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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1148/95.

Dt. of Decision : 07-06-96.

K. Krishna Murthy

.. Applicant.

Vs

1. The Union of India rep. by
the General Manager,
SC Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
SC Railway, Rail Nilayam,
Secunderabad.

.. Respondents.

Counsel for the Applicant

: Mr. Mr. Shastry for
Mr. G.Ramachandra Rao

Counsel for the Respondents

: Mr. V.Bhimanna, SC for Rlys.

CCRAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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ORDER

Oral Order (Per Hon'ble Shri R.Rangarajan, Member (Admn.))

The applicant while working as a Deputy Controller of Stores, SC Railway at Secunderabad was compulsorily retired from service on 16-08-1990 as per Railway Board's letter No.E(O)/I-89/SR-10/58 dated 25-07-1990. Aggrieved by the order he filed OA.235/91 on the file of this Bench which was dismissed on 02-04-1992.

2. The applicant now submits that he is entitled for unavailed leave salary (Leave encashment) in addition to pension and other terminal benefits to be paid immediately after his retirement. As the leave encashment salary was not paid to him soon after his retirement on 16-08-90 or after the dismissal of the OA.235/91, referred to above he made representation on 8-7-92 to R-1 for the above payment. Further he has made a representation to the Hon'ble Minister for Railways on 28-6-1993 and to the President of India on 24-03-94 to realise the above dues. But it is stated that those representations were not replied. However he received a cheque for Rs.47,040/- on 31-05-95 against the leave encashment salary. The applicant submits that the calculation made for the above dues for which the cheque was handed over to him is computed erroneously. He further claims interest on the leave encashment salary due to delayed payment of that amount. He sent a notice on 15-06-92 to R-2 to correct the calculation and pay him the correct amount against the leave encashment salary with 12% interest from the date of his retirement. The calculation was corrected and he was paid a further sum of Rs. 1,600/- on 08-08-95 but the interest on the delayed payment has been negatived.

3. This OA is filed praying for a direction to the respondents to pay interest at 12% per annum on the amount of unavailed leave salary from the date of retirement of the applicant i.e., 16-08-90 till the actual payment i.e., 31-05-95 and 08-08-95 with costs.

4. The respondents in their reply state that in terms of Railway Board's letter No.F(E)III-82/LE-1/2 dated 29-12-83 (Serial Circular No.9/84) the authority competent to grant leave may withhold whole or part of cash equivalent of LAP at his credit, subject to a maximum of 180 days (since revised 240 days) in the case of a Railway servant who retires from service on attaining the age of superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. The learned standing counsel submits that since he was compulsorily retired and that order was challenged in this Tribunal the amount pertaining to leave encashment salary was not paid to him immediately after his retirement in view of the Railway Board's letter quoted above. But the reply does not indicate whether a view was taken by the competent authority to come to the conclusion that there is a possibility of some money becoming recoverable from the applicant which resulted in non-payment of the leave encashment salary at the time of his retirement. Though the learned standing counsel tried to substantiate his case on that basis, as no averments in this connection is made in the reply, it has to be concluded that no such view was taken by the competent authority to withhold his leave encashment salary because of the possibility to realise some dues from the applicant at a later date.

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5. The second contention taken by the learned standing counsel is that as the OA.235/91 is pending in this Court, the applicant is not entitled to get the leave encashment salary till the case is disposed of. But there is no rule or instructions produced before me to state that the leave encashment salary is not to be paid when an employee is compulsorily retired and that order is challenged and is pending in a Court of Law. In view of this, this contention also has no merits.

6. The third contention of the respondents is that the applicant would not have filled the final settlement papers in time and because of that he could not be given the leave encashment salary in time. But in the reply nowhere it has been brought out that the applicant was supplied with the necessary final settlement forms to fill up for payment of the final settlement dues in time and the same were received by him and that the applicant had failed to return the filled forms as per time schedule. It may be possible that the respondents could have failed to send him the necessary forms. But if there is a proof that the forms were sent to the applicant in time and received by him and that he failed to submit the duly filled forms as per time schedule the respondents may have a case to with-hold the leave encashment salary and ~~pay~~ the same after necessary formalities are concluded. As no records have been produced in this connection I am not ~~able~~ to come to a ~~definite~~ conclusion whether the fault for the delayed payment ~~lies~~ on the respondents or on the applicant in this regard. However a view may be taken that in case if the applicant failed to submit the necessary papers, on receipt from the respondents which were sent to him in time, ~~and he failed to submit the papers~~ duly filled, then the respondents cannot be blamed for not paying the leave encashment salary and on that account the delay in payment may be condoned. In any case

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he is entitled for the payment immediately after the date he has duly filled the papers and submitted the same. It is also not known whether the filling up of the final settlement papers is a pre-condition for payment of leave encashment salary. No rule or instructions is brought to my notice stating such a pre-condition do exist. If no such pre-condition is there then the applicant is entitled for leave encashment salary from the due date.

7. From the averment in the OA it is seen that the applicant is reconciled to the fact that he is entitled for final settlement dues including the leave encashment after the disposal of the OA.235/91. Hence, he submits that he should have been given the dues on leave encashment atleast from the date of dismissal of the OA.235/91 on 02-04-92. Hence it is appropriate under the circumstances related above that the applicant is entitled for interest on the delayed payment after the dismissal of the O.A.235/91.

8. Under the facts and circumstances of the case the following direction is given:-

The applicant is entitled to interest ^{on the leave encashment salary} at the rate of 10% per annum (as fixed by the Railway Board), from the date of dismissal of the O.A.No.235/91 i.e., from 02-04-92 provided,

a) (i) there is no pre-condition to submit the duly filled-in final settlement forms for grant of leave encashment salary;

 (ii) The respondents failed to send the necessary forms in time to the applicant for filling up the same;

b) In case the applicant received the forms from the respondents in time but failed to send the forms as per time schedule after filling it up, then the applicant is entitled

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for getting the interest at the above rate only from a date six months after the receipt of the filled in forms by the respondents from the applicant and in any case that date will fall on or after 02-04-92.

c) The above facts indicated in above paras (a) to (b) have to be verified from the records.

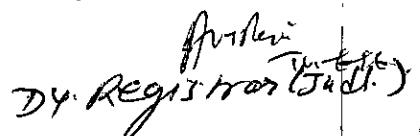
d) In all other circumstances not covered by the above, the applicant is entitled for payment of interest at the rate of 10% per annum on the delayed payment of encashment of leave salary after a lapse of six months from the date of receipt of the completed final settlement forms from the applicant and in these cases the initial date for counting the period eligible for payment of interest will not be earlier than 2-4-92.

9. The OA is ordered accordingly. No costs.



(R. Rangarajan)
Member(Admn.)

Dated : The 7th June 1996.
(Dictated in Open Court)


Dy. Registrar (Jt. Stt.)

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Copy to:-

1. The General Manager, South Central Railway, Union of India, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
3. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
4. One copy to Sri. V.Bhimanna, SC for Rlys, CAT, Hyd.
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN: M(A)

DATED: 7/6/96

ORDER/JUDGEMENT
O.A. NO./R.A./C.P. NO.

O.A. NO.

in
11486

ADMITTED AND INTERIM DIRECTIONS IS

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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