

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 16th day of February, 2004.

QUORUM : HON. MR. A. K. BHATNAGAR, J.M.

O.A. No. 370 of 1999

Ram Awadh Prasad S/O Late Sri Chatai Prasad R/O Village
Bedouli, Post Sighouli, District Gorakhpur..... Applicant.

Counsel for applicant : Sri R.K. Dubey.

Versus

1. Union of India through its Ministry of Railway, New Delhi.
2. The Divisional Railway Manager (Personnel), Lucknow.
3. The General Manager, N.E. Railway, Gorakhpur.

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.....Respondents.

Counsel for respondents : Sri A.V. Srivastava.

O R D E R (ORAL)

BY HON. MR. A.K. BHATNAGAR, J.M.

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant has prayed for a direction to respondents to release the payment in respect of Leave encashment amount which is due for 240 days earned leave. He has further sought a direction to respondents to release difference amount in gratuity which has not paid to the applicant, and to release the aforesaid payment at the rate of interest paid by the nationalised bank since 31.12.1995.

2. The applicant's case in brief is that the applicant joined his service as Goods Train Driver in Respondent's establishment on 19.12.1958 and retired as Senior Goods Train Driver on 31.12.1995 working at Diesel Loby, Gorakhpur under Luc-know Division. The applicant has worked continuously since his initial appointment to his date of retirement with full satisfaction to the department. The applicant was informed on 1.12.1995 vide letter No.E/11/PC/R.A.Prasad issued by Railway Divisional Manager (Personnel), Lucknow that no documents concerning to the applicant is available since 19.12.1958 to 31.12.1988 so accordingly the applicant

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was directed to submit the documents for the period mentioned above and in case these are not available then he may file an affidavit so that the retiral benefits could be made without any delay to the applicant (Annexure-1). In pursuance to this letter, the applicant submitted to the department that no documents are available with him.

3. The grievance of the applicant is that inspite of representations sent to the department, the respondents have not paid the leave encashment amount due to the applicant and his gratuity has also not been paid as calculated in the Pension Pay Order issued by the respondents. Learned counsel for applicant submitted that it was the duty of department to maintain the service record of the applicant as custodian of the records and to preserve them properly and the employee is not at all liable to face the consequences on the fault of administration. Learned counsel for applicant also submitted that in pursuance of the letter issued by the department, the applicant has filed an affidavit on 5.12.95 to the effect that no document of his service is available with him. Counsel has further submitted that as he has never taken leave being an employee of running department so he is entitled for leave, encashment for 240 days earned leave.

4. Learned counsel for the respondents while resisting the claim of the applicant invited my attention on paras 6,7 and 8 of the Counter Affidavit and submitted that all the payments due to the applicant have been paid to him within three months of the retirement of applicant of which full details chart-wise has been mentioned in para 7(G), (D) and (E) respectively. Vide order dated 26.02.03, learned counsel for respondents was directed to file affidavit dated 2.1.96 on the basis of which the leave account was restructured in support of para 7(F) of the C.A. which was submitted by the respondents for corroborating the aforesaid

statement. In compliance of the above order, learned counsel for the respondents has brought the required original documents in the Court today and has filed photostat copy of the affidavit filed by the applicant on 2.1.96 along with calculations containing in four pages on which basis the respondents have calculated the amount in dispute which is taken on record.

5. I have heard counsel for the parties and considered the submissions and perused the record and the affidavit dated 2.1.96 along with the calculations made by the respondents containing four pages.

6 Learned counsel for applicant submitted that he may be permitted to inspect the records filed by the respondents counsel and make a fresh representation to the department for consideration and for payment which is due to him. Learned counsel for respondents has no objection if the applicant is given an opportunity for filing a fresh representation and for making an application for inspecting the records in the department.

7. In view of the above and after considering the submissions of the counsel for parties, I find it appropriate that the ends of justice will be met if the applicant is given an opportunity to file a fresh representation to the competent authority i.e. Sr. D.P.O. who will consider and decide the same within a specified period.

8. Accordingly the O.A. is disposed of with a liberty to the applicant to file a fresh representation after inspecting the required documents within one month and the competent authority is directed to consider and decide the representation of the application if so filed within a period of four months from the date of receipt of a copy of this order.

No order as to costs.


J.M.