

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
J O D H P U R

Date of order : 12th May, 1998.
O.A.NO. 392 OF 1997.

Naresh Nath Chaturvedi S/o Shri Kedar Nath, aged 62 years, Retired Dy.Chief Controller, Northern Railway, Bikaner, C/o Shri Gautam Chaturvedi, T-13-8, Railway Colony, Lalgarh, Bikaner.

..... Applicant.

V E R S U S

1. Union of India through General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.

..... Respondents.

.....

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

.....

Mr. Y.K.Sharma, counsel for the applicant.
Mr. V.D.Vyas, counsel for the respondents.

.....

BY THE COURT :

The applicant has filed this O.A. with the prayer that the respondents be directed to pay to the applicant interest on Rs. 41,760/- for the period from 29.6.1993 to 20.5.1996.

2. Notice of this O.A. was given to the respondents who have filed their reply in which they have stated that the applicant had retired on medical grounds, therefore, the applicant was not allowed the benefit of encashment of leave because there was no specific provision to allow leave encashment to an employee who had refused to accept the alternate posting as per medical category and had proceeded to take voluntary retirement. The O.A. is, therefore, required to be rejected.

3/11/98

3. The applicant had filed rejoinder to the reply of the respondents in which the applicant had reiterated its claim and cited the case of Shri R.K.Pareek, who was allowed benefit of encashment of leave on average pay and has prayed that the application of the applicant is liable to be allowed.

~~We have heard the learned counsel for the parties and gone through the record.~~

4. It is alleged by the applicant that he retired on medical grounds on 29.6.1993 as per the letter dated 28/29.6.1993. At the time of his retirement applicant had in his credit 225 days unconsumed leave and according to the relevant provisions he was entitled for encashment of unavailed period of leave to his credit. The applicant had requested to the authorities concerned to grant such benefit but the respondents had not given the benefit of leave encashment. Subsequently, he represented to the authorities from time to time for giving him the benefit of encashment of leave on average pay due to the applicant. At last, after protracted correspondence, the applicant was paid Rs. 41,760/- through Cheque dated 3.5.1996 which was delivered to him on 20.5.1996. The respondents had thus detained the amount for almost three years. The applicant represented to the respondents authorities for paying him interest on the delayed payment because he was deprived of the benefits on the amount which rightfully belong to him. But no relief was given to him, Therefore, he was forced to file this O.A.

5. I have heard the learned counsel for the parties and gone through the record.

6. First of all, it was argued by the learned counsel for respondents that the O.A. claiming interest is not maintainable. He has argued that the applicant may go to the civil court for claiming the benefit of interest on the delayed payment. I have given my thoughtful consideration to this argument. But, I am unable to agree to the argument advanced by respondents' learned counsel.

The question of payment of interest or otherwise, depends on whether the respondents were justified in with-holding the amount of leave encashment money. If not, then the applicant is certainly entitled for the benefit of interest which in the circumstances is related to service benefits and consequently a service matter. Therefore, the argument of learned counsel for respondents is rejected. The learned counsel for applicant has argued that there is a provision for leave encashment to the Government servants who retires on superannuation or who retires voluntarily after completing twenty years of service. The case of the applicant cannot be placed on different footing than a Government servant who voluntarily retires. Therefore, the applicant is entitled for leave encashment benefit soon after his retirement. Since the authorities had not paid the amount for almost three years and thus deprived the applicant from rotatting his own money for his benefit. Hence, applicant is entitled for interest.

7. On the other hand, the counsel for respondents contended that applicant was declared fit for his original category C-1 but was to be given a posting which was not strenuous in nature. Therefore, the applicant was offered an alternative job of equal rank in the engineering department which the applicant had refused to accept and proceeded to take voluntary retirement. As such, he was not entitled to leave encashment benefit. It was also argued that leave encashment benefit is available to such of the employees who are permanently declared medically unfit. Since the case of the applicant was absolutely different, he was not given this benefit, when it was claimed by the applicant. But the same was extended when the situation was clarified by the Headquarter.

8. I have carefully considered the arguments. In my opinion, a person seeking voluntary retirement and a person proceeding on voluntary retirement refusing to accept the alternative job offered

Qm

Leave encashment benefit soon after he had

cannot be placed on different footings because an employee who has completed 20 years of qualified service can seek voluntary retirement. It makes no difference if the employee is fit and seek voluntary retirement and if he is medically decategorised and offered alternative job, yet the seeks voluntary retirement. Both the cases can be termed as the case of voluntary retirement. From the facts it appears that applicant was being offered an equal ranking post in a different department. It was the choice of the employee to accept the alternative appointment or to proceed on voluntary retirement. If the employee has chosen to proceed on voluntary retirement, it cannot be said that he refused to accept the alternative posting. As said earlier, after requisite qualifying service an employee is free to proceed on voluntary retirement grounds may be any. In my opinion, the applicant cannot be refused leave encashment benefit^{in the instant case} The concept of which means encashing the leave as is due to the employee on the date of his retirement subject to the maximum limit fixed under the rules. Whether an employee retires on superannuation, whether an employee proceeds on retirement voluntarily and whether he is retired on being found medically unfit, are three different situations in which such a person is entitled to claim leave encashment benefit. A person^{having} offered alternative job, has a choice to accept that posting or may proceed on retirement. If after considering the retiral benefits etc. the applicant has chosen to proceed on voluntary retirement by refusing to accept the alternative posting, he cannot be placed on a different and dis-advantageous position than the person voluntarily retired or retired on medical grounds having been found medically unfit. The Railway Board's Circular dated 2.11.1983 (Annex.A/9), covers the instant case in which it has been mentioned in Para No. 3 that ".....encashment of LAP due and admissible subject to a maximum of 180 days (now the limit is 240 days), may be allowed in cases of premature/voluntary retirement or retirement on invalidation.....". If this provision is read with the clarification issued by the General Manager vide its letter dated 14.3.1996 (Annex.R/3), then it would be evident that applicant ~~who was entitled to have encashment benefit soon after he had~~

was entitled to leave encashment benefit soon after he had voluntarily retired on being medically declassified and when he was offered the alternative job.

9. Since the respondents had not paid the amount of the leave encashment to the applicant soon after his retirement, he was deprived of the benefit of interest on the amount. On the other hand, the Railways by detaining the amount which was rightfully due to the applicant had benefited itself to that extent. Therefore, applicant is entitled to interest and in my opinion he can be compensated for this at the prevailing simple rate of interest from 01.07.1993 to 20.5.1996. The O.A. deserves to be accepted.

10. The O.A. is, therefore, accepted and the respondents are directed to pay to the applicant interest at the simple rate of interest i.e. 12% per annum to the applicant from 1.7.1993 to 20.5.1996 on delayed payment of 41,760/- within a period of three months from the date of communication of this order. In the circumstances of the case, the parties shall bear their own costs.

Am
(A.K.MISRA)
JUDICIAL MEMBER

.....

MEHTA

16/09/1968
29/09/1968
86/10/1968
24/10/1968

Part II and III destroyed
in my presence on 17.3.2003
under the supervision of
section officer () as per
order dated 31.12.2003

SP
Section officer (Record)