

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1872 of 1993

Allahabad this the 25th day of July 1996

Hon'ble Dr. R.K. Saxena, Member ( Jud. )

Surendra Singh, S/o Late Kishun Singh, Ordely  
Bazar, Varanasi.

APPLICANT

By Advocate Sri S.K. Dey  
Sri S.K. Misra

Versus

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

RESPONDENTS.

By Advocate Sri A.K. Gaur.

O B D E R

By Hon'ble Dr. R.K. Saxena, Member ( J )

This O.A. has been filed by Surendra Singh with the relief that the respondents be directed to make payment of the amount of 17 days leave encashment with interest, and the salary of 19.3.92 and 20.3.92.

2. The facts of the case are that the applicant had joined as Commercial Clerk on 23.3.53 at Danapur division under the respondents. On 01.8.1978, Danapur division was bifurcated and besides Danapur division, one more division named Mughalsarai division, was created and the applicant was transferred to Mughalsarai on 01.1.78. With the

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transfer of the applicant, the Service Book, Provident Fund Account, Leave records and other connected records were expected to have been transferred to Mughalsarai Division. The applicant, however, retired from service on 30/6/92 after attaining the age of super-annuation. At the time of retirement, the applicant claims to be drawing an amount of Rs. 2,200/- and he was entitled for leave encashment of 240 days but, the respondents arbitrarily paid leave encashment for 223 days only. The applicant had represented and the respondents had obtained the report (annexure A-2) of Welfare Inspector but with no result. The contention of the applicant is that at the time of retirement, he had 240 days leave to his credit and, therefore, he was entitled to 17 days leave encashment more. The claim of the salary for 19.3.92 and 20.3.92 has also been preferred but, without disclosing the reasons thereof.

3. The respondents contested the case by filing counter-reply. It is alleged that the applicant was not entitled for 240 days leave encashment because he had only 223 days to his credit at the time of retirement. It is further averred that the leave record had been maintained from 01.1.1970 as per extant procedure. The leave record prior to the period of 01.1.1970 was not available and was missing but, that would not mean that the applicant had not

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availed leave right from the date of his appointment. It is further contended that the trend of taking leave by the applicant from 01.1.1970 would show that he had also taken leave prior to 01.1.1970. The claim of the applicant is, therefore, opposed.

4. The applicant filed rejoinder, in which facts which were narrated in the O.A., were restated. It is pointed out that the maintenance of leave account was rested with the respondents and if the leave record prior to 1970 was not available, it would not mean that the applicant ~~had~~ <sup>did have</sup> not 240 days to his credit at the date of his retirement.

5. I have heard the learned counsel for the parties and have perused the record.

6. The applicant has come with two reliefs. First is for the payment of 17 days leave encashment and the other is payment of salary for two days namely 19.3.92 and 20.3.92. In the body of the application, it is nowhere stated as to how two days salary was due to be paid to the applicant. Since, there was no averment and this point had not been argued as well, I do not see any ground to conclude that two days salary was due to be paid to the applicant.

7. As regards payment of encashment leave,

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it has been averred on behalf of the applicant that he was initially posted in the Danapur division and when Danapur division was bifurcated into two, he was transferred to Mughalsarai division on 01.1.78. What appears from the counter-reply of the respondents that the leave record of the applicant was available only from the year 1970. It further appears from the report (ann. A-2) of the Welfare Inspector that the applicant remained posted at Mughalsarai prior to the creation of the Mughalsarai division and, therefore, the leave account <sup>of that period could</sup> be traced. According to this report (ann. A-2), the applicant had availed 10 days earned leave from 16.4.62 to 25.4.62. Thereafter, in the year 1975, he took a day's earned leave on 23.8.75, 3 days earned leave from 22.9.75 to 24.9.75 and five days earned leave from 10.10.75 to 14.10.75. If, this report is correctly prepared, it goes to show that the record of leave taken by the applicant in the year 1962 was available. In view of this report, the averment made in the counter-reply that the leave record was available only from 1970, does not hold good. Anyway, it was the duty of the respondents to have maintained the record properly and to have given all the benefits which were due at the time of retirement of the applicant. Even if, Danapur division was bifurcated into two divisions, the applicant had nothing to do to see that his service record including leave encashment

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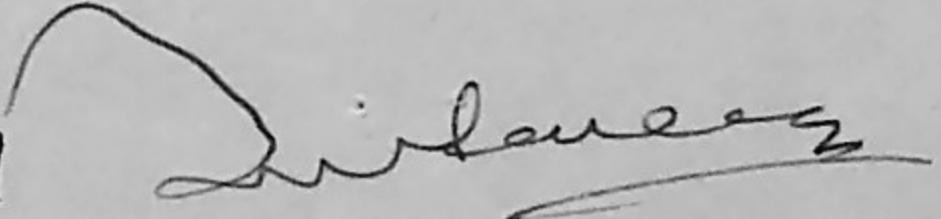
record is transferred to Mughalsarai division. It was for the respondents themselves to have ensured the maintenance and the transfer of the record. The applicant contends that 240 days were to his credit at the time of his retirement while the respondents point out only 223 days. There is no material on record as to how 223 days were calculated. The report (ann-A-2) of the Welfare Inspector gives an indication that the applicant was very miser in taking leave. Moreover, an employee always prefers to keep the entire period of 240 days earned leave to his credit by the time of retirement so that he may get the leave encashment for full period. Since, the maintenance of the record of the leave encashment is the duty of the respondents, it is also the duty of the respondents to explain as to what amount of days of leave was available at the time of retirement of an employee. Mere disclosure of days which is not supported by any cogent evidence, will not mean the proper discharge of the duties. In my opinion, the respondents have failed to explain as to how only 223 days were to the credit of the applicant at the time of his retirement. I am, therefore, of the view that the contention of the applicant that 240 days were to his credit, should be accepted.

8. It is surprising that the respondents

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preferred to fight the case than to make payment of 17 days encashment. When an employee worked for about 39 years under the respondents and if, he was claiming leave encashment of only 17 days the respondents should have acceded to the claim because non-maintenance of the proper record, was the fault of the respondents themselves.

9. In view of the facts and circumstances of the case, as disclosed above, the applicant succeeds so far his claim for the payment of leave encashment of 17 days is concerned. The O.A. is, therefore, partly allowed. No order as to costs.

  
Member ( J )

/M.M./