

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 251/2004
with
MISC. APPLICATION NO. 122/2004**

Date of order: 6-1-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Ummad Mal S/o Shri Sunder Lal, resident of outside Mertigate, Uday Mandir, Jodhpur.

Post: The applicant at the time of his retirement was holding the post of MCM at Shop No. 15 under Deputy Chief Mechanical Engineer, N.W.R., Workshop, Jodhpur.

...Applicant.

Mr. Kuldeep Mathur, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, North-Western Railway, Jaipur.
2. The Deputy Chief Mechanical Engineer, North-Western Railway, Workshop, Jodhpur.

... Respondents.

Mr. Govind Suthar, proxy counsel for
Mr. Manoj Bhandari, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant retired from the Railways on 31.07.2003. At the time of his retirement, he was entitled to 300 days of leave encashment. But 45 days of leave encashment was withheld on the ground that he participated in the railway strike in the year



1974. It is contended by the applicant that he did not participate in the railway strike of 1974. Subsequently, he was paid 28 days of leave encashment, out of the 45 days encashment that was withheld. The applicant is also aggrieved by the denial of loyalty benefit applicable to those who did not participate in the strike. The applicant has prayed for the following relief in the OA:

- "(i) That the original application may kindly be allowed.
- (ii) The respondents may kindly be directed to make payment of leave encashment for 17 days to the applicant, which has been illegally withheld.
- (iii) That the respondents may kindly be directed to extend the benefit of loyalty scheme introduced in the year 1974 to the applicant, for the employees, who did not participate in the national-wide strike of the railway employees by allowing him extra increment/appointment of ward in the railway. In case, the applicant is allowed extra increment as per the loyalty scheme, then his pay may be re-fixed and arrears of the same may be paid to him with interest @ 12% per annum.
- (iv) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may kindly be granted.
- (v) Costs of this application be ordered to be awarded in favour of the applicant."

2. The respondents have stated in their reply that the Original Application is barred by limitation. The cause of action arose in the year 1974 and the claim is being made after 30 years. The service of the applicant who served in various Divisions could not be verified in the absence of record. It is not possible to say whether he participated in the strike or not. Loyalty incentive is not a matter of right. The applicant has not been able to show the names of others who were given such

benefit at Barmer. Encashment of 28 days of leave was granted to him on 15.12.2003. The Original Application is liable to be dismissed on account of delay.

3. We heard the learned counsel for the applicant Shri Kuldeep Mathur and the learned counsel for the respondents Shri Govind Suthar for Shri Manoj Bhandari. We have also perused the documents carefully. During the course of the hearing, the applicant's counsel indicated that he is not pressing for the relief relating to loyalty benefit and therefore we do not propose to deal with that relief. The M.A. filed by the applicant for condonation of delay pertains to the relief of loyalty benefit. As the applicant is not pressing for that relief now, the M.A. No. 122/2004 is disposed of as not pressed.

4. The point that now remains for consideration is whether the applicant was wrongly denied the benefit of 300 days of leave encashment at the time of retirement. The relevant Rule 39 (2) (a) of CCS Leave Rules reads as follows:

"39 (2) (a) - Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo motu issue an order granting cash equivalent of leave salary for earned leave, if any, at the credit of the Government servant on the date of his retirement, subject to a maximum of [300 days* (including the number of days for which encashment has been allowed along with Leave Travel Concession while in service)].

5. It is stated by the respondents in the reply that payment of 28 days leave encashment out of 45 days was paid to the applicant on 15.12.2003; whether he participated in the strike or

not cannot be verified by the answering respondents as the applicant has not impleaded the correct parties to the Original Application. There is no specific contention taken by the respondents to the effect that the leave encashment was withheld on account of participation in the railway strike. It is further stated that 17 days leave encashment is rightly withheld by the respondents. It is also stated in para 11 of the reply that no more leave remained due for the purpose of encashment.

From the aforesaid contentions of the respondents, it appears that the 17 days leave was not granted as there was not enough leave available in his credit. There is a photocopy of the leave account of the applicant at Annex. A/3, which shows that as on 30.06.2001 EL to the extent of 300+15 days is available to his credit. There is no further entry in that photocopy. It is therefore not possible to verify what is the actual number of days of EL at the credit of applicant as on 31.07.2003 i.e. on the date of his retirement. However unless the applicant has availed of more leave during the period July 2001 to July 2003 than what he earned during the same period the leave in his credit would be not less than 300 days. If the applicant was having 300 or more EL in his credit on the date of retirement, he is entitled to the remaining period of 17 days of leave encashment. The ends of justice demands that the respondents provide the updated leave account to the applicant and if he was having



27

more than 300 days of leave on 31.07.2003 he ought to be granted the withheld portion of leave encashment.

6. For the reasons stated above, the Original Application is disposed of with a direction to the respondents to provide the updated leave account of the applicant right upto the date of retirement and if on the date of retirement he was having 300 or more days of EL, grant and pay him the withheld portion of leave encashment. The aforesaid direction shall be complied with within a period of two months from the date of receipt of a copy of this order. No order as to costs.



Dr Sugathan
(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

S.M.M. Alam
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

कॉपी प्राप्त की

Umed mal

12-1-2010

Copy
Copy
Copy
12/12

दिनांक 17/12/15 के अनुसार सार
भेरी उपस्थिति में 12/12/16
को घटना-II वाले घटनाक्रम का घटा।

अनुशासन अधिकारी
केन्द्रीय प्रशासनिक अधिकारा
जोधपुर नवायारपेठ, जोधपुर