

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A. 1137/95

Date: 21.1.98

Between:

M. Lakshminarayan

.. Applicant

A N D

1. Divisional Railway Manager,  
(Personnel)  
South Central Railway,  
Hyderabad Division,  
Secunderabad.

2. Chief Personnel Officer,  
South Central Railway,  
Rail Nilayam,  
Secunderabad.

.. Respondents

Counsel for the applicant : Shri G.V.Subbarao

Counsel for the respondents : Shri J.R.Gopal Rao

Coram:

Hon'ble Shri H. Rajendra Prasad, Member(A)  $\frac{8}{22}$

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Date: 21.1.98

O.A. 1137/95J U D G M E N T

(Per Hon'ble Shri H. Rajendra Prasad, Member(A))

Heard Shri G.V. Subba Rao for the applicant.

2. The applicant was injured on 6-10-1991 while on duty, was admitted to the Railway Hospital on the same day, and remained there under treatment till 25-11-1992. On discharge from the hospital he was medically decategorised and placed in C-1 category on 24-11-1992 and was offered an alternate appointment as Commercial Clerk on 29-4-1993. The applicant, however, preferred to go on voluntary retirement on 6-5-1993, was duly permitted on 9-7-1993 to do so with effect from 5-8-1993, and retired from the same date.

3. The grievance of the applicant in this O.A. is that instead of allowing him the facility of encashment of 240 days of accumulated earned leave at his credit, he was permitted to avail of it for only 55 days (and not 77 days as mentioned by the applicant). His contention is that the entire period from 6-10-1991 ( the date on which he was injured and admitted to the hospital) to the date of his voluntary retirement should have been treated as on duty. During the course of the arguments, Shri G.V. Subba Rao, learned counsel for the applicant cited a case decided by the

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Calcutta Bench of Central Administrative Tribunal (MD. ISRAFIL V. UNION OF INDIA AND OTHERS - ATR 1987(2)CAT 117) Although it was submitted by the said counsel that the facts and circumstances between the instant OA and the case cited supra are similar, I find that the similarity between them does not go beyond a point, and there are a number of factual divergences between the two cases. The applicant cannot, therefore, draw full support from the said case.

4. The counter-affidavit filed by the respondents is inadequate to the point of being needlessly cryptic. The respondents submit that although the applicant had 57 days of leave on average pay and 449 days of leave on H.A.P. to his credit at the time of his retirement, the same could not be granted since he did not make any request for commutation or conversion of leave prior to his retirement in terms of Rule 505 of IREC Vol.I. Hence 180 days LAP and 37 days LHAP were debited to the leave account of the applicant for the period from 25-11-1992 to 4-8-1993 i.e., the date of discharge from the Hospital and the date of his voluntary retirement, respectively. The respondents state that conversion of LAP into LHP cannot be considered because such conversion (one type of leave to another) is not permissible after a person's retirement under Rule 505 of IREC, Vol.I, which is as under :

"505. Conversion of one kind of leave into another :

- (1) At the request of a railway servant, made before he ceases to be in service, the authority which granted him leave

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may convert it retrospectively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the railway servant cannot claim such conversion as a matter of right."

5. To this argument Shri Subba Rao, learned counsel for the applicant, submits that there was no scope of opportunity for the applicant to apply for such conversion because he was not aware of the kind and quantum of leave the respondents had decided to sanction to cover his sickness etc., nor did he know the extent of leave on Average Pay or Half Pay available at his credit at that point of time. The applicant learnt about these details only after his retirement, when the impugned order (Annexure III) was issued which was itself very unclear on the <sup>quantum</sup> of leave allowed to be encashed. In this connection, the counsel points out that, according to the Railway Board's Policy Circulars, the authorities are required to apprise all employees of the position of leave <sup>their</sup> at credit in January every year, whereas in the instant case, the applicant was not so apprised even once between the date of his injury and hospitalisation and his eventual retirement.

6. I find some force in the argument of the learned counsel for the applicant in this regard, specifically when the respondents themselves admit that "generally, all the employees will be informed of the leave position in the month of January" (Para 3(iii), page 3 of the counter-affidavit) Unless the applicant had known as to what kind of leave had been or was going to be sanctioned to him, <sup>and type</sup> or what was the extent of leave he had to his credit,

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he could not possibly have applied for any conversion of one kind of leave to another prior to his retirement. It is noted in this context that the events in the wake of his discharge from the hospital - the offer of alternative appointment, the applicant's declining to accept the offer, the applicant's offer of voluntary retirement, and its acceptance - all came in rapid succession of little more than three months. All this left the applicant with apparently not enough time at all to know <sup>or ascertain</sup> the <sup>kind and quantum of</sup> leave at his credit, determine what leave to apply for, or to decide to apply for any kind of leave or its conversion.

7. Elaborate instructions and guidelines are seen to exist in respect of absorption of medically incapacitated railway staff in alternative employment. The position of rules is as under :

- Rule 1302 of IREC, Vol.I divides the medically decategorised/unfit staff into two categories; according to this classification, the case of the applicant falls in sub-clause(ii) of the said rule. Rule 1304, ibid, proceeds to deal with the manner in which a case like the present applicant's should be handled. The railway servant must cease to perform the duties of the post he was holding from the date he is declared medically unfit. An alternative employment must be found, and until this is done, he should be granted leave as admissible from the date of incapacitation to the date of offer of alternative appointment. If, however, the employee has less than six months'

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leave to his credit, extraordinary leave should be granted to bring it upto that period, i.e. six months. If <sup>an</sup> alternative appointment cannot be found and offered to him even within the period of such expanded leave, his service should be extended by grant of further extraordinary leave. It is stated that it should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. The note under the rule describes the purpose of grant of extraordinary leave to such employees. It states that a permanent railway servant, who is medically incapacitated, may not like to avail of the extraordinary leave but may instead prefer to quit service on pension immediately after the expiry of his period of leave with allowances.

8. These rules, in their application to the facts of the present case would reveal:

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|-----|---|-----------|
| (a) | Date of injury and hospitalisation                        | 6-10-1991 |
| (b) | Date of discharge from hospital )<br>& decategorisation ) | 4-11-1992 |
| (c) | Date of offer of alternative appointment                  | 29-4-1993 |
| (d) | Date of request of voluntary retirement                   | 6-5-1993  |
| (e) | Date of acceptance of request of above.                   | 9-7-1993  |
| (f) | Date of voluntary retirement                              | 5-8-1993  |

9. It is to be noted that the Respondents took as much as (i) five months and (ii) two months to (a) offer the applicant an alternative appointment, and (b) to act on his request for voluntary retirement, respectively. As against this, the applicant took no more than ten days to decide that the alternative job offered to

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him was not acceptable since it carried a lower scale than what his original job carried ~~the acceptance of the offer~~ and would have an adverse impact on his pension. It is also to be noted in this context that the entire thrust of the relevant rules was to ensure that there would not occur any break in the service of the employee and that he should be offered all reasonable facilities - including grant of Extra Ordinary Leave - to enable him to tide over the interim uncertain period between his medical decategorisation and the offer of an alternative appointment to him. In the present instance the delays noticed were wholly on the part of the respondents and practically none on the applicant's side. Such being the situation there does not seem to be any reason why the applicant should suffer the consequences of a tardiness which was not of his making at any stage.

10. In the circumstances, it has to be held that that part of leave which came to be unilaterally debited to his account was not warranted, inasmuch as a needless and unjustifiable drain on his encashable LAP was made in his leave account. The applicant ~~is~~ all fairness to him and in view of the proven delays on the part of the authorities, and their failure to apprise, in time, the applicant of his leave entitlement, - should be permitted to apply for commutation of leave that was available in his

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account on the date of his retirement. Since Rule 505 of IREC does not permit conversions of leave after an employee ceases to be in service, such request, if received, shall, if necessary, have to be transmitted to a higher authority for according a waiver of the restriction in this regard as a special case, given its circumstances.

11. In the result, the applicant may, if so advised, submit a detailed representation to the respondent, and make a request for suitable conversion of leave at his credit. If such a representation is received within thirty (30) days from today, the same shall be examined and processed further, in terms of the observations in the <sup>preceding</sup> paragraph, ~~above~~, <sup>hereafter.</sup> within thirty (30) days. A final decision shall be taken in the matter within ~~thirty~~ (30) days ~~thereafter~~ <sup>after that</sup>.

12. Thus the OA is disposed of.

MD

(H. RAJENDRA PRASAD)  
Member (A)

22 JAN 98.

*Prabhu*  
Deputy Registrar



1. The Divisional Railway Manager(Personnel)  
SC Rly, Hyderabad Division, Secunderabad.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 22 / 1 - 1998

ORDER/JUDGMENT:

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

in

O.A.No. 1137/95

T.A.No. QW.2

Admitted and Interim directions  
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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