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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 203/2011

Jodhpur, this the 1st day of August, 2013.

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judl. Member

Ummed Mal
s/o Shri Sunder Lal,
aged about 67 years,
r/o Outside Merti Gate,
Uday Mandir, Jodhpur,
Rajasthan.

.....Applicant

(Through Advocate: Mr Kuldeep Mathur)

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.
3. Senior Personal Officer,
North Western Railway (Workshop),
Jodhpur.

.....Respondents

(Through Advocate : Mr. Aditya Singhi, proxy counsel for Mr. Manoj Bhandari)

ORDER (Oral)

Per Hon'ble Mr. Justice K.C. Joshi

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985 challenging

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legality of the impugned order dated 09.07.2010 (Ann.A/1) by which he was informed that Leave Encashment of 283 days leave has been paid and there is no amount due with the respondent-department regarding Leave Encashment.

2. Short facts of the case are that the applicant was serving in the Railway Department and superannuated from service on 31.07.2003 from the post of MCM at Shop No. 15 of the Workshop Department. At the time of releasing retirement benefits of the applicant, the respondents withheld Leave Encashment of 45 days. It was informed by the respondents to the applicant that since he had participated in the strike of the Railway Employees in the year 1974, therefore, the period in which he was on strike has been treated as leave without pay.

3. On representation filed by the applicant, the respondent-department reviewed the entire service record and further granted encashment of 28 days leave. In the year 1974, the Railway Department launched certain loyalty benefits for the railway employees, but the applicant was not allowed any such benefit. Therefore, he submitted representations on 13.12.2003 and 18.5.2004 to allow him extra increment as per the Loyalty Scheme of 1974, but the respondent-department did not pay any heed to the request of the applicant.

4. The applicant also filed OA No.251/2004, Ummed Mal vs. UOI and Ors., and the same was disposed of by this Tribunal vide

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order dated 06.01.2010 with direction to the respondents to provide updated leave account to 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.

5. The Senior Personal Officer, North Western Railway, Jodhpur after the judgment of the Tribunal served a letter dated 25.2.2010 upon the applicant informing that he has been paid Leave Encashment of 283 days for which he was entitled.

6. The contention of the applicant is that Leave Encashment of 17 days is due in his favour. Therefore, applicant again filed representation dated 5.5.2010 to make him payment of Leave Encashment due to him.

7. For non-compliance of the order dated 6.1.2010, the applicant also filed a Contempt Petition No. 31/2010 before this Tribunal and the same was withdrawn by the applicant. The Tribunal provided an opportunity to the applicant to file a fresh OA. Therefore, the applicant has filed the present OA for the following reliefs:-

"(i) That the Original Application may kindly be allowed.

(ii) That the impugned order dated 09.07.2010 passed by Respondents may kindly be declared illegal and same may kindly be quashed and set aside.

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- (iii) That the respondents may be directed to make him payment of 17 days leave encashment which has been illegally withheld by the respondents 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) Cost of this application be ordered to be awarded in favour of the applicant."

8. By way of reply, the respondent-department denied the averments made in the OA and further averred that the applicant has been paid the Leave Encashment amount due to him and he has been informed about Leave Account vide Ann.A/7 and now no Leave Encashment amount is due to the applicant, therefore, the respondents pray to dismiss the OA.

9. Heard both the parties. Counsel for the applicant contended that encashment of 17 days leave is due in favour of the applicant and payment for the same is not made by respondent-department. Therefore, the respondents be directed to pay the encashment equal to 17 days Leave.

10. On the contrary, counsel for the respondents contended that the detailed information has been provided vide Ann.A/7 to the applicant and as per record available with the Railway Department, Leave Encashment for 283 days leave was due and payment for the same has already been made to the applicant.

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11. Considered rival contention of both the parties. The factual dispute is pending before the parties. As per calculation made by the Railway Department, 283 days leave were due to the applicant and payment for the same has already been made to the applicant. The applicant contends that 300 days leave were due to him, therefore, the letter dated 9.7.2010 (Ann.A/1) is illegal as the leave has not been correctly calculated by the respondent-department.

12. In view of above, since the factual dispute is pending between the parties, therefore, I propose to dispose of this OA with direction that the applicant shall file a detailed representation against the orders/letters dated 9.7.2010 (Ann.A/1) and 25.2.2010 (Ann. A/7) enclosing documents in his possession, within one month from the date of receipt of this order and the same shall be decided by the respondent-department by a reasoned and speaking order within four months from the date of receipt of the said representation. If the applicant has any grievance, he can approach the appropriate forum, if so advised.

13. The OA stands disposed of in the above terms with no order as to costs.


(JUSTICE K.C.JOSHI)
Judl. Member.

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