

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 51st day of November 1996.

Original application No. 624 of 1992.

Hon'ble Mr. D.S. Baweja, AM

1. B.C. Dutta, S/o Late. L.N. Dutta.
2. M.N. Soor
3. J.N. Gope, S/o C. Gope.
4. A.P.N. Srivastava, S/o A.G. Prasad.
5. J.P. Srivastava
6. R.V. Trivedi
7. K.P. Singh
8. T.K. Jha
9. B.N. Shukla
10. A.L. Khan
11. M. Amanullah
12. I.D. Prasad
13. L.N. Verma
14. B.B. Prasad
15. S.N. Sharma
16. Pyare Lal

All resident of C/o B.C. Dutta, New Mohal
Moghal Sarai, Dist. Varanasi.

..... Applicants.

C/A Sri S.K. Day

Versus

1. Union of India through General Manager,
Northern Railway, 17 Neetaji Subhas Road,
Calcutta.
2. The Divisional Railway Manager, E. Rly.,
Moghal Sarai.

..... Respondents.

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed jointly by sixteen applicants with a common cause of action praying for direction to the respondents to prepare their leave account crediting with average pay leave balance of 240 days on 1.1.78 and to award payment of the leave encashment of 240 days.

2. Brief facts leading to filing of this application are as ^{follows} ~~under~~. All the applicants retired while working as Guards from Mughal Sarai Division of Eastern Railway on various dates during 1987 to 1990. All the applicants were originally posted on Danapur Division. However on creation of Mughal Sarai Division, the services of all the applicants were transferred to Mughal Sarai Division from 1.1.78. The applicant's case is that they have ^{been} paid for leave encashment at the time of retirement based on the leave record maintained by Mughal Sarai Division from 1.1.78. On enquiry they had come to know that the leave records upto 31.12.1977 maintained by Danapur Division were not traceable. Because of loss of the leave record, the respondents have illegally taken zero as the balance leave in the leave account of the applicants in terms of letter dated 26.5.89 (Annexure-A-1). At the time of transfer, they had sufficient leave in balance which has been reduced to zero due to non availability of the leave records. The applicants have also brought out that in case of a large number of employees

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of Mughal Sarai zero balance in leave account was taken on 1.1.78 due to missing of the leave records. On of such staff filed O.A. No. 33 of 1990 in Patna Bench and the same was decided on 21.8.90 in favour of the applicant. Having come to know of this judgement, the applicants also made a representation dated 19.8.91 to recast their leave records giving the benefit of this judgement. The respondents in reply informed vide letter dated 8.10.91 that the matter is under consideration of Head Quarter and Railway Board. Thereafter another representation dated 21.12.91 was made but no action had been taken on the same. Being aggrieved, this application has been filed on 28.4.92, challenging that the action taken by the respondents is arbitrary and illegal.

3. The respondents have strongly opposed the application by filing counter reply. It is submitted by the respondents that leave records of all the applicants prior to 1.1.78 are available and therefore the question of ^{presumption} persuing zero leave in balance on 1.1.78 does not arise. The leave encashment has been paid based on the leave due on the date of retirement. The letter dated 20.5.89 is not applicable for the present case as it concerns in respect of those whose leave records prior to 1.1.78 were not available. Similarly the letter dated 8.10.91 at Annexure-3 has no relevance to the case of the applicants. The judgement in O.A. 39/90 S.P. Varshney Vs. U.O.I. of Patna Bench has also no relevance to the applicant's case as in their case zero leave in balance as on 1.1.78 has not been taken. In view of these facts the grounds taken by the applicants are not tenable and the application deserves to be dismissed.

4. The applicants have filed the rejoinder reply countering the contentions of the respondents and reiterating the grounds taken in the application.

5. Heard the learned counsel for the parties. We have given careful thought to the pleadings and arguments made during the hearing and the material brought on record.

6. From the facts detailed above, it is noted that the applicants have made the submission of zero leave balance on 1.1.78 on the presumption that their leave records were missing. No documentary evidence has been brought in support of this contention. There is no averment as to why they did not make any representation at the time of retirement when they were aware of this position. The applicants have based their claim based on the judgement dated 21.8.90 in O.A. 39/1990 of Patna Bench. The respondents on the other hand have vehemently controverted the stand of the applicants stating that the leave records prior to 1.1.78 in respect of all the applicants are available. Keeping these rival contentions in view, the respondents were directed to produce the original service and leave record of the applicants. The respondents have accordingly made available the original records. On going through the records, we find that the leave records since joining service including as on 1.1.78 of all the applicants are available. On scrutinizing, we note the leave in balance on 1.1.78 as under

| APPLICANT | BAIANCE LEAVE DUE ON 1.1.78 |
|---------------|--------------------------------|
| 1. B.C. Dutta | 180 |

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| 2. M.N. Soor | 14 |
| 3. J.N. Gope | 31 |
| 4. A.R.N. Srivastava | 9 |
| 5. J.P. Srivastava | 65 |
| 6. R.V. Trivedi | 173 |
| 7. K.P. Singh | 30 |
| 8. T.K. Jha | 15 |
| 9. B.N. Shukla | 40 |
| 10. A.L. Khan | 30 |
| 11. M. Amanullah | 15 |
| 12. I.D. Prasad | 140 |
| 13. L.N. Verma | 15 |
| 14. B.B. Prasad | 110 |
| 15. S.N. Sharma | 40 |
| 16. Pyare Lal | 36 |

From the above, it will be seen that in case of none of the applicants the balance leave on 1.1.78 has been presumed as zero. On perusal of the records we are satisfied about the authenticity of the leave records and service records. With this factual position as per the records obviously the applicants have simply advanced their claim on knowing about the judgement in O.A. 39/1990 of Patna Bench to seek undue benefit.

7. In view of the above facts, the applicants have no case and the application is accordingly dismissed. No order as to costs.

Member - A

Arvind.