

**Reserved**

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Original Application No. 432/2008**

**This, the 12<sup>th</sup> of April, 2013**

**Hon'ble Mr. Navneet Kumar, Member(J)**

Donald Jojaf, aged about 61, years, S/o late E. H. Jojaf, R/o Ghasiyari Mandi, Lucknow.

**Applicant**

**By Advocate Sri Alok Trivedi.**

**Versus**

1. Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Senior Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.

**Respondents**


**By Advocate Sri S. Verma.**

**(Reserved on 5.4.13.)**


**Order**

**By Hon'ble Mr. Navneet Kumar, Member (J)**

The present Original Application has been preferred under Section 19 of the Central Administrative Tribunal Act, 1985 with the following


- reliefs:
- (i) To quash/set aside the order dated 03.10.2007 (Annexure No. A-1 to this Original Application).
  - (ii) To direct the respondents to pay the applicant the leave encashment at least for 275 days with interest @ 18% per annum from the date the applicant retired till the date of actual payment.
  - (iii) To issue any other order or direction deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.
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(iv) To allow the Original Application with cost.

2. The brief facts of the case are that the applicant was a railway servant who superannuated as Train Lightning Fitter Grade II on 31.7.2001. After said retirement, he was paid all this retrial benefits including pension and commutation of pension, but the applicant was not paid the leave encashment. The learned counsel for the applicant categorically pointed out that by virtue of a Railway Board Scheme issued from time to time, the applicant is entitled for the leave encashment, but the same was not paid to him. As such, feeling aggrieved by in action of the respondents, he earlier preferred O.A. 698/2001 which stands disposed of by virtue of an order dated 31<sup>st</sup> July, 2007 and the Tribunal while deciding the O.A. directed the applicant to report to Senior DPO, Northern Railway, Lucknow and the respondents shall thereafter arrange for the appropriate officer to look into the grievance of the applicant with regard to the service records as well as the documents enclosed with the pleadings and the applicant shall be given made an opportunity to state his case and the Senior DPO shall thereafter pass speaking order within three weeks from 30<sup>th</sup> August, 2007. The Tribunal Further directed that if the applicant is further aggrieved, he shall be at liberty to seek redressal according to law. After the said orders of the Tribunal, the case of the applicant was considered, but the respondents taken a view and not granted him the leave encashment as such, feeling aggrieved by the order dated 3.10.2007 the applicant is before this Tribunal. 

3. The learned counsel appearing on behalf of the respondents filed counter reply and through counter reply, the respondents categorically pointed out that after attaining the age of superannuation, the applicant retired from the service and the claim of the applicant for leave encashment has been rejected by the respondents without any malafide intentions and the decision so taken by the respondents is absolutely in accordance with law. Apart from this, the applicant has also received payment in regard to the provident fund, gratuity, commutation of pension, group insurance and he was paid pension, but he was not paid leave encashment since the same was not due and payable as leave account is stated to be nil. The learned counsel for the respondents has also pointed out that since, the applicant has retired long back and he never sought permission to inspect his service record, and as per the service record, no leave is admissible to him as such, the applicant is not entitled for the leave encashment. Accordingly, decision taken by the respondents, rejecting the leave encashment of the applicant is absolutely in accordance with law and no interference is called for by this Tribunal in the present O.A.

4. Heard the learned counsel for the parties and perused the record carefully.

5. The applicant, who was in service, was superannuated after attaining the age of superannuation. 

After the retirement, the applicant was paid following retriial benefits:-

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| (i)   | Provident Fund   | Rs. 16232.00  |
| (ii)  | Gratuity   | Rs. 120925.00   |
| (iii) | Commutation of Pension   | Rs. 120663.00   |
| (iv)  | Group Insurance  | Rs. 14600.00  |
| (v)   | Leave Encashment   | Nil (being not due and payable as leave account is nil) |
| (v)   | Pension @ Rs. 2563/-per month + admissible relief from time to time. |   |

The applicant claims that he has not been paid the leave encashment which is admissible to


6. ~~The~~ learned counsel for the respondents has also pointed out that after the decision of the Tribunal passed in O.A. No. 698/2001, the case of the applicant was considered and the applicant also visited the office of DRM and the DRM after considering the details of the Master Roll, the leave encashment account and all the relevant documents found that the applicant is not entitled for leave encashment as no leave is due to the applicant. Apart from this, the learned counsel for the respondents has also pointed out that the records pertaining to such a back date were not fully traceable and the applicant has also never asked for any permission to inspect his records and the leave account such as LAP/LHAP shown in the pay slips are neither authentic, nor final. The correct position of the leave availed by a railway servant and the balance leave available to his credit can only be ascertained from the Leave Record of the concerned railway servant and the pay slips issued to the applicant did not show authentic or correct position of the balance

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leave admissible to the applicant. Not only this, the encashment of leave could have been permitted to the applicant only on the basis of his leave record/leave account and not otherwise.

7. It is undisputed that this Tribunal has no mechanism to ascertain that what are the leave dues to the applicant and it was only the respondents who can ascertain the leave available to the applicant and accordingly the employees are entitled for the leave encashment etc. apart from this the applicant also failed to give any details of his leave account. This Tribunal has earlier directed the respondents to consider the case of the applicant and ascertain that whether any leave is available to the applicant or not and in pursuance thereof, the respondents have also considered and passed a detailed order after giving an opportunity to the applicant and said order dated 3.10.2007 which is impugned in the present O.A. and according to the said order, no leave is due upon him and as such, this Tribunal cannot look into this aspect that whether any leave is due to the applicant or not. As such, the O.A. is fit to be dismissed.

8. Accordingly, the O.A. is dismissed. No order as to costs.

  
(Navneet Kumar)  
Member (J)

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