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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration T.A. 504 OF 1987  
( C.A. No. 1401 of 1983 )

Union of India

... ..

Plaintiff/  
Applicant.

Versus

Abdul Gafoor

... ..

Defendant/  
Respondent.

...

( By Hon. Mr. Justice U.C. Srivastava, V.C. )

The plaintiff-applicant was an Ex-Military Personnel having joined the Military in the year 1942 and was discharged in the year 1946. The applicant having been released from the Military Service, joined the Railway Service on 7.4.1946 and since then, he was continuously working in the Railways. He was retired from the Railway Service on 30.4.1979 after attaining 58 years of age. According to the applicant, under the Railway Rules, an employee is entitled to get the leave salary for the Leave Average Pay due to him on the date of his retirement and under the Railway rules an employee can accumulate 180 days leave at his credit and the applicant when retired from the Railway Service, 180 days leave was due to him as he had not taken any leave for the last several years before his retirement but the Railway Administration arranged payment of leave salary only for 8 days as leave due only for the year 1979. The applicant has made representation to this effect to the department and after failing to get any relief he has approached the Tribunal seeking relief that this Hon'ble Court may be passed a decree of declaration in favour of the plaintiff and against the defendant, it be declared that the plaintiff-applicant is entitled to recover a sum of Rs. 4152/- as wages and

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Rs. 747 as interest @ 6% p.a. from 1.5.1979 as the leave salary for 180 days ~~which~~ was due to him on the date of his retirement and further a decree be passed in favour of the applicant and against the defendant for recovery of Rs. 4899/- and interest pendente lite and ~~and~~ future @ 12% p.a.

2. The respondents have opposed the claim of the applicant and have stated that as per extant rules, the leave on average pay due to an employee is ~~not~~ credited upto a maximum of 180 days only and is payable in encashment at the time of retirement of the employee but the applicant had only 8 days leave on Average Pay on his credit and he was paid the amount of leave @ encashment for the said period. As per the record maintained by the Railway Administration, the applicant prior to his retirement, had taken 16 days Leave on Average pay during the period 2.12.1969 to 16.12.1970 in addition to leave without pay for 132 days which was granted to him during the year 1976 as no leave was due to his credit at that time. The applicant had taken leave for 47 days, as leave on average pay and 15½ days leave on half average pay and 19½ days leave without pay during the period 2.9.1977 to 30.4.1979 and it is totally wrong to say that the applicant had not taken any leave prior to his retirement or his leave account is not available. There is no proof on record for the Leave Average Pay for the year 1977 to 1979, as such, <sup>awaiting of</sup> 16 days leave has not been proved by the <sup>applicant</sup> respondents and <sup>as such as the un rebutted statement of applicant</sup> it is presumed that these 16 days leave was <sup>also</sup> in the credit of the <sup>respondent</sup> applicant <sup>has got to be accepted</sup>.

3. Accordingly, this application is allowed in




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- 3 -

part and the decree granted by the trial court is modified to the extent that the respondent will be entitled to get 24 days Leave Average Pay out of which 8 days Leave Average Pay was already paid to him by the Railway Administration and <sup>there</sup> he will not be entitled for the Leave Average Pay 24 days in all <sup>and</sup> <sup>if payment for 16 days has not been made it will be made with that delay</sup> u The application is disposed of with the above terms.

No order as to costs.

  
Vice-Chairman

Dated: 15.2.1993  
(n.u.)