

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No: 399 of 1992

This ...24. The Day of October 1994

R.S.Mehrotra, aged about 56 years S/O  
Late Kedar Nath Mehrotra, R/O  
83-B, Railway Colony, Mirzapur.

..... Applicant.

By Advocate Shri A.K.Sinha

Versus

1. City Magistrate & the Prescribed Authority  
Payment of Wages Act, Kanpur City.
2. Union of India through the Divisional Personnel Officer, Office of the D.R.M. Northern Railway, Allahabad.
3. Sr. Engineer (Civil), Northern Railway, Loco Colony, Kanpur.

..... Respondents.

By Advocate Shri

Coram:

Hon'ble Mr. S.Das Gupta, Member-A  
Hon'ble Mr. T.L.Verma, Member-J

J U D G E M E N T

Hon'ble Mr. T.L.Verma, Member-J

The subject matter of challenge in this C.A. is the order dated 23.6.1983 (Annexure A-1), passed by the Payment of Wages Authority in P.W.A. case No. 32/30/83 whereby the claim of the applicant for Payment of Wages amounting to Rs. 3,812.08 P alleged to have been unauthorisedly deducted by the respondents together with 10 times compensation has been rejected.

*JK*

2. The case of the applicant in short is that, while he was working on the post of Permanent Works Mistry under P.W.I.- II Northern Railway Kanpur, he applied for leave from December, 1982 to May, 1983. The leave was sanctioned by respondent No. 2. It is stated that the applicant had not taken any leave on average pay eversince his appointment in 1960. Leave on average pay, therefore, was due to him and as such he was entitled to full average pay for the said period amounting to Rs. 5,704.20 P. @ Rs. 950.70 P. per month. The respondents, it is alleged, however have paid only Rs. 1, 892.12 P. only and have unauthorisedly deducted sum of Rs. 3, 812.08 P. The applicant, therefore, filed a case before the Payment of Wages Authority under Payment of Wages Act for payment of wages deducted with 10 times compensation which was numbered as P.W.A. case No. 32/13/83. The Payment Wages Authority, it is stated, has illegally rejected the claim of the applicant. Hence, this application for a direction to the respondents to make payment of the amount claimed by the applicant in his application under Section 15 of the Payment of Wages Act (Annexure A-1) with all consequential benefits and 20 per cent interest thereon from the date of the judgement dated 31.10.1991.

3. The respondents have contested the claim of the applicant. It has been averred in the written statement filed on behalf of the respondents that the applicant was unauthorisedly absent and on his application, the period of absence was regularised and a

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sum of Rs. 1,812.12 P only was found to be due as wages for the said period and that the same has been paid. Nothing, therefore, it is stated, is due from the respondents to the applicant and that the application is without any merit.

4. We have heard the rival contentions and perused the record.

The dispute before the competent authority was whether the period of absence from December, 1992 to May, 1993 was authorised or unauthorised. The jurisdiction of the Payment of wages Authority under Section 15 of Payment of wages Act is only to determine whether the accrued wages ~~not~~ have been paid or not. Such authority, however, is not competent to decide whether the wages are due or not when the person claiming the wages is said to be absent from duty and the question as to whether the period of absence is covered by leave or not is in dispute. In the present case, admittedly a dispute with regard to regularisation of the period from December 1992 to May 1993 is ~~admittedly~~ in dispute. The prescribed authority, therefore, had rightly dismissed the claim petition by the impugned order dated 31.10.1991.

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5. In view of the foregoing conclusion, the next question that arises for consideration is whether the applicant can now agitate the same matter by filing this application. Admittedly, the period for which the claim was made before the competent authority is

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between December, 1982 to May, 1983. The applicant should have agitated the question whether ~~was~~ his absence during the aforesaid period was covered by leave sanctioned before a competent forum within the period of limitation from the date on which ~~was~~ cause of action had accrued. This application has been filed in 1992 after the claim of the applicant was rejected by the competent authority under the Payment of Wages Act. This case has although been filed within one year from the date, the impugned order was passed, but much after the expiry of the period of limitation. That being so, the question is whether the delay in filing this application should be treated as having been explained by the fact that the application of the applicant remained pending before the competent authority under the Payment of Wages Act up to 30th September, 1991. In the circumstances of the case, we are inclined to accept that the delay in filing this case in the Tribunal stands explained by the aforesaid fact.

