

Reserved

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: This the 04 day of November 1999.

Present:- Hon'ble Mr. Rafiq Uddin, Member (J.)

Original Application No. 504 of 1995.

Laxmi Narayan Singh
s/o R.E. Singh,
R/O Madhopur,
P.O. Chapwa
Distt. Saran.

. . . Applicant.

(Through Sri S.K. Dey Adv. and
Sri S.K. Mishra, Adv.)

Versus

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

. . . Respondents.

(Through Sri A.K. Gaur, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiq Uddin Member (J.)

The applicant retired on 31st January 1995 as Railway Guard. He has been paid all the retiral benefits including the encashment of 33 days leave. The applicant has filed this O.A. claiming payment of 207 days leave encashment which has been denied by the respondents.

2. In brief the case of the applicant is that on his retirement he is entitled for 240 days leave salary as per rule 523 and 525 of Railway Establishment Code Vol. I.

3. The case of the respondents for refusing

the claim of the applicant is that the leave account of several employees including the applicant is missing. As a result the policy was framed by the respondents uniformly applicable to all the cases of such employees whose leave record is missing. It was decided that on attaining the age of superannuation such employee will be entitled for only 33 days average leave. The payment of leave salary was accordingly made to the applicant. It is, however, admitted to the respondents that maximum limit of admissibility of leave encashment is upto 240 days as per rule. It is also admitted that the applicant has earned leave during his service period but he also availed leave from time to time. It is further added that the leave account of the applicant has properly been maintained from the year 1972 upto the date of his retirement.

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

5. It is evident from the facts of the present case that the applicant has not been paid amount of leave salary of 207 days by the respondents because the applicant's leave account is missing. As per policy decision taken by the respondents the employees of this category has been paid only 33 days. It has been rightly contended on behalf of the applicant that the applicant is not liable for the loss of his leave account. As such in the absence of any record it can not be presumed that the applicant had already availed earned leave of 207 days prior to his retirement. The policy decision taken by the respondents in respect of

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such employees whose leave record is missing is not binding on the applicant. It is admitted case that the applicant is not liable for the loss of his leave record. Therefore, in my opinion the applicant should not suffer for the loss of his leave record. The responsibility of maintaining the leave record lies with the respondents. In the absence of any material to show that the applicant availed earned leave during his service period, it can not be assumed that he actually availed the earned leave. On the other hand it is generally the tendency of the Government servants to accumulate the earned leave to enable them to encash the same at the time of their retirement. Under the facts and circumstances of the present case, therefore, the respondents can not deprive the applicant from the payment of the encashment of salary leave for 207 days and the applicant is entitled for the same. The O.A. is liable to be allowed.

6. The O.A. is allowed. The respondents are directed to pay the applicant the amount of leave salary of 207 days within three months from the date of communication of this order. NO order as to COAS.

Rafiqul Hasan
Member (J.)

Nafees.