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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.390/96

Date of order: 10.11.1998

N.K.Mathur, S/o Shri Kanmalji Mathur, aged 61 years, R/o 59,
Anand Nagar, Ajmer (Raj).

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway,
Church Gate, Mumbai.
2. Divisional Railway Manager, Western Rly, Ajmer.
3. Divisional Accounts Officer, Western Railway, Ajmer.

...Respondents.

Mr.W.Wales - Counsel for applicant

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

Applicant N.K.Mathur has approached this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985 to seek a direction against the respondents to quash and set aside the impugned order dated 10.4.1996 (Annex.A1) being purely arbitrary and void and has also sought a direction against respondent No.2 to arrange payment of Rs.13,440/- in respect of his unutilised leave on average pay for 100 days, as per rules with a further direction to grant him 18% interest on the aforesaid amount of Rs.13,440/- with effect from 1.5.93 till the date of payment.

2. Facts relevant for disposal of this application in brief and as stated by the applicant are that he joined the Railways on 5.12.1958 and retired from the post of Chief Booking Clerk on 30.4.1993. According to the applicant, he was transferred from Gandhidham to Ajmer on 3.10.1975 and worked at Ajmer till the date of his retirement. His original leave record was sent by the Station Master Gandhidham to the Station Superintendent, Ajmer vide letter dated 18.3.93 (Annex.A3) wherein his leave due and unavailed as on

3.10.1975 was indicated as under:

(i) L.A.P	180 days
(ii) H.L.A.P	200 days

The applicant wrote to respondent No.2 on 16.4.93 to recast the his leave account consequent upon the leave records received from the Station Master, Gandhidham. However, the applicant was surprised to receive the payment towards the unavailed leave for only 140 days earned by him for the period between 4.10.75 to 30.4.93 while working at Ajmer, without any consideration for the balance LAP 180 days and HLAP 200 days earned and lying to his credit as on 3.10.1975. Not being satisfied, he made a representation on 3.5.93 (Annex.A5) after his retirement to respondent No.2 which was followed by another representation dated 7.12.94 after receipt of the respondents' reply dated 28.11.94 (Annex.A6). Having received no response he approached this Tribunal by filing an earlier O.A No.353/95 which was disposed of vide order dated 14.8.95 (Annex.A9) with a direction to the respondents to examine the case of the applicant in the light of the Railway Board's letter dated 13.1.93 (Annex.A8). It is the grievance of the applicant that instead of re-examining in accordance with the Railway Board's letter, he was advised vide the impugned order Annex.A1 dated 10.4.96 that there has been an excess payment of 12 days and that on recasting he is entitled to receive leave encashment for