

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A.NO. 483/1992  
T.A.NO.

DATE OF DECISION 17<sup>th</sup> November 98

Shri Lavaji Petitioner

Shri B.B.Gogia Advocate for the Petitioner [s]  
Versus

Union of India Respondent  
Owning & Representing W.Rly through  
General Manager  
Mr. N.S.Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C.Kannan, Member

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *✓*
2. To be referred to the Reporter or not ? *✓*
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

Lavji Bhagwan,  
Occ: Retired Rly.Servant,  
Add: Chhotalal Jamnadas,  
at Joravarnagar Street No.3,  
Joravarnagar,  
Dist: Surendranagar

:: Applicant

Advocate Mr. B.B.Gogia

versus

(1) Union of India,  
Owning & Representing  
Western Railway,  
Through: General Manager,  
Western Railway,  
Churchgate,  
MUMBAI

(2) Divisional personnel Officer,  
Western Rly, Kothi Compound,  
RAJKOT

:: Respondents.

Advocate Mr. N.S.Shevde

JUDGMENT

IN

OA 483/92

Dated: 17/11/1998

Per Hon'ble Mr. V.Ramakrishnan, vice Chairman

The Applicant who had retired from Railway Service on 31-7-88 after having worked as a Gatekeeper/Points Jamadar at Surendranagar has challenged the order dt. 22/7/92 from Respondent No.2 annexed as A-6, which reiterates their earlier stand to recover from the gratuity due to him a sum of Rs. 5223/- on account of alleged overpayment of leave salary.

This is the second round of litigation. At the time of the Applicant's retirement with effect from 31-7-88, Respondents issued an order dt. 17-8-88 by which they deducted a sum of Rs. 5223/- from the gratuity due to him for the alleged overpayment of leave salary for the

period from 25-12-76 to 9-7-86. The applicant had approached this Tribunal in OA No. 304 of 1990 challenging this order. The Tribunal noted that the Applicant was not given an opportunity to be heard before the impugned order was issued and this amounted to violation of the principles of natural justice. The Tribunal in its judgment dated 7-4-82 had given the following directions.

" The application is partly allowed. The order of the Respondents at Annexure A/4 dated 17th August, 1988, is quashed and the Respondents are directed to decide the question of recovery of the overpayment referred to in that order after giving an opportunity to the applicant of being heard. The respondents may also consider the length of period of about 10 years which is referred to in the said order and then take into consideration all aspects about the recovery of the amount which is spread over such period. The applicant is at liberty to cite the Rule about waiver to the Respondents. The respondents to decide the above point according to rules. If the applicant is dis-satisfied with the ultimate order of the respondents, he is entitled to approach this Tribunal according to law. The respondents to decide this matter within a period of three months from the date of receipt of this judgment. No order as to costs. "

2 Respondent No.2 has complied with the directions and issued an order dt. 22-7-92, which was communicated to the applicant by letter of the same date as Annexure A-6. In this order Respondent No.2 has taken <sup>his</sup> view that the applicant had not quoted or produced any rule in support of his case that no recovery should be made from him

and held that the recovery of Rs. 5223/- have been correctly made from the applicant's DCRG as per rules. This has been challenged in the present OA.

3 We have heard Mr. B.B.Gogia for the applicant and Mr. N.S.Shevde for the Railway Administration.

4 The Tribunal while issuing Notice on admission had given an Interim Direction to consider the provisions of Rules 1016 and 1017 of the Indian Railway Establishment Manual, which contains provision for waiver and to decide whether the present case is a fit one to exercise the power of waiver either fully or partly. There is also a reference to the fact that applicant was a low paid employee and overpayment was made to him several years before his retirement and that too on account of pay granted to him during his leave period. In compliance with the above direction the Respondents has passed an order stating that there is no justification for write-off. It is seen from the reply statement of the Respondents that the following order has been passed:-

" Overpayment made to an employee on account of excess leave granted due to irregular postings in the leave accounts should be recovered from him/her in cash or excess leave allowed in the past, set off with the consent of the employee against future credits of leave earned by him/her. The amounts excess paid to the staff in such circumstances should not be written off in any case."

