

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.2/04

Thursday this the 23rd day of December 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

K.Gopinathan Nair,
S/o.Krishna Pillai,
(Retired Station Master, Mayakonda R.S.,
South Western Railway, Mysore Division).
Residing at Mohavalayam,
Puliyoor Post, Chengannoor,
Alappuzha District.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager, South Western Railway, Headquarters Office, Hubli, Karnataka.
2. The Divisional Railway Manager, South Western Railway, Mysore Division, Mysore.
3. The Divisional Personnel Officer, South Western Railway, Mysore Division, Mysore.
4. The Chief Engineer/Construction, South Western Railway, Mysore Division, Mysore.

Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 23rd December 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The grievance of the applicant a retired Station Master of Mysore Division, South Western Railway is that while in terms of the Annexure A-5 letter of the Divisional Personnel Officer, Southern Railway, Mysore dated 5.2.2003 there was 315 days of LAP standing to his credit and he has thereafter availed of 3 days of LAP prior to his retirement, the respondents have given him leave salary for only 271 days while he was entitled to get leave salary for the entire period of 300 days and that half the period

of his casual service between 1.7.1969 and 17.5.1979 has not been reckoned as qualifying service for pension. The applicant has therefore filed this application for a direction to the respondents to pay an amount of Rs.9974/- to the applicant with 12% interest calculated from 1.6.2003 being the value of 29 days of LAP and for a direction to the respondents to recalculate and revise the applicant's pension and other terminal benefits reckoning half the service between 1.7.1969 and 17.5.1979 also as qualifying service declaring that he is entitled to that benefit. It has been alleged in the application that while as cash equivalent of 300 days of leave the applicant should have been paid Rs.103080/- the respondents paid only Rs.93106/- and there was absolutely no basis for the reduction.

2. The respondents in their reply statement contend that on verification of the applicant's leave account by the Associate Accounts it was found that there was omissions to debit 34 days of leave during 1979, that the LAP to the credit of the applicant was recalculated at 277 days as is recorded in Annexure R-1, and that the applicant was entitled to leave salary for 277 days and payment of Rs.2062/- being the balance after payment of Rs.93106 has been arranged. Regarding the counting of half the period of service from 1.7.1969 to 17.5.1979 the respondents contend that the applicant is not entitled to the relief because he was during that period working in the construction organisation. When the application came up for hearing today learned counsel of the applicant stated that regarding the prayer in Sub-paragraph (b) and (c) of Paragraph 8 the applicant may be permitted to make a detailed representation to the 2nd respondent and the 2nd respondent be directed to dispose of the same in accordance with

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the law and the prayer in Sub paragraph (a) of Paragraph 8 alone may now be considered. This has not been opposed by the learned counsel of the respondents.

3. In view of the submissions by the counsel, now the controversy in this case is limited to the claim of the applicant for Rs.9974/- as balance of leave salary out of which the respondents conceded that a sum of Rs.2062/- is due. Learned counsel of the applicant argued that the contention of the respondents that the actual leave to the credit of the applicant on the date of his retirement was only 277 days based on Annexure R-1 is untenable because Annexure R-1 was prepared long after the retirement of the applicant and even after the filing of the Original Application on 19.7.2004 and also because in terms of the instructions contained in P.B.Circular No.54/83 the verification of the leave account even in exceptional cases by the Accounts could be made only of a period of 3 years prior to the retirement. In this case the claim of the applicant for leave salary for 29 days over and above what has been paid to the applicant is being resisted by the respondents on the ground that it was noted that during the year 1979 34 days of leave was not debited. Learned counsel argued that even if the above statement be presumed to be correct the respondents have no authority to revise the leave account in view of what is contained in P.B.54/83. Learned counsel of the respondents seeks to justify the stand of the respondents on the ground that as a matter of fact 34 days of leave during 1979 was not debited and so what has been done by Annexure R-1 is a rectification of the mistakes.

4. I have considered the rival contentions. The relevant part of the P.B.Circular No.54/83 reads as follows :-

Maintenance and Verification of Leave Accounts and Qualifying Service for Pension

Attention is invited to para 2(e) of the Board's letter of even number dated 20th August 1970 on the above subject wherein it has been laid down that at the time of retirement/termination of service of employees, scrutiny of their leave account should ordinarily be restricted to the last three years of their service etc. In this connection, the question whether in a case where there is *prima facie* evidence that the leave account of an employee has not/been kept up-to-date and does not bear an endorsement of verification, it should be open to the Accounts Office to scrutinize the unverified period, has been reconsidered by the Board. It has been decided, in consultation with the Ministry of Finance and C. & A.G. that in such cases scrutiny of the leave record should be restricted to the last three years of service in all cases. In view of this clause (e) of para (2) of the Board's letter of 20th August 1970, referred to, be substituted as under -

"(e) At the time of retirement/termination of service of employees, scrutiny of their leave accounts should be restricted to the last three years of their service in all cases."

5. Even assuming that there has been an omission to debit 34 days of leave availed by the applicant during the year 1979, in view of what is contained in P.B.Circular No.54/83 quoted above the Account Department has no jurisdiction to reopen the leave account beyond the period of 3 years prior to the retirement of the applicant. Further it is seen from Annexure R-1 that the rechecking and recalculation was done long after the retirement of the applicant and even after the application has been filed, which is impermissible.

6. In the result, I find that the claim of the applicant for a direction to the respondents to pay a sum of Rs.9974/- over and above what has been paid to him prior to the filing of the application on account of the leave salary is sustainable. If

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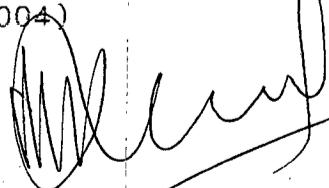
the sum of Rs.2062/- as mentioned in Annexure R-1 has since been paid the respondents would be entitled to adjust that amount and to pay the balance.

7. In the light of what is stated above the application is disposed of with the following directions :-

(a). Regarding the claim of the applicant for reckoning 50% of casual service between 1.7.1969 and 17.5.1979 and consequential benefits the applicant is permitted to make a detailed representation to the 2nd respondent within one month from the date of receipt of a copy of this order and the 2nd respondent is directed that if such a representation is received the same shall be considered in the light of the rules and instructions on the subject and disposed of with a speaking order within a period of two months from the date of receipt of the representation.

(b). Finding that the applicant on the date of his retirement was entitled to leave salary for 300 days the respondents are directed to pay to the applicant the balance leave salary of Rs.9974/- adjusting Rs.2062/- if the same has already been paid after the filing of the application. The respondents shall pay interest on this amount at 6% per annum from 1.6.2003 till the date of payment. There is no order as to costs.

(Dated the 23rd day of December 2004)



A.V.HARIDASAN
VICE CHAIRMAN