

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

21st Day of January, two thousand four

Original Application No. 339/2001 & M.A.No.114/02

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Gokul Chand,
S/o Shri Chagan Lal
R/o Teli Loharon Ka Mohalla
Nichla Bazar,
Bikaner. : Applicant.

By Mr. Y.K. Sharma: Counsel for the applicant.

VERSUS

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

Respondents.

By Mr. Salil Trivedi : Counsel for the respondents.



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ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Mr. Gokul Chand has filed this O.A under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- a) that the Hon'ble Tribunal may kindly be pleased to direct the respondents to compute the pension and pensionary benefits on the basis of emoluments drawn during the period from December 1992 to September 1993 and revise the Pension Payment Order accordingly.
- b) that the respondents may further be directed to make encashment of remaining 219 days unconsumed leave.
- c) that the respondents may further be directed to pay interest on the amount of (a)& (b) above @ 12% p.a.
- d) that the cost of the application be awarded.

2. Leaving aside the unnecessary details, the material facts of the case which necessitated the filing of the instant Original Application are that the applicant was initially appointed on 20.4.1957 in Railways and was retired on superannuation on 30.09.93 from the post of Shunt Master and at the time of retirement his basic was Rs. 1600/- with effect from 13.01.93. It has been averred that vide notification dated 20.09.93, the name of the applicant was shown in the list of employees to be retired on 30.09.93. He was called upon to be present before Assistant Personnel officer in connection with the settlement dues. But the same was withheld due to some dispute in his date of birth. As per the service book his date of birth was

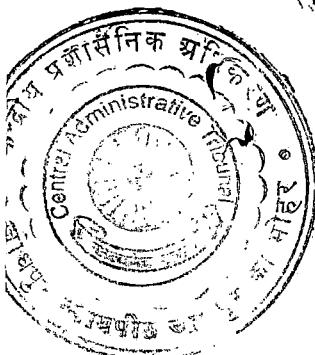


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entered as 14.06.35 and therefore he ought to have been retired on superannuation on 30.06.93. The respondents therefore recovered a sum of Rs. 11,559/- from his DCRG i.e. on account of wages paid for the period from 01.07.93 to 30.09.93. The applicant physically performed his duties for the said period hence he moved Labour Court at Bikaner vide case No. 3/94. The same was allowed vide order dated 17.07.98 and the respondents were directed to refund the amount of Rs. 11,559/- along with interest at the rate of 12% per annum. The same was paid to be applicant.

3. The further facts of the case are that his pension and other retiral benefits ought to have been calculated on the basis of the last ten months average emoluments drawn by him i.e. from 01.12.1992 to 30.09.93, whereas he was paid retiral benefits on the basis of average emoluments from 01.09.92 to 30.06.93. The applicant moved representation to the authorities for revision of his Pension Pay Order (for brevity PPO) and also prayed for leave encashment as per the original leave account, and also dearness pay on the correct amount. But there was no response from the respondents.

4. The Original Application has been filed on various grounds and we shall take into consideration the grounds which were



argued and stressed by the learned counsel for the applicant in the later part of this order.

5. The respondents have contested the case and have filed a detailed and exhaustive reply to the Original Application. They have taken preliminary objection of delay in filing the O.A and have averred that nearly 8 years have elapsed and the O.A is hopelessly barred by limitation. It has been further averred that the date of birth of the applicant is 14.06.35 and he had completed the age of superannuation prevailing at that time on 30.06.93 and the applicant was never forced to sign any documents as alleged by him. There is no provision for the grant of pensionary benefits for the period of service rendered beyond the actual date of retirement and therefore the applicant is not entitled to any relief in this O.A. The next ground of defence as set out in the reply is that at the most, the service beyond the actual date of retirement can be treated as re-employment. As regards the leave encashment it is stated that the applicant has been correctly paid the leave encashment for 21 days. No rejoinder has been filed.

6. M.A. No. 114/02 has been filed for summoning the records relating to original leave account. The respondents have filed a reply stating that the service record of the applicant was lost and this fact is evident from the pleadings made by the applicant in



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the O.A itself and therefore the Original Record cannot be made available and this M.A is misconceived.

7. We have heard the arguments advanced by the learned counsel for the parties and have carefully perused the records of this case. Both the parties have agreed for final disposal of this case at the stage of admission itself.

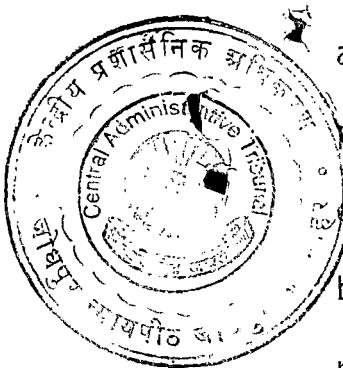
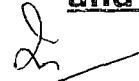
8. The learned counsel for the applicant has reiterated his pleadings and has submitted that the applicant has physically worked upto 30.09.93 and as per the rules in force, the pension ought to have been reckoned on the basis of half of the average emoluments during the last 10 months. The respondents have not adhered to this and have reckoned his pension by taking average emoluments for the last 10 months i.e. upto 30.06.93 and not 30.09.93. Similar is the position in regard to other retiral benefits. He has also submitted that the applicant had never availed any leave during his entire service and he must be paid 240 days leave encashment, whereas he was paid only 19 days leave encashment and therefore he ought to have been paid the remaining 221 days leave encashment. He has contended that the applicant should not be made to suffer because the respondents have lost the service record of the applicant. As regards the limitation, it has been contended by the learned counsel for the applicant that the matter relates to





pensionary benefits and the pensionary benefits are not bounty and they are the property of the applicant and it was illegally withheld by the respondents and therefore they cannot be allowed to take the plea of limitation, rather the property of the applicant has been utilised by them and the respondents would have to pay interest on the same. The learned counsel for the applicant also tried to elucidate the fact of granting pensionary benefits for the retirement dated as 30.06.93, when he was actually in service upto 30.09.93. He cited the case of A.R. Ghosh vs. State of Rajasthan and another [2002 (3) DNJ (Raj) 993] and has submitted that as per the ratio of the above judgement, the period upto 30.09.93 is required to be reckoned towards the qualifying service for the grant of pensionary benefits.