5 Mr. Gogia says that reasonable opportunity was not given to the applicant before the order dated 22-7-92 was passed. The applicant was summoned before the concerned Officers and was asked to quote any rule which would support his case. The applicant being a low-paid employee was not in a position to quote any such rule. Mr. Gogia says that no show-cause Notice was given to the applicant. He further says that the statement annexed with the so-called speaking order shows alleged excess leave, but it is not clear whether the applicant has been given due credit for the leave earned by him posted on 1st January and 1st July of every year when the leave account could have been credited with 15 days earned leave. Counsel submits that what has been produced is very cursory and it cannot be sustained. He requests that as it is an old case and moreover as the applicant is a low paid employee, directions should be given to the Respondents to refund to him whatever has been recovered from his gratuity and treat the matter as closed.

6 Mr. Shevde states that the applicant was paid leave salary for period for which no leave was due and this resulted into overpayment. According to Mr. Shevde recovery of such overpayment is permissible as per the rules.

7 We have considered the submissions of both sides. The Respondents were earlier directed to give an opportunity to the applicant before taking further action. There is ofcourse a mention that the Applicant may cite any rule dealing with waiver to the Respondents. From the so-called speaking order dt. 22-7-92 we find that the applicant was

summoned and was asked to explain as to why there should be no recovery of Rs. 5223/- towards overpayment and to substantiate the justification for waiver. It is admitted that no show-cause notice was given to the applicant setting forth the Railway's stand as to how overpayment has resulted. There is a statement enclosed with the Speaking order, which relates to the different periods of leave taken by the applicant allegedly in excess of what is due to him as per rules. No show-cause notice was given to the applicant. It is not clear from the enclosed statement the extent of leave which was at the credit of the applicant at different times showing inter-alia the leave he has earned during those periods including on 1st January/1st July of every year. Mr. Shevde has produced some documents to show that due credit for leave has been given to the applicant. However, this the fact remains that before issuing the order dt. 22/7/92, reasonable opportunity was not given to the applicant by the respondents. Therefore, the order dated 22/7/92 cannot be sustained.

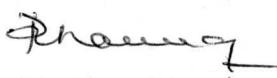
8 In the facts of the case we quash the letter dated 22/7/92 ~~not~~ and direct this if the Respondents still want to pursue the matter, they shall issue a proper show-cause notice, which should indicate all relevant details pertaining to the leave account of the employee, the leave credited at different times ~~not~~ and period of excess leave. The applicant shall also be given an opportunity to

examine his leave account if he wants before giving reply. After receiving his request the Respondents shall consider and pass an appropriate order.

If it is found on the basis of such an exercise that the overpayment in fact has resulted, the Respondents shall re-examine the matter regarding justification of waiver either fully or ~~on~~ part. We find from the reply statement of the Respondents that Respondents had passed orders that there was no justification <sup>to waive the</sup> in excess payment. It is not clear whether before passing the order they have taken into account observations of the Tribunal that the applicant was a low paid employee and the overpayment is ~~not~~ made to him several years before his retirement and that too on account of leave salary granted to him during his leave period. They shall do so <sup>in</sup> the discretion to waive overpayment should be judiciously exercised and the request should not be summarily rejected.

If the Railways wish to proceed further in the matter, they shall take action as directed above. The entire exercise should be completed within 3 months from the date of receipt of this order.

9. With the above observations the OA is finally disposed of with no order as to costs. The relevant file dealing with the settlement case of the Applicant, which was handed over by Mr. Shevde is returned to the Respondents.

  
(P.C. Kannan)  
Member.

  
(V. Ramakrishnan)  
Vice Chairman.

  
N.S.H.