6. In view of the foregoing conclusion, we now proceed to examine whether the applicant is entitled to full pay for the period from December, 1982 to May, 1983.

No document has been filed by the applicant to show that leave on full average pay had been sanctioned to him by respondent No. 2 for the period from December, 1982 to May, 1983. A Misc. Application No. 1128 of 1992 was filed in C.A. No. 398 of 1992 for a direction to respondents to produce attendance register of 1982 and 1983 of the office of L.I.I. II/Kanpur, memorandum and ~~justify~~ findings of

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along with Inquiry Officer L order of SEN Kanpur, Original service record from DRM/ Office along with dealing clerk/leave application for perusal of the Tribunal. This Tribunal, by order dated 13.11.1992 directed the respondents to keep the documents mentioned above ready for the perusal of the Tribunal. The said direction was reiterated in order dated 11.5.1994. These documents however, have not been produced. From Annexure A-6, it appears that similar prayer was made before the competent authority. L The respondents, in their reply (Annexure A-1) informed the authority that the leave record of the applicant prior to 1974 was not traceable. Copy of his leave account and payment register and application dated 27.10.1983 filed by the applicant, however, were placed before the Payment of Wages Authority. It has also been stated in Annexure A-7 that no attendance register in respect of Permanent Way Misries is maintained. The fact remains that no record ~~is~~ except the photo copy of the leave account and payment register annexed with Annexure A-2, is available for determining whether any leave had been sanctioned to the applicant for the period of his absence from December, 1982 to May, 1983. The leave account pertains to the period from 26th March, 1974 to 19.5.1983. The entries on page 21 indicate that the applicant was absent without leave from 9.5.1976 to 17.4.1977. It would further appear that he was allowed leave without pay from 15.4.1966 to 15.4.1977 in terms of D.P.W./ACO No. 754-E/Engineering/PWI-II/PT (U) dated 17.7.1978 (15.4.1976 to 8.5.1976) and 19.9.1977 to 29.11.1977. The above period of leave without pay, however, was

treated as L.A.P. due on completion of leave account.  
also  
It also appears that the applicant was sanctioned leave  
without pay for some period in 1980 also. From the  
copy of the Pay Register at page 23 details of the period  
of absence of the applicant with the kind of leave allowed  
We have noticed  
can be noticed, L details of the wages paid during  
the period in question in the said chart. . It appears  
that the payments were made month-wise. The applicant  
seems to have received the same. The learned counsel  
for the applicant submitted that failure on the part of  
the respondents to produce the records called for should  
lead to an adverse inference against the respondents.  
The consistent case of the respondents before the Payment  
of Wages Authority and before us has been that the  
service book of the applicant has been lost and leave  
account prior to 1974 also was not available. We would  
have drawn an adverse inference / failure of the  
respondents to produce the record had the copy of the  
leave account even distantly suggested that leave was  
due to the applicant. It rather shows that the period  
during which the applicant was absent on many occasions  
was treated as L.W.F.. However, the same was subsequently  
regularised as leave on average pay. Even in 1980  
and 1981, he occasionally absented from duty for  
considerable length of time and his absence was treated  
as LWF. In the circumstances as/merged from the entries  
~~in the copy~~ of the leave account, it is difficult to  
draw an inference that leave on average pay was  
admissible to the applicant. That apart, on the basis  
of slender material before us, it is not possible for us  
to draw a conclusion that leave on full average pay  
was due to the applicant and that the period of his

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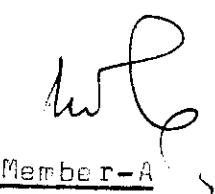
absence from December, 1982 to May, 1983 is covered by such leave.

7. In view of the discussions made above and having regard to the fact that it is for the competent authority, under whom the applicant was working, to determine whether the period of absence of the applicant is covered by the leave due, we are not inclined to issue directions as prayed for by the applicant and dismiss this application. We would however, like to observe that as leave account and service book of the applicant ~~prior~~ prior to 1974 is missing, it is expected that the respondents will reconstruct the leave account and service book of the applicant and re-examine the question whether leave claimed by the applicant was due or not, and pass fresh order to regularise the period of absence from December, 1982 to May, 1983 if it is found that leave on average pay was due to the applicant and pass order in that regard.

There will be no order as to costs.

  
Member-J

7/10/94

  
Member-A

/jm/