9. Per contra, the learned counsel for the respondents has strongly opposed the contention of the learned counsel for the applicant and has submitted that the applicant cannot get any pensionary benefits for the service rendered beyond the actual date of his superannuation. In this view of the matter, no benefits would be accrued to the applicant for the service rendered from 01.07.93 to 30.09.93 and in support of this contention he relied upon the judgement of the Apex Court in the case of RamSwaroop Masawan vs. Municipal Council and another [1998 (6) SCC 338]. He has reiterated the

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grounds of defence as set out in the reply and submitted that the O A is misconceived and the same deserves to be dismissed with exorbitant costs. He has further contended that the Supreme Court has settled the issue and the judgement of the Hon'ble High Court of Rajasthan relied on by the learned counsel for the applicant cannot be applied to the instant case.

10. The learned counsel for the respondents has next contended that as regards the leave encashment is concerned, the applicant has never objected to the same and it is only after 8 years, he has contended that he ought to have been given leave encashment for 240 days. The applicant has filed a case before Labour Court and there he did not claim any such relief.. He kept pin drop silence all these eight years and now in the fine morning after such delay, he cannot complain of and claim that he has not been paid due amount of leave encashment. He has also expressed his inability to provide the records, but submitted that the respondents have re-constructed some records and as per the constructed records, the leave at the credit of the applicant was only 19 days and for which payment had been already made. Thus no interference is called for.

11. We have considered the rival contentions raised on behalf of both the parties. As per the factual aspect of the matter is concerned, there is no quarrel as far as the date of birth of the

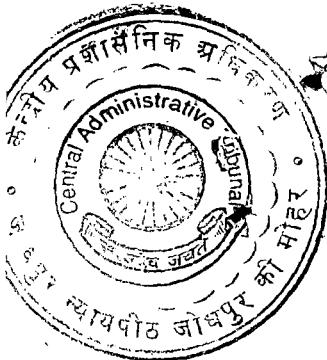


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applicant, date of retirement and the grant of pensionary benefits are concerned. The only dispute is regarding the number of days of leave available in the credit of the applicant for encashment. Since the applicant has already been paid salary towards the service rendered by him for the period from 01.07.93 to 30.09.93, i.e. beyond 30.06.93, the actual date of his retirement, we are not called upon to examine the same.

12. The primary question for consideration is regarding the calculation of pensionary benefits. His Lordship of Rajasthan High Court in the case of **A.R. Ghosh** (*supra*) had held that the service rendered beyond the actual date of retirement would count as service period for the purpose of pension and other retiral benefits. However, the judgement in the case of **Ramswaroop Masawan** (*supra*) was rendered by their Lordships of the Apex Court in a similar situation, wherein it was held that the service rendered beyond the actual date of superannuation would be treated as re-employment and the appellant would not be entitled to any pensionary benefits for that period. The judgement of the Apex Court cited above squarely covers the controversy involved in the instant case on all fours and in this view of the matter the applicant cannot be granted any pensionary benefits for the period from 01.07.93 to 30.09.93 and the applicant would be entitled to pension and other retiral benefits on the basis of average emoluments

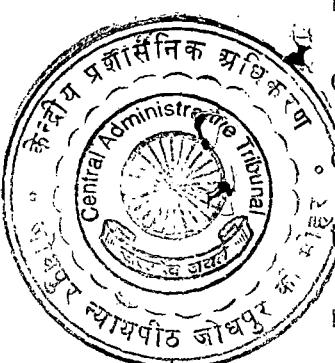


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calculated for the period from 01.09.92 to 30.06.93. Since the applicant has been granted the due benefits, the submissions of the learned counsel for the respondents have substance and we are in agreement with the same.

13. Now adverting to another issue regarding the leave encashment for 240 days(as claimed by the applicant)—19 days(already paid by the respondents)= 221 days , we have bestowed our attention to go into the root of the problem and find that for the first time the applicant has submitted an application only on 08.11.2000 i.e. after about 7 years and before that date he kept quiet. We tried to know the reasons for the silence kept by the applicant, the learned counsel for the applicant has nothing to say except to make us travel through the pleadings and led us to vacuum. He contended that if the records were made available the truth would have come out. However, except making endeavour to persuade us through the oral arguments, nothing substantial came out in support of his contention. The respondents had already made a clean breast of their position in this matter and even calling the available records could not be of any help to the applicant. Otherwise also we cannot disbelieve the version of the respondents. Therefore, we hold that the contention of the learned counsel for the applicant is groundless and have no substance.

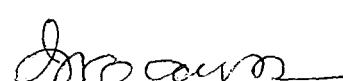


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14. As regards the grounds of delay raised by the learned counsel for the respondents, since we have come to the conclusion that there is no merit in the instant case on any account, we find that there is no necessity to adjudicate upon the point of limitation in regard to retiral benefits and this issue we leave open for decision in some other appropriate case.

15. In the premise, M.A. No. 114/2002 summoning of records is hereby rejected and the O.A is also devoid of merit and stands dismissed. However, the parties are directed to bear their own costs.


 (G.R. Patwardhan)
 Administrative Member


 (J.K. Kaushik)
 Judicial Member

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