

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.355 of 2000

Thursday this the 12th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Mr. Shivamangal Vishwakarma
Ex-Office Superintendent,
Of the Chief Security Commissioner,
RPF, Central Railway, CST Mumbai,
Residing at Renuka Chawl, Galli No.1 Room No.4,
O.T. Section, Ulhasnagar, No.3. ..Applicant

By Advocate: Shri S.P. Inamdar.

Versus

1. The General Manager,
Central Railway,
CST, Mumbai-400 001.
2. The Chief Security Commissioner,
Railway Protection Force,
Central Railway, CST Mumbai-400 001.
3. Sr. Divisional Security Commissioner,
Railway Protection Force, C. Railway,
CST Mumbai-400 001.
4. Union of India through
Secretary, Railway Board,
Rail Bhavan, New Delhi-110 001. ..Respondents

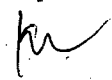
By Advocate: Shri Suresh Kumar.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case is aggrieved of an order passed by the respondents whereby they had refused to convert the half pay leave into leave on average pay retrospectively and there is request for payment of leave encashment of the leave on average pay at the credit of the applicant at the time of his retiremet as per rules.

2. Facts in brief are that the applicant was working with the Central Railway and had superannuated on 31.1.1998. The applicant alleges that as per practice prevailing in the Central




Railway, the conversion of availed leave on average pay into half pay leave is to be applied and processed before one month of the retirement. Accordingly, the applicant had submitted his application on 19.11.1997 to the Divisional Security Commissioner, RPF, Central Railway, CST Mumbai through proper channel but the same has not been considered. Thereafter he made a representation and sent reminders also but the same has also not been heeded to.

3. The applicant further submitted that in cases of certain other employees their leave had been converted into half pay leave and had also been allowed encashment of the same.

4. The applicant vide Annexure A-2 had first applied for conversion of leave on 19.11.1997 claiming the conversion of leave which he had availed from 25.8.97 to 20.9.97 and from 10.10.97. Consequent to that the applicant had also issued a notice through his counsel vide Annexure A-11 but his request had been rejected vide Annexure A-1 wherein it was mentioned that the matter was referred to Sr.DPO/CSTM and the applicant was informed that as per Rule 2117 of R-II, Government servant does not possess any right to insist for the leave already sanctioned and availed and each case has to be considered on its own merits and the authorities were of the view that there is no merit in the case and the question of conversion of leave into Half Pay Leave does not arise in the light of the existing rule.

5. The respondents are contesting the OA. They have taken the plea that the case of the applicant was considered by the competent authority on merit and had been rejected.

6. As far as discretion is concerned, it is only in those cases the leave had been allowed to be converted where railway doctors had issued M-8 and 9-B, therefore, retrospective



conversion was allowed.


7. Besides that it is also pleaded that now vide letter dated 5.2.1998 the conversion of leave can be allowed only in those cases where an employee applies for the same within a period of 30 days on the expiry of the relevant spell of leave availed of by him. It is stated that in this case since the applicant had applied much late, so on that score he cannot be allowed conversion of leave.

8. I have heard the learned counsel for the parties and gone through the records of the case.

9. As far as the circular dated 5.2.1998 is concerned, I find that this does not apply to the case of the applicant since he had applied for conversion of leave on 19.11.1997, i.e., much prior to the date when this new circular was issued and these amended rules cannot be applied with retrospective effect unless so specifically stated in the amendment made itself. Hence, I am of the considered opinion that this circular dated 5.2.1998 is not at all applicable to the case of the applicant.


10. But as regards the impugned order is concerned though the same mentions that there is no merit in the case with regard to the question of conversion of leave into half pay leave, it is apparent that no reason has been assigned in the impugned order though in the counter-affidavit the respondents have taken a plea to justify the rejection and have also tried to explain as to why in the cases of other employees conversion was allowed but there is no reason why the case of the applicant has been rejected. So in view of these circumstances, the impugned order is liable to be quashed as it is a non-speaking order and has been passed without assigning any reason as to why the case of the applicant has been rejected.

11. I, therefore, allow the OA and direct the respondents to



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consider the application of the applicant for conversion of leave into half pay leave in accordance with the unamended rules within a period of 2 months from the date of receipt of a copy of this order. In case respondents allow the conversion of leave, then applicant shall also be paid cosequential leave encashment amount. No costs.


(KULDIP SINGH)
MEMBER (J)

Rakesh