

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.769/92

DATE OF JUDGEMENT:

5th MARCH 1993

Between

R.Showri Rajan

.. Applicant

and

1. The General Manager
South Central Railway
Rail Nilayam
SECUNDERABAD -3
2. The Chief Works Manager
Rly.Workshop
South Central Railway
Lallaguda
Secunderabad-17
3. Works Accounts Officer
Rly.Workshop
South Central Railway
Secunderabad-17

.. Respondents

Counsel for the Applicant

:: Mr GV Subba Rao

Counsel for the Respondents

:: Mr V.Bhimanna, SC for
Rlys

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SHRI
T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19
of the Administrative Tribunals Act, to the direct the
respondents to pay the applicant cash equivalent to leave
salary for 13 days towards encashment of leave at the
time of retirement, together with an interest of 18%
from the date it fell due and also pass such other orders
as may deem fit and proper in the circumstances of the
case.

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2. The facts giving rise to this OA in ~~the~~ brief may be stated as follows:

3. The applicant was appointed as Tracer on 10.3.52 and had retired on 31.10.90 as Assistant Workshop Manager in the Lallaguda Workshop. Prior to the retirement of the applicant, the respondents had informed the applicant that he had 240 days Leave ^{on} Average Pay to his credit. The Administrative Branch sent a bill for encashment of his Leave Average Pay for 240 days to the Accounts section for verification and payment. The accounts section, on the verification of the leave account found a mistake in the entries relating to earlier years in debiting the leave account of the applicant. The said mistake was rectified. The applicant was found having 227 days ^{as on the date of his retirement on 30.10.90.} of leave average pay to his credit. Accordingly, the encashment bill was passed for 227 days and payment was made to the applicant. The case of the applicant is that he had 240 days of EL to his credit as on date of retirement and that, he is paid only cash equivalent to 227 days of EL, and there is no justification on the part of the respondents in denying cash equivalent to 13 days of EL and so, the applicant has filed the present OA for the relief as already indicated above.

4. Counter is filed by the respondents opposing this OA.

5. After perusing the leave account of the applicant, it is found that 227 days of EL (Leave ^{on} Average Pay) to his credit as on his date of retirement on 31.10.90. So, we are satisfied that the action of the respondents in paying

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to the applicant 227 days of Leave ^{on} average pay is legal and valid.

6. On 19.10.90, the office of Chief Workshop Manager, Lallaguda, had advised the Work Accounts Officer, Lallaguda, that the CWM had accorded sanction for 240 days LAP in favour of the applicant and that a special pay bill No.687 dated 11.10.90 for Rs.40,040/- was sent therewith for verification and arranging payment by cheque on Bank of India, Malkajgiri Ac No.13300. It is the contention of the learned counsel appearing for the applicant, that vide their letter dated 19.10.90, of the respondents, have made the applicant to believe that prior to his retirement that the applicant had 240 days of EL to his credit for Leave ^{on} Average pay and that it was not open for the respondents to go back on the proceedings that were communicated to the Works Accounts Officer, Lallaguda on 19.10.90, and further that the respondents are estopped from their own conduct in contending that the applicant did not have to his credit 240 days EL on the date of the applicant's retirement.

7. As it is the contention of the respondents that there is a mistake in debiting the leave availed by the applicant in the year 1982, we thought it fit to scrutinise the entire leave account of the applicant. After scrutinising the leave account of the applicant, we could observe that in the year 1982, the applicant had availed 54 days Leave ^{on} Half Average Pay and by mistake it had not been ~~debit~~ debitted to the leave account of the applicant. This mistake had been rectified subsequently. It is not open for the applicant to take

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advantage of the mistake that had been committed by the respondents in calculating the leave account of the applicant and try to make capital out of the mistake of the respondents. The principle of Estoppel cannot be invoked in a case, where a mistake had been made. The question is whether the applicant had to his credit 240 days of EL (Leave ^{on} Average Pay) on the date of his retirement. The leave account of the applicant goes to show that he had only 227 days of EL (Leave on average pay) to his credit at the time of his retirement after giving credit to the leave accumulated and after debiting the leave spent by the applicant. So, that being the position, we are unable to understand how the applicant taking advantage of the mistake of the respondents in not correctly informing him the leave account, can claim any benefit.

8. Upto the year 1980, there had been no mistake in debiting or crediting the leave account of the applicant. So, starting from the year 1980 onwards, we have credited the leave that the applicant was entitled and debited the leave that he had availed upto the date of his retirement on 31.10.90. After such scrutiny, we have found that the applicant as already pointed out, had only 227 days of EL (Leave on Average Pay) to his credit. As already indicated, the mistake in informing the applicant with regard to his leave account had arisen due to the fact that the 54 days of Half Pay Leave availed by the applicant in the year 1982 had not been debited to his leave account.

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9. The learned counsel appearing for the applicant, during the course of the argument, brought to our notice a copy of the Railway Board letter No.E(G)70 LE1-4 dated 2.1.71 circulated vide SCRly HQrs letter No.P(R)420/dt.23.1.71, where clause (e) reads as follows:

"(e) At the time of retirement/termination of service of employees, scrutiny of their leave accounts should be ordinarily be restricted to the last three years of their service, but in case there is a prima facie evidence that the leave account of an employee has not been kept upto date and does not bear an endorsement of verification as mentioned in (a) above (which should be few and exceptional), it would be open to the Accounts Office to scrutinise the unverified period."

So, on the basis of the said instruction, it is contended on behalf of the applicant, that it is not open for this Tribunal to re-open the entire leave account of the applicant from the year 1980 onwards. On the other hand, the argument of the learned counsel for the applicant that the 54 days of Leave on half average pay that had been availed by the applicant cannot be debited at this late hour to the leave account of the applicant.

10. The Circular issued by the Railway Board does not have any statutory force. So, this Tribunal need not give importance to above instructions issued by the Railway Board to its employees. But, we may pointed out, that in the interest of justice are paramount. It is only with a view to do substantial justice to both the parties that we had taken the pains of scrutinising the entire leave account of the applicant right from the year 1980 onwards and verify the leave that had been credited

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To


1. The General Manager, S.C.Rly,
Railnilayam, Secunderabad-3.
2. The Chief Works Manager, Railway Workshop,
S.C.Railway, Lallaguda, Secunderabad-17.
3. The Works Accounts Officer, Railway Workshop,
S.C.Rly. Secunderabad-17.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.Bench.
5. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
6. One spare copy.

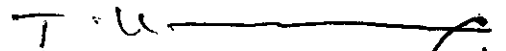
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to the applicant and the leave that had been availed by the applicant and that had been not debited to his leave account. This Tribunal, under its inherent power, can certainly re-open the entire leave account of the applicant and can come to an appropriate decision with regard to the un-availed portion of EL (Leave on Average Pay) by the date of his retirement. In clause (e) of the said Railway Board letter, it is stated "At the time of retirement/termination of service of employees, scrutiny of their leave account should be ordinarily be restricted to the last three years of their service" (emphasis is ours). The plain and popular meaning of the word "Ordinarily" means usually, normally and not exceptionally as contrasted with extraordinarily. So, in view of this position also, the respondents too, in exceptional cases, had a right to re-open the entire leave account of the applicant at the appropriate time and rectify the mistake that had been committed.

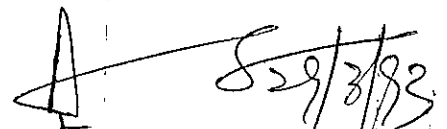
11. So, as already pointed out, there is no mistake at all on the part of the respondents in withholding cash equivalent to 13 days of EL (Leave on Average Pay) out of the gratuity payable to the applicant. So, we see no merits in this OA and hence the OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.


(R. BALASUBRAMANIAN)
Member (Admn)


(T. CHANDRASEKHARA REDDY)
Member (judl.)

Dated: 5th March, 1993

mvl


Deputy Registrar (T)

TEMPED BY

COMPARED BY

CHECKED BY

APPROVED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR.

DATE: 5-3-1993

ORDER/JUDGMENT:

R.P./C.P/M.A. No.

A.A.No.

769/92

T.A.No.

(W.P.No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

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Central Administrative Tribunal
DESPATCH

4 APR 1993

HYDERABAD BENCH.