

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 64 of 2013
&
Miscellaneous Application No. 79 of 2013
in
Original Application No. 64 of 2013

THURSDAY, this the 13th day of November, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

Sri. K.A. Narayanan, Retired Technician, Southern Railway, Residing at
 Girija Villa, West Ponniyam PO, Near Coimbatore Saw Mill,
 Thalassery, Kannur District. **Applicant**

(By Advocate – Mrs. Shameena Salaludheen)

V e r s u s

1. Union of India, represented by Secretary to the Government of India,
 Ministry of Railways, Rail Bhavan, New Delhi – 110 001.
2. The Chairman, Railway Board, Rail Bhavan, New Delhi – 110 001.
3. The General Manager, Southern Railway, Chennai – 600 003.
4. The Senior Divisional Personnel Officer,
 Southern Railway, Palghat – 678 002.
5. The Divisional Railway Manager,
 Southern Railway, Palghat – 678 002.
6. The Additional Divisional Railway Manager,
 Southern Railway, Palghat – 678 002.
7. The Senior Divisional Finance Manager,
 Southern Railway, Palghat-678 002. **Respondents**

(By Advocate – Mrs. K. Girija)

This Original Application having been heard on 24.10.2014, the
 Tribunal on 13-11-2014 delivered the following:



ORDER

Shorn off the details in the pleadings of the parties the short point to be considered in this case is whether applicant is entitled to an order directing respondents to effect payment of the amount equal to 55 days leave salary to him with interest?

2. MA No. 79 of 2013 has been filed by the applicant to condone the delay of 918 days in filing the above Original Application.

3. Applicant is a retired Technician from Southern Railway. He retired from service on 30.8.2006. According to him as per Annexure A1 salary slip of June 2006 and Annexure A2 leave transaction statement for the year 2006 (dated 30.6.2006), he is entitled to leave salary for a total of 300 days. But respondents while settling the retirement dues paid only an amount equivalent to 245 days leave salary without assigning any reasons. It appears that applicant had taken up this issue through the Railway Pensioner's Association and also had employed the Right to Information Act, 2005 for knowing the status of the claim he had made through a lawyer's notice.


4. Respondents strongly disputed the claim stating that the applicant is entitled to only 245 days of leave salary and that Annexures A1 and A2 were issued prior to settlement without actually calculating the earned leave available to the applicant which could be settled only after retirement and after verification of the records. Respondents have produced some records indicating that applicant is eligible only for 245 days which is being disputed



by the applicant. When called for producing the original records respondents contend that as per the rules relating to destruction of records the records relating to the applicant's leave have been destroyed and that only Annexure R1 was available with them.

5. In Annexure A1 salary slip for the month of June, 2006 i.e. two months prior to date of retirement (30.8.2006) of the applicant, the balance of leave (LAP) is shown as "Bal (approx) LAP 305". That means the balance of leave shown in Annexure A1 is only **approximate**. Annexure A2 is leave sanction statement for the year 2006, "**issued on 30.6.2006**". At the end of Annexure A2 LAP balance is shown as 300. It has to be remembered that Annexure A2 was issued two months prior to his retirement. Learned counsel for respondents submitted that calculation of leave salary is done by the Accounts Department only after the retirement of the employee with reference to all available records relating to the leave availed of by the employee and the un-availed leave will be calculated for encashment. It is seen from Annexure A2 that the applicant had availed of LHAP even after June, 2006. Learned counsel for respondents submitted that encashment of unavailed LHAP also was given to the applicant.

6. It appears that applicant cannot place Annexures A1 and A2 as the proof of the actually available balance of leave, binding on the respondents because in Annexure A1 it is made clear that what is indicated is only an approximate calculation of the balance LAP. Annexure A2 also does not seem to be a final proof for the applicant's claim because it was issued on 30th



June, 2006 and there was two more months more for the applicant to retire. The applicant has not produced any proof to show that he has not availed of any LAP subsequent to Annexure A2 . Respondents through out their contentions maintained that as per the available records like Annexure R1, the leave available to applicant is only 245 days. Nothing was produced by the applicant to controvert the entries in Annexure R1 or to prove that he had not availed of any more leave so as to reduce his balance from 300 LAP.

7. In the afore mentioned circumstances this Tribunal is inclined to accept the contentions of the respondents and to treat Annexure R1 as a document prepared during the course of the official transactions. It is seen at the bottom of Annexure R1 (at page 43 of the paper book) that a senior official like Divisional Finance Manager, Palakkad has endorsed the entries made therein.

8. In the light of the above discussion this Tribunal is of the view that applicant has not been able to produce any convincing proof for his claim that he was actually entitled to 300 leave for the purpose of terminal encashment.

9. Applicant has approached this Tribunal after the lapse of nearly six years from the date on which his cause of action had arisen. The only reason for the delay is that he had entrusted the case to an another Advocate who had misplaced the file somewhere and only after the said Advocate re-located the file the same was entrusted to the present counsel who has filed



the present OA. This Tribunal is not satisfied with the aforesaid reasons. Unlike the issues like pension and arrears of salary, leave encashment is a definite and separate component of the retiral benefits. Therefore, the moment when a retired employee gets his leave salary and comes to know that he has been deprived of any portion of leave salary his cause of action begins and thereafter the time begins to run for the purpose of limitation envisaged in Section 21 of the Administrative Tribunals Act, 1985. The reasons stated by the applicant for the delay is not a sufficient cause for not making the application within the prescribed time. If the files were misplaced by the former lawyer, if the applicant was alert, he could prefer an application before this Tribunal within time or ask the lawyer to file an application ignoring the loss of records. In fact no records would have been necessary for filing an application for raising a claim like this. Applicant could call upon the respondents to produce the requisite records. Therefore the reasons stated by the applicant for delay do not appear to be convincing and hence, the MA No. 79 of 2013 for condonation of delay is only to be dismissed. I do so.

10. In the result the Original Application is dismissed. No order as to costs.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”