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O.A. No. 117 of 2009

Order dated: 30.10.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Applicant Ainthi Ranasingh, a retired Railway employee has approached this Tribunal for the second time disputing the leave period and the leave salary calculated by the Respondent-authorities. He has prayed for the following relief:-

“..to allow the original application, direct the Respondents to count the leave period from 01.04.1973 to 31.01.2002 and release the consequential financial benefit accrued out of the same with interest/penal interest....”

2. The applicant claims that he was working in the Railways from 1964 till 31.01.2002, on which date he retired from service. The further claim of the applicant is that from 1964 to 1973 he was on casual register. However, while calculating the leave period and other benefits including gratuity, the Respondent-authorities have not taken into account the entire period of his service and have thereby determined only 132 days LAP and consequential leave salary entitled to by the applicant. The applicant had

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earlier approached this Tribunal by filing O.A. No. 19/07, in which all the contentions of the applicant were considered by this Tribunal, and as per the order dated 7.08.2008 this Tribunal held that there was no material/rule to show that the applicant is entitled to the pensionary benefits as he claimed for the period from 1964 to 1.4.1973 and hence he was not entitled to any benefit for the said period. However, this Tribunal, with regard to the other claims, namely, the leave salary and gratuity, directed the Respondents to recalculate everything and inform the matter to the applicant within a reasonable time. In pursuance of the said direction, the Department considered the claim of the applicant in extenso and passed an order on 25.11.2008 calculating his leave days as 132 and fixing his gratuity and other benefits as shown in the said order.

3. At present, aggrieved by the said order, the applicant has filed the present O.A., claiming that he is entitled for all the benefits, which he claimed before this Tribunal including that of the leave salary for the leave days, and stating that the calculation made by the Respondents is wrong.

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4. This Tribunal admitted the O.A. and as per order dated 30.03.2009 this Tribunal directed the applicant to produce any other document, which would show that his claim is based on any material or any rule or order. But no such material has been produced before this Tribunal excepting a representation, which he had filed before the authorities at Annexure-A/4.

5. However, today, when the present O.A. came up for admission, this Tribunal heard Mr. S.K.Mandal, Ld. Counsel appearing for the applicant and Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents appearing on notice.

6. The main contention raised by the Ld. Counsel for the applicant is that the service of the applicant from 1964 to 1973, namely, up to 1.4.1973 has not been considered properly and the calculation regarding leave days as per leave account, which has been relied on by the Respondents, is unsustainable, being not supported by any material. This Tribunal again asked the Ld. Counsel for the applicant to show any rule or any circular which would show that the calculation now made by the Respondents is wrong, or miscalculation crept in the order passed by the Respondents, there was no answer or material placed before

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us in support of the claim of the applicant. The Ld. Counsel only submits that the applicant's service from 1964 to 1973 should be taken into consideration for calculating all his retirement dues. The further contention of the Ld. Counsel for the applicant is that the period from 1.4.1973 to 1997 should also be considered for calculating leave account or leave days which would entitle him to the payment as per the commuted leave which could be encashed from the Department subject to a maximum of 240 days. But the question now coming up before this Tribunal is whether the applicant is entitled for calculation of any leave days for the period from 1.4.1973 to 1997, on which date his service has been regularized, though by a subsequent order it has been regularized w.e.f. 1.4.1973. During this period unless the applicant works he cannot claim any leave days to be credited to his leave account. Hence, Annexure-A/3 and the documents attached thereto show that the applicant was not earning any leave days entitling him for any payment for the period from 1973 to 1997 as his regularization w.e.f. 1.4.1973 was only notional. The Respondent-authorities have maintained the applicant's leave account with endorsements of accrual of leave and period of leave availed

of by him during service and have determined the balance leave available for leave salary. Hence, the calculation made in the statement attached to Annexure-A/3 being fraught with no infirmity, this Tribunal is not inclined to interfere with such order passed by the Respondent-authorities.

7. With regard to the other claim now the Ld. Counsel raised that he is entitled for pensionary benefit for his service period from 1964 to 1973, this Tribunal finds that the said claim of the applicant has already been concluded by the Tribunal in the earlier order, which has been accepted by the applicant without any challenge, and the applicant cannot re-agitate the said question for consideration in the present O.A.

8. In the above circumstances and with the above findings, the O.A. is dismissed as meritless. No costs.

U.K. 9/11/97
MEMBER (J)

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