

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 345 of 1996.

Present : Hon'ble Dr. B. C. Sarma, Member (A)

NALANI LAL RAY

VS.

UNION OF INDIA & ORS.

For applicant : In person.

For respondents : Mr. P.C.Saha, Counsel.

Heard on : 18.9.96 :: Ordered on : 18.9.96.

O R D E R

In this application, the applicant, who is a retired railway servant, has prayed for issue of a direction on the respondents to pay 35 days leave salary with ten times compensation.

2. The applicant had retired on 31.12.78. He had earlier filed a case bearing No. O.A. 496 of 1994 praying for various reliefs and that application was disposed of by an order passed on 7.7.95. A number of directions was given on the respondents regarding the reliefs prayed for by the applicant in that application. In respect of payment of leave salary, the following direction was given in para 9 of the judgement :

"We are, therefore, of the view that the claim of the applicant should be re-examined by the railway respondents and if it is found that he had really applied before his retirement, an appropriate decision should be taken as per rules and if the commutation is allowed then the applicant should be paid for the equivalent leave which is at his credit before his retirement subject to the limit as per rules."

The applicant now contends that although the railway respondents has passed a speaking order on 7.9.95, they have denied the benefit of 35 days leave encashment as prayed for by him and, hence, the application.

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3. The case has been resisted by the respondents by filing a reply. The stand taken by the respondents has been that they have complied with the direction given by the Tribunal in the judgement dated 7.7.95 and there is nothing more to determine in this case. They have, therefore, prayed for dismissal of this case since it is devoid of merit.

4. The applicant himself has appeared in this case and argued this case before me today. The main thrust of his argument was that railway respondents have denied him the benefit of 35 days leave encashment after his retirement illegally since he had applied in time for the commutation of leave which was sanctioned as LAP. The applicant has also argued that the railway respondents had suppressed certain documents before the Tribunal as a result of which they have denied him the/^{said} benefit. However, Mr. P.S. Saha, 1d. counsel for the respondents, elaborately argued the matter and produced before me the relevant file, which I have perused. Mr. Saha also produced before me a copy of the Establishment Serial No. 96 of 1982 dated 3.5.82 on the subject of encashment of LAP at the time of retirement - commutation of leave of one kind into leave of a different kind. According to Mr. Saha all the leave accumulated at the credit of the railway servant lapses on his retirement and, therefore, the applicant's claim to convert one kind of leave to another which was sanctioned already cannot be granted. Mr. Saha further submitted that the prayer made by the applicant for the conversion of LAP into commuted leave after retirement cannot be allowed in view of the Establishment Serial circular as mentioned hereinbefore.

5. I have examined the case carefully after hearing both the parties, perusing the records and considering the facts and circumstances of the case. I have also perused the judgement dated 7.7.95 passed in O.A. 496 of 1994. In that case also the applicant appeared in person before the Tribunal and the Division Bench heard him at length and passed a judgement covering all the



points. Earlier the respondents, as per the version of the applicant, had denied the benefit of conversion of LAP into commuted leave on the ground that he did not apply in time and applied for the first time sometime in 1991. On perusing the document produced by the applicant before hearing of that O.A., the Tribunal observed as below :

"It appears to us that the applicant had applied for commutation even before his retirement while he was in service."

In view of this, the respondents were directed to re-examine the matter and the applicant was also directed to furnish a copy of the said application, which he has claimed to have been sent to the respondents on 27.7.79. I have perused the contents of the speaking order passed by the Senior Divisional Personnel Officer of S.E.Railway, Kharagpur on 7.9.95. I find following the direction given in the said judgement, the applicant had furnished a copy of his application dated 27.7.79 and that was perused by the said Sr.D.P.O. and also that was discussed in the said speaking order. I find in that speaking order emphasis has been laid on the Establishment Serial No.96 of 1982, ^{which states} it speaks that on retirement all leave accumulation at the credit of a railway servant ceased and, therefore, any application submitted after retirement for conversion of one kind of leave into another, particularly when leave of that kind was sanctioned already, is not regular. In this case, I note that the applicant had retired on attaining the age of superannuation on 31.12.78 and it was after a lapse of about seven months he had applied for the conversion of LAP into commuted leave. The circumstances under which such unusual delay was made by the applicant could not be explained before me satisfactorily. However, the applicant ^{he} contends that from time to time/pursued the conversion of the LAP into commuted leave. I find that the Sr.D.P.O. has passed a detailed speaking order dealing with all aspects of the matter and as per the provision laid down in Section 114e) of the Indian



4.

Evidence Act, 1872, official transactions shall be presumed to have been correctly done. The applicant contends that some of the documents have not been maintained by the respondents correctly. Even if I accept, for the sake of argument, that the contention of the applicant is correct, the alleged mistakes had occurred as early as in the year 1978, which was many years before the establishment of this Tribunal and this Tribunal cannot go into a reviving enquiry into the matter at such a distant date. I am, therefore, of the view that the speaking order passed by the Sr.D.P.O. on 7.9.95 pursuant to the judgement passed by the Division Bench of this Tribunal cannot be interfered with on any justifiable ground and, this being the position, the application must fail.

6. For the reasons given above, I do not find any merit in this application. It is, therefore, dismissed without passing any order as regards costs.



B.C. Sarma)
MEMBER (A)