

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1522 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member..

Bhupendra Nath Halder, s/o late Mahendra Nath Halder, aged about 62 years, retired Principal, BHHS, S.E. Railway Adra, now living at Vill. Sadpur, PO. Machlandapur, Dist. 24-Parganas (N).

...Applicant.

- v e r s u s -

1. Union of India, service through General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Divisional Rly., Manager, S.E. Rly., Adra.
3. Divl. Personnel Officer, S.E. Rly., Adra.
4. Controlling Officer, S.E. Rly., BHSS, Adra, (Sr. D.A.O., Adra)

...Respondents.

For the applicant : Mr. B.C. Sinha, counsel.

For the respondents : Mr. P. Chatterjee, counsel.

Heard on 28.1.99

Order on 28.1.99

O R D E R

D. Purkayastha, JM

The grievance of the applicant in short is that he was the Principal of Boys' Higher Secondary School, Adra under South Eastern Railway and he retired from service on 31.1.96. So he is entitled to get leave salary, gratuity etc. from the date of superannuation i.e. on 31.1.96. But the respondents did not make payment of the leave salary as well as gratuity immediately after his retirement from the service. The respondents delayed the matter and ultimately they paid Rs.65,135/- against the leave salary for 210 days (L.A.P) during the period of February 2/97. According to the applicant, the respondents further paid Rs.68,442/- after deducting Rs.42,478/- from the gratuity amount of Rs.1,10,920/- But before deduction of Rs.42,478/- no opportunity of being heard was given to him. Accordingly the applicant is entitled to get leave salary for 300 days not for 210 days on the date of retirement. But the respondents did not make payment of leave encashment of 300 days.

2. The respondents filed written reply denying the claim of the applicant. The respondents admitted that initially his leave for encashment was certified by Accounts for 97 days which was not agreed by the applicant. Then after examination of the records it revealed that 210 (LAP) is due for encashment and accordingly Rs.65,135/- has been paid to the applicant during February 1997. It is also averred in the reply that an amount of Rs.1,10,920/- was sanctioned towards DCRG but not paid for non-receipt of final clearance from FA & CAO (SV). However, after approval of DRM/ADA, an amount of Rs.68,442/- after deduction of Rs.42,478/- has been passed for payment on 28.7.98. Balance amount of Rs.42,478/- has been withheld by the competent authority as per outstanding recoverable from him as per details given in the enclosed statements (Annexure-R/1 of the reply).

3. Mr. Sinha, Id. counsel for the applicant submits that as per statement made in sub para (a) of para 5 of the reply, it is apparent that the respondents did not maintain correct leave account of the applicant and the respondents could not produce leave account of the applicant maintained by them alongwith the reply. So the applicant is entitled to get leave encashment for 300 days which was admissible to him. Mr. Sinha, Id. counsel submits that Rs.42,478/- was arbitrarily/ wrongly withheld by the authority.

4. Mr. Chatterjee, Id. counsel appearing on behalf of the respondents submits that the respondents did not bring the records relating to leave account today. But he submits that the reasons for deduction has been assigned in the Annexure marked as Annexure-R/1 of the reply.

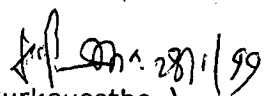
5. In view of the aforesaid circumstances, I am of the view that the department is obliged to maintain leave account properly and correctly. There is no explanation from the side of the respondents as to why the respondents did not produce the leave account of the applicant maintained by them. The respondents also did not disclose how they calculated the period of 210 (L.A.P.) for encashment of leave in respect of the applicant. It is also found that Rs.42,478/- has been withheld by the authority without giving any opportunity of being heard to the applicant before withholding of the said amount.

6. In view of the aforesaid circumstances, I am of the view that a pensioner has a right to get all retirement benefits under the pension rules on the date of retirement or within a reasonable period from the date of retirement. But the matter of payment of retirement benefits and settlement dues has already been delayed by the respondents. Moreover, it is found from the statement made by the respondents in para 5 of the reply that the leave account was not correctly and properly maintained by the respondents nor they produced the records in respect of leave account of the applicant. It is admitted by the respondents that initially he was granted leave encashment of 97 days only and on protest made by the applicant he was paid leave encashment for 210 (210) days only. So adverse presumption can be drawn against the respondents that the applicant is entitled to get leave encashment of 300 days as claimed by the applicant in this application since the respondents fails to produce the records of leave account maintained by the respondents at the time of hearing.

7. Regarding withholding of Rs.42,478/- it is found that the said amount was deducted from the D.C.R.G. of Rs.1,10,920/- without affording any reasonable opportunity to the applicant and such action of the respondents is also arbitrary, illegal. Thereby I think it would be fit case to direct the respondents to decide the point of recovery of Rs.42,478 which was withheld by the respondents after giving full opportunity to the applicant within one month from the date of communication of this order. Respondent No.2 DRM, Adra is directed to pass reasoned and speaking order after giving full opportunity to the applicant to represent his case.

8. With this observation, I dispose the application with a direction upon the respondents that the applicant would be entitled to get interest at the rate of Rs.12% per annum if the withholding of Rs.42,478/- was found without any reasonable ground. Regarding leave encashment, the applicant would be entitled to get interest at the rate of 12% p.a. on the amount which would be admissible to him for the period of 300 days from date of retirement 31-1-96. Accordingly the application is disposed of.

9. No order is passed as to costs.

  
( D. Purkayastha )  
M e m b e r (J)