

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No. 303 of 2010

Wednesday, this the 2nd day of June, 2010

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

Kochu Sankoo. K. S/o. Kunjulal,
aged 60 years, retired as Head Clerk, Office of
the Senior DEE[G]/O/TVC, Divisional Office,
S/R Trivndrum, Residing at Chaithanya House,
Vengai P.O., Sasthamcotta, Kollam-690569.

Applicant

(By Advocate – Mr. R. Premchand)

V e r s u s

1. The General Manager, Southern Railway,
Headquarters Office, Park Town P.O., Chennai-3.
2. The Divisional Railway Manager, Personnel
Branch, Divisional Office, Trivandrum Division,
Southern Railway, Thiruvananthapuram- 695014.
3. The Divisional Personnel Officer, Personnel
Branch, Divisional Office, Trivandrum Division,
Southern Railway, Thiruvananthapuram-
695014.

Respondents

(By Advocate – Mr. Varghese John for Mr. Thomas Mathew Nellimoottil)

This application having been heard on 25.5.2010, the Tribunal on
02-06-10 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant seeking a direction to the respondents to grant him cash equivalent of the leave salary for 300 days at his credit at the time of his retirement on 28.02.2010.



2. The applicant was working under the respondents as Head Clerk in the office of the Senior DEE (G)/O/ Trivandrum Division. He retired on superannuation on 28.02.2010. He has been issued a pension payment advice releasing all retirement benefits except the cash equivalent of the leave salary. He had submitted a representation to the respondents vide his letter dated 14.03.2010. The respondents have not granted the benefit to the applicant so far. Hence this O.A.

3. It is submitted by the applicant that he has got more than 300 days of earned leave at his credit at the time of his superannuation. As per Rule 550 of the Indian Railway Establishment Code – Volume-1, he is eligible to get cash equivalent of 300 days' leave salary on his retirement in one lump sum as one time settlement. The respondents have failed to make the payment in accordance with the said rule. Therefore, they should be directed to make the payment.

4. The respondents contested the O.A. A civil suit No. OS 41/2009 is pending against the applicant in the Munsiff Court, Trivandrum, in which it is stated that the applicant has executed a guarantee agreement dated 11.04.2002 in favour of one Mr. B. Santhosh Kumar, Clerk, General Branch, Southern Railway, Trivandrum, before the Syndicate Bank, Killipalam, Trivandrum, for due performance of a of a contract. The Railway authority has also been impleaded by the Bank for the in its interim application. The matter is sub judice. Therefore, the payment of cash equivalent of 300 days salary was withheld.

5. The respondents further contended that the applicant made a representation vide his letter dated 14.03.2010. He filed the present O.A. On



05.04.2010. Therefore, the condition that six months should elapse from the date of his representation is not fulfilled. The O.A. is, therefore, premature. The amount due to the plaintiff bank is not mentioned by the applicant in the O.A. The applicant has concealed the material facts relating to the case. There is no denial of the cash equivalent of the leave salary. The same has been withheld on account of the aforesaid pending case. Therefore, the O.A. should be rejected as devoid of any merit.

6. Arguments were heard and the documents perused.

7. The Administrative Tribunals Act, 1985, lays down that ordinarily an application should not be admitted unless the applicant has availed of all the remedies available to him for redressal of grievance. In the instant case, the applicant has made a representation to the higher authority for releasing cash equivalent of the leave salary on 14.03.2010. Before the lapse of a period of six months from 14.03.2010, the applicant has filed this O.A. The expression "ordinarily" in Section 20 (1) of the Administrative Tribunals Act, 1985, means "generally" and not always in all cases. It indicates that the Tribunal is vested with some discretion which is to be exercised sparingly in extra ordinary circumstances. As the instant case pertains to the payment of leave salary on retirement, this Tribunal has decided to admit the case as a special case before the lapse of a period of six months from the date of representation of the applicant to the higher authority.

8. The only reason for non-payment of the leave salary is the pendency of the Suit No. O.S.41/2009 pending in the Munsiff Court, Trivandrum. It appears that the applicant stood a guarantee for another Railway employee, Shri B. Santhosh



Kumar, Clerk, General Branch, Southern Railway, Trivandrum, in a loan agreement with Syndicate Bank. The matter is sub judice. The respondents have not produced any direction from the Munsiff Court for withholding the leave salary from the applicant's terminal benefits nor any rule empowering them to withhold the same. But the Rule 550 of Indian Railway Establishment Code Volume-1 reads as under :

"550. Cash payment in lieu of unutilised leave leave on average pay on the date of retirement.- (1) All Railway servants retiring on superannuation on or after 30.09.1977 may be be paid cash equivalent to leave salary in respect of period of leave on average pay at their credit at the time of retirement on the following conditions:

A. In case of retirement on attaining the age of superannuation -

(1)(a) The payment of cash equivalent of leave salary shall be limited to a maximum of 300 days of leave on average pay;

(b) The cash equivalent of leave salary thus admissible will become payable on retirement and will be paid in one lump sum as one time settlement;

(c) Cash payment under this rule will be equal to leave salary as admissible for leave on average pay and dearness allowance admissible on that leave salary at the rates in force on the date of retirement. No compensatory (city) allowance and/or house rent allowance shall be payable.

(d) The authority competent to grant leave shall suo-moto issue order granting cash equivalent of leave on average pay at credit on the date of retirement.

(2) A railway servant availing a part of leave on average pay as leave preparatory to retirement will also be eligible for the benefits of this rule for the leave on average pay that remains at credit on the date of retirement.

(3) The rule (A) shall not apply to (a) cases of premature or voluntary retirement; and (b) persons who are compulsorily retired as a measure of punishment under the Railway Servants (Discipline & Appeal) Rules, 1968."

9. The respondents are bound by Rule 550 of Indian Railway Establishment



Code Volume-1 to pay cash equivalent of the leave salary to the applicant on his retirement in one lump sum as one time settlement. It is the guarantee agreement dated 14.04.2002 which is sub judice in the Munsiff Court, Trivandrum. The payment of cash equivalent of salary is not sub judice. It is a benefit available to an employee on superannuation. If the applicant has failed to intimate about the pendency of a case in the Munsiff Court, Trivandrum, the respondents can take appropriate disciplinary action against the applicant but it does not empower them to withhold the payment of cash equivalent to the leave salary to the applicant.

10. The liability in the O.S. No. 41/2009 is Rs. 98,661.04 as on 03.01.2009. The payment of cash equivalent of the leave salary payable to the applicant is apparently much more than that. This makes withholding of payment all the more unreasonable. The Civil Suit may take long time for settlement. If the suit is decided in favour of the applicant herein, he will be put to loss of interest for the period the cash equivalent to the leave salary is withheld. The period of withholding is indeterminate. It may be possible that the applicant may not get it in his life time.

11. The applicant stood guarantee for his fellow employee in good faith. If there is an error in judgement on his part he is responsible for that. But the Syndicate Bank has to exhaust all remedies against the loanee first before pressing the guarantor. It is not known whether the Bank is approaching the guarantor as a last resort. The Bank did not seek any concurrence of the respondents before accepting the guarantee provided by the applicant to his fellow employee. The applicant has not authorised the respondents to withhold the cash equivalent of the leave salary against the pending Civil Suit. In the absence of such authorisation and any direction from the Munsiff Court it is illegal for the



respondents to withhold the payment due to the applicant which is his hard earned income over a period of many years. Merely for the sake of maintaining goodwill with a PSU Bank, the respondents authorities are violating the Rule 550 of Indian Railway Establishment Code Volume-1 which they are bound to follow in letter and spirit, with scant regard for the service put in by the applicant.

12. Before parting with this case, I would like to observe that as a model employer, the Railway should not have withheld the payment of leave salary amount and even if they had erroneously done that, they should have intimated the employee about the reason for doing so.

13. In the light of the above, the O.A. succeeds. The respondents are directed to pay the applicant cash equivalent of the leave salary for 300 days at his credit at the time of his retirement on 28.02.2010 within a period of 30 days from the date of receipt of a copy of this order. In case the payment is not made within 30 days, interest @ 9% per annum till the date of payment of the amount due should also be paid to the applicant.

14. No order as to costs.

(Dated, the 2nd June, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.