

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 14th day of May 1998.

Original Application No. 583 OF 1995

Hon'ble Mr. D. S. Bawaja Member (A)

Sri Gupteshwar Prasad Singh S/o Late R. M. Singh
R.O. & P.O. Malowu, Disst. Nalanda.

.....Applicant.

C/A Sri S.K. Dey

Sri S.K. Mishra

VERSUS

1. Union of India, through the General Manager,
E. Rly, 17 Netaji Subhas Road, Calcutta-I
2. The Divisional Railway Manager,
E. Rly, Mughalsarai.

.....Respondents.

C/R Sri A.K. Gaur.

ORDER

Hon'ble Mr. D.S.Bawaja Member (A)

This application has been filed seeking the relief that the applicant be paid leave encashment of 240 days after preparing his leave records from 26.02.1957 to 31.01.1995.

2. The applicant joined the Railway Service in Danapur Division on 26.02.1957 as Guard and finally superannuated on 31.01.1995 from the Mughalsarai Division of Eastern Railway. The applicant submits that he was entitled for the leave encashment from 26.02.1957 for 240 days but only six days of leave encashment has been given. The applicant further submits that it is given to understand that leave records of the applicant was missing for which he is not responsible and it is for the respondents to ensure the availability of the leave due record. The applicant further submits that he never availed entire earned leave and therefore, there was enough earned leave in his credit at the time of retirement. The applicant made representation on 20.05.1995 and also took personal interview with the concerned authority but did not get any response. Feeling aggrieved the present O.A. has been filed on 09.05.1995.

3. The respondents have contested the applicants submissions through the counter affidavit. The respondents submit that the applicant on attaining the age of retirement was entitled for only six days leave on average pay and accordingly encashment of six days was paid to the ~~applicant~~ applicant. The respondents further submit that after bifurcation of Danapur Division and ~~the~~ ^{of} setting up the Mughalsarai Division, several leave records of the staff were misplaced as when the records were transferred. In case of the applicant, the leave record is available only from January 1978 to 31.01.1995 and leave record for the earlier period from 26.02.1957 to 31.12.1977 ~~was~~ not available. The respondents further submit that the leave account of the applicant has been properly maintained from ^{onwards of the} January 1978 and for such staff a ~~was~~ whose record was missing, a decision had been taken that the leave in

credit should be taken as zero in terms of the chief personnel officer's letter dt.12.5.89. In view of these facts, the respondents plead that the O.A. is misconcieved and therefore, the applicant is not entitled for the relief prayed for. The respondents have also proposed the application stands ^{being} ~~as~~ highly time barred ^{therefore} ~~as~~ barred and deserves to be dismissed ^{on} to this ground alone.

4. The applicant had filed rejoinder affidavit controverting the submissions of the respondents made in the counter affidavit and reitraliting the grounds taken in the O.A. The applicant has again emphasised that the leave record was to be maintained by the respondents and applicant could not be penalized by taking the leave in credit as zero.

5. I have heard Shri S.K.Dey, learned counsel for the applicant and Shri A.K.Gaur, learned counsel for respondents. The argument advanced have been carefully considered and material on record has also been perused.

6. From the rival averments following salient facts are noted ;

(a) It is admitted fact that leave record of the applicant for the period from 26.2.57 to 31.12.77 was missing and the leave record has been maintained regularly from 01.1.78 till the date of retirement and available with the respondents.

(b) As per the respondents, the leave due in credit of the applicant at the time of retirement was 06 days only while the applicant claims that he was entitled for full leave encashment of 240 days.

With the above admitted facts, the two questions which are involved in the present O.A. are,

(a) Whether taking of leave in balance as on 01.1.78 as

zero in terms of Chief Personnel Officer's letter dated 25.9.89(C.A.-1) is unsustainable, (b) If (a) is not sustainable whether the applicant is entitled for leave encashment of 240 days as claimed by him.

7. Taking the first question, I have carefully gone through the order dated 25.9.89. The order simply says that in respect of the staff where the leave record for the period before 1978 is missing, the leave record may be recasted taking the balance as zero. The letter does not show any authority under which such a directive has been issued. The letter is silent whether there is any authority of the Railway Board in giving these directions. The respondents in the counter-affidavit ^{also} have not brought on record any rules which have been laid down by the Railway Board with regard to re-casting of the leave record ^{where} the same ~~has been~~ found missing. As indicated by the applicant, I fully endorsed that it is incumbent on the part of the respondents to maintain the leave record and to ensure its availability. Incase the leave record is missing, the employee cannot be penalised for the same for ~~not~~ fault of his. Keeping these facts in view, I find that the order passed by the Chief Personnel Officer, directing to take the balance as zero for re-casting the leave record, is unfair, unjust and arbitrary. Therefore, the action taken by the respondents to recast the leave record with zero balance on 01.1.78 is not sustainable.

8. Having recorded finding above, the second question for consideration is whether the applicant is entitled for full encashment of 240 days. As indicated earlier, the respondents have ^{stated} the leave record available

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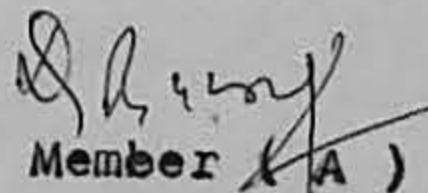
from 01.1.78 till the date of retirement and the same has not been refuted by the applicant. As per the record maintained from 01.1.78, the total leave in balance on the date of retirement was only 06 days. With this factual situation, to allow the applicant leave encashment of 240 days, it is obvious that leave in balance on 01.1.78 should have been 234 days. This ^{based on} also mentioned that even in 1978, the maximum leave which could be accumulated, was 240 days. Both the applicant as well as the respondents could not indicate as to what was the maximum leave which could be allowed to be accumulated in 1978. The learned counsel for the respondents vaguely indicated that the earlier leave was ~~allowed~~ to be accumulated ^{up to} 180 days which was subsequently amended to 240 days. Keeping this in view, the applicant can have the leave in balance maximum to the extant permitted to be accumulated on 01.1.78 as per the extant rules applicable at that time. However, allowing the maximum permissible leave to the applicant would mean that the applicant was not availing the leave ~~fairly~~. Such presumption would be not just and fair. It would be, therefore, reasonable if the trend of the leave availed by the applicant during the 5 years period from 01.1.78 is ascertained and based on this trend, the leave in balance on 01.1.78 could be worked out. Keeping this in view, it is considered expedient to laid down the following directions;

"The average leave availed for a year during the 5 years period from 01.1.78 ^{orwards} to be worked out. Based on this ^{average} leave availed per year, the leave account will be recasted from 26.2.57 to 31.12.77. The balance as on 01.1.78 shall be arrived at. This balance will be subject to the limit of the maximum permissible period which was allowed to be accumulated as per the

extant rules in 1978. The applicant will be entitled for the leave encashment for the balance so arrived at as per the directions indicated earlier. The compliance of this order shall be done within a period of 3 months from the date of receipt of this order. The copy of the leave record as recasted, shall be furnished to the applicant.

9. The plea of the respondents that the application is barred by limitation is not tenable if the facts of the case are considered. The applicant has been paid the settlement dues on 01.2.95 and he made a representation for non-payment of full leave encashment on 20.2.95. The present O.A. has been filed on 09.5.95 and, therefore, the application is within the limitation period. The respondents perhaps have made this plea on the presumption that the applicant has sought his leave record to be recast from the period from 26.2.57 onwards. This presumption is far-fetched as the applicant could know only when six days of leave encashment was paid that something was wrong with his leave record.

10. The O.A. is allowed partly alongwith the directions as contained in para-8 above. No order as to costs.


Member (A)

/M.M./