

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 16th day of Nov., 2005.

QUORUM : HON. MR. K.B.S. RAJAN, J.M.

O.A. No.1414/03

C.K. Pandey, aged about 58 years, Son of, Late Triloki Nath Pandey, working as Senior Clerk under Chief Crew Controller, North Eastern Railway Bareilly City, R/O Village Tajapur, P.O. Saidabad, District Allahabad.

.....Applicant.

Counsel for applicant : Sri Sudama Ram.

Versus

1. Union of India through General Manager North Eastern Railway, Headquarters Office, Gorakhpur.
2. General Manager North Eastern Railway, Headquarters Office, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Izatnagar, Bareilly. (UP).

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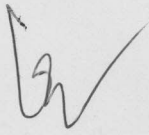
.....Respondents.

Counsel for Respondents : Sri K.P. Singh.

O R D E R


BY HON. MR. K.B.S. RAJAN, J.M.

At the very out set, the counsel for the applicant submitted that the grievance of the applicant has been substantially redressed and what is left is leave encashment in respect of leave at credit as on 25.11.1991, which the



respondents denied on the ground that the applicant had been granted continuity of service ~~and~~^{for} pensionary benefits in pursuance of the order dated 29.10.1999 in O.A. No.867/98. As such, this order is confined to ascertaining the entitlement or otherwise of the applicant for leave encashment of any credit of leave in his account till 24.11.1991.

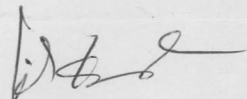
2. It is the admitted fact that notwithstanding the fresh reappointment as Senior Clerk in the Izzat Nagar Division, the applicant's services from 1965 onwards have been taken into consideration for working out the pensionary benefits. Leave encashment is also a part of pensionary benefits. It is on that scores~~x~~ that the respondents have calculated the leave encashment in respect of the applicant's appointment as Senior Clerk in Izzat Nagar Division. The situation in this case relating to considering the service of the applicant as continuous from 1965 onwards amounts to a deeming fiction, as at the same time, the applicants' appointment in 1999 (notionally from 1990) had been on reappointment. If ¹so, the oft-quoted observation of Lord Asquith in East End Swellings Limited Versus Finsbury Borough Council 1952 AC 109 at 132 applies in this case also. "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so also imagine as real the consequences and incidence which, if



the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it".

3. In view of the above, the applicant is entitled to leave encashment in respect of the leave at credit as on 24.11.1991 also. The respondents shall work out on the basis of records the extent of leave at credit of the applicant as on 24.11.1991 and treat the same as leave at credit as on 31.7.2005 by adding to the same the extent of leave earned during the period of his service from 1999 till 2005. Leave encashment shall be worked out for the entire period of leave at credit subject to the maximum ceiling as per rule and after adjusting the amount already paid as leave encashment, the balance be paid within a period of five months from the date of receipt of a copy of this order.

The O.A. is disposed of accordingly.
No costs.


J.M.

Asthana/