

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 18<sup>th</sup> day of December, 1998

Original Application No.1768/1993

District : Allahabad

CORAM:-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

Braj Bhushan Ghosh  
S/o Late Purna Chandra Ghosh,  
R/o 431, A.B. Indian Institute Colony,  
Moghalsarai, District Varanasi.

(Sri S.K. Day, Advocate)

. . . . .Applicant

versus

1. Union of India through the General Manager,  
E.Railway, Calcutta.
2. The Divisional Railway Manager,  
E. Railway, Moghalsarai.

(Sri A.K. Gaur, Advocate)

. . . . .Respondents

ORDER

Hon'ble Mr. S. Dayal, A.M.

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to pay leave encashment of 208 days.

2. In brief the facts as stated by the applicant are that the applicant entered in Railway Service on 5-8-1954 and retired as Guard on 30-9-1992. It is stated by the applicant that he earned full pay leave and half pay leave during the period. He never availed earned leave either full pay leave or half pay leave during his service period. Therefore, he was entitled to leave encashment of 240 days on the date of his retirement but the applicant was paid only 32 days leave salary. It is stated by the applicant that he was denied the leave salary without any justification and for want of leave record, he cannot be denied the leave salary.

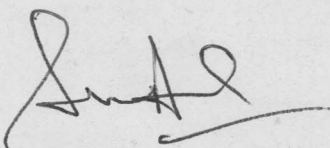
The applicant filed a representation but no results. He, therefore, prays to direct the respondents to pay the applicant leave salary for 208 days.

3. A counter was filed. It is stated that the applicant has taken leave during his service period and for the balance leave he was allowed leave salary encashment for 32 days and, therefore, he is not entitled to any more leave encashment. In this way on the basis of the averments made in the counter affidavit the respondents have requested to dismiss this OA with costs.

4. A rejoinder affidavit has been filed and stating that the applicant did not avail earned leave and he was entitled to 240 days leave encashment on the date of his retirement. Merely the absence of record does not dis-entitle the applicant for leave encashment.

5. Heard learned counsel for the applicant and learned lawyer for the respondents and perused the whole record carefully.

6. It is an admitted fact that the applicant was paid only 32 days leave encashment on the date of retirement. The respondents did not produce any leave account. It was the duty of the respondents to maintain the leave account and produce the same before this Tribunal for perusal but no leave account has been produced so far to establish the fact that only 32 days leave was at the credit of the applicant at the time of his retirement. The employee always prefers to keep in balance the entire period of 240 days earned leave so that he may get leave encashment at the time of his retirement. The


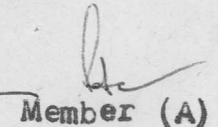


applicant has made specific averments that he is entitled to 240 days leave encashment as he did not avail full pay/ half pay leave during the service period whereas the respondents have failed to prove the fact that only 32 days leave was at the credit of the applicant on the date of his retirement. No record has been produced by the respondents to establish this fact. Therefore, an adverse inference can be drawn against the respondents supporting that either no record is maintained by the respondents or if maintained, it does not support the contention of the respondents. Therefore, the contention of the applicant is to be accepted to the extent that the balance 240 days leave was at the credit of the applicant on the date of retirement. Therefore, he is entitled to leave encashment in total for 240 days at the date of his retirement.

7. The same view has been followed by this Tribunal in OA No.1872 of 1993 in a judgement delivered on 25-7-1996, a copy of which has already been filed alongwith this OA.

8. We, therefore, allow this OA and direct the respondents to pay the applicant leave encashment of 208 days more within three months from the date of receipt of the copy of this order.

9. No order as to costs.

   
Member (J) Member (A)

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