) The account of Leave on Half Average Pay (LHAP) of every railway servant shall be credited with LHAP in advance, in two instalments of 10 days each on the 1st day of January and July every year (Copy enclosed as 9).

Since the applicant joined in July/1999 and according to the rule produced pay slip submitted by the applicant showed only credit balance excluding the taken LAP & LHAP as under :-

Year	Credit(LAP)	Balance(LAP)	Credit(LHAP)	Balance(LHAP)
July/1999	15	15	10	10
Jan/2000	15	15+15=30	10	10+10=20
July/2000	15	30+15=45	10	20+10=30
Jan/2001	15	45+15=60	10	30+10=40
July/2001	15	60+15=75	10	40+10=50
Jan/2002	15	75+15=90	10	50+10=60
July/2002	15	90+15=105	10	60+10=70
Jan/2003	15	105+15=120	10	70+10=80
July/2003	15	120+15=135	10	80+10=90
Jan/2004	15	135+15=150	10	90+10=100
July/2004	15	150+15=165	10	100+10=110
Jan/2005	15	165+15=180	10	110+10=120
July/2005	15	180+15=195	10	120+10=130
Jan/2006	15	195+15=210	10	130+10=140
July/2006	15	210+15=225	10	140+10=150
Jan/2007	15	225+15=240	10	150+10=160
July/2007	15	240+15=255	10	160+10=170
Jan/2008	15	255+15=270	10	170+10=180
July/2008	15	270+15=285	10	180+10=190
Jan/2009	15	285+15=300	10	190+10=200
July/2009	15	300+15=300+15	10	200+10=210
Jan/2010	15	300+15=300+15	10	210+10=220
July/2010	15	300+15=300+15	10	220+10=230
Jan/2011	15	300+15=300+15	10	230+10=240

On review of salary bill of the applicant it is found that the last pay roll i.e January/2012 shows the credit of LAP as 0 & LHAP as 0 (Copy enclosed as 10) whereas the produced pay roll i.e July/2011 by the applicant shows the credit of LAP as 315 & LHAP as 240 (Copy enclosed as 11).

So, the produced pay roll by the applicant is not justified, the credit balance of LAP as 315 & LHAP as 240 in the leave account of the applicant which shows by the default of mechanized system of computer.

6) Reconstruction of S/Book, Leave A/C and P/Case of Biswanath Banerjee.

Thus S/Book, Leave A/C and P/Case of Biswanath Banerjee have been reconstructed on the basis of re-conciliation of the same by the JA Grade Committee duly approved by the competent authority (Copy enclosed as 12 & 13).

7) About LAP Balance for 2.5 days only

As per Rly Bd's R/B.E. No 5/93 vide attached the copy no 5&6 of Item No.1 highlighted, it is mentioned herewith that if there is any period of LWP for more than 2(two) days at a stretch, it should be assumed that the leave account bears no credit on that date. Since, Shri Biswanath Banerjee was 28 days LWP including two occasion in Nov/11 for 8 days at a stretch w.e.f. 22.11.2011 to 29.11.2011 and in Dec/2011 for 2 days at a stretch LWP w.e.f. 29.12.2011 to 30.12.2011 vide attached copy no.2 was effected which implies "Nil" credit of LAP upto Dec/2011.

The applicant retired on 31.01.2012 and therefore the pro-rate occurred of LAP in Jan/2012 is only 2.5 days (15/6). So, the credit balance of LAP in favour of the applicant is 2.5 days only which is also the guideline of JA Grade Committee vide attached copy no 3&4.

- 8) Summary:-** Under the above circumstances you are requested to represent the CA that the produced Pay Slip by the applicant for reconstruction of his Leave A/C for credit balance of 300 days LAP and payment of leave salary for 300 days is not correct at all. This office has acted based on the certification of leave guided by the JA Grade Committee only. It is also stated that the undersigned had never supplied false and baseless report before the JA Grade Committee.

DA/ as above

WAONBQ
कारखाना, लेखा, आयुक्त
पं. सी. लखन सिंह

4. The applicant, on the other hand would claim as under:

- (i) That an explanation was called from the custodian of records, about the missing of records from his custody, but no reply came from the staff and no action was taken against any such custodian.
- (ii) That from the JA Grade Committee's Recommendation, published vide MEMORANDUM dated 22.11.2013, it is crystal clear that the committee recommended the leave Account only on the basis of leave certification of WAO/NBQ (the controlling officer) with a credit of 2.5 days LAP and 44 days LHAP (Page - 2, item No. B of the MEMBORANDUM).

"It is fully vindictive."

- (iii) That "Records of leave Account" as was submitted by Rly. Advocate on 01.01.20 along with Annexure, is fabricated as Credit of Leave is shown in Page -1 of 300 days of LAP & LHAP of 240 days, but how leave is debited

has not been shown. "Moreover, in all Pay-Slips for such periods, 30 days of Leave credit is printed against each year but no debit figure is shown".

It stands that after serving of 30.5 yrs. Of service from 29.09.81 to 31.01.2012, there is no reflexation in any document how the leave account is calculated and maintained. The entire matter is fictitious and cannot be accepted.

(iv) That the case does not come under the preview of Rly. Bd's letter, as he was never unauthorisedly absent from service and there has been no "pay-cut" or any case of leave regularisation.

28 days of LWP in the month of July/2011 to Dec/2011, is false.

A leave application in July/2011, has submitted which was duly acknowledged and full salary for the month was paid. In Nov/2011, sanctioned leave and free privilege Rly. Pass was issued in his favour along with his wife, with a recommendation letter to Manager, SBI/Tribeni Br. and full salary for the month was paid.

For all other months, leave was sanctioned and full salary was paid.

Therefore Railways cannot justify such claim of LWP.

(v) On "**Reconstruction of Leave Account**", that, the newly constructed leave Account Book for unauthorised absence of 28 days duly signed by WAO/NBQ on 30.11.2013 is false and cannot be accepted in the context of the giving payment for those periods which is a circumstantial evidence.

(vi) That in the "Pension Adalat" held on 24th July/2014, neither WAO, nor any of his representatives attended and as per minutes, it was recorded to forward the matter to the appropriate higher authority but nothing was done.

(vii) A correspondence was made by WAO/NBQ to the SBI Manager to deduct Rs. 29,309.00 on the Plea of excess payment of 28 days, was vehemently denied in the context of the File gone Missing.

(viii) That "the Railways final scope to recover any outstanding from a retired staff is when the DCRG (Gratuity) payment is made. In my case Gratuity payment was made on 11.09.2012 Rs. 4,56,620.00 after deducting Rs. 6,874 against Electric Bill, House Rent and other dues but no overpayment was deducted on account of LWP, as no other payment was left to be deducted."

(ix) That "the file missing episode was a calculated plan game prepared long before Retirement which can easily be seen and understood."

(x) That "About 30 Appeals were preferred upto the Highest Authority to expedite the payments but not a single reply was given. The Rly. Administration turned a deaf ear at the behest of the controlling officer, only to victimise me."

(xi) That "My entire service period is from 29.09.1981 to 31.01.2012= 30.5 yrs., but leave account is reflected from the year of 1999 only, which



itself proves that the Rly. Admin has failed to produce any concrete document in support of their allegation 28 days of unauthorised absence."

"In the context of the above facts, no rules of Rly. Establishment, nor any formula is applicable for non-granting of leave salary for minimum of 300 days as admissible."



5. Ld. Counsels were heard, records perused.


6. We have failed to decipher any leave records suggestive of any unauthorised leave on the part of the applicant. An employee is entitled to leave salary for a maximum of 300 days. The present employee has rendered service from 1981 and retired in 2012. Therefore in his prime of life, he has given more than 30 years at a stretch to the respondents, only to find out that at the end of the day he is credited with only 2.5 days LAP and 44 days LHAP which is absurd, as no concrete records are available to imply any unauthorised absence on the part of the employee.

The service book is claimed to be missing since 2011 whereas since 1999 till January 2011 his balance LAP and LHAP was 300 and 240 respectively, which itself would entitle him full leave salary, unless the respondents are able to substantiate that after 2011 the applicant was on unauthorised leave for a considerable period, which they have miserably failed to substantiate.

There is no evidence of any notice or proceedings out of his alleged unauthorised absence, no evidence of any sick leave.

The reconstruction of records as done by the JA Committee is not on any sound basis, or after an open enquiry. The purported LHAP statement (as in X-2) starts only from the year 2006 where as the applicant has rendered service since 1981.

The purported records as created from the year 2007 offers no plausible explanation of the figures credited to the leave account.



No records are available to justify such leave statement. Therefore, the only conclusion that can be drawn is of a concocted leave statement. No records are available to justify denial of full leave salary for 300 days in the service life of the applicant of more than thirty years. The deprivation and denial is unjust, whimsical and unfair. It is not on any sound legal principles or on the basis of any evidence.

Admittedly the records have gone missing from the custody of the respondents and the applicant should not be made to suffer for such wrong.

It is trite, axiomatic and settled law that the Government cannot be permitted to take advantage of its own mistake. [Rekha Mukherjee v. Ashis Kumar Das and Others reported in (2005) 3 SCC 427, A.K. Lakshmipathy (dead) and Others v. Rai Saheb Pannalal H. Lahoti Charitable Trust and Others reported in (2010) 1 SCC 287].

7. In such view of the matter the authorities are directed to release full leave salary of 300 days at admissible rate, within 2 months from the date of receipt of a copy of this order.

8. O.A. is thus disposed of. No costs.



(Bidisha Banerjee)
Judicial Member

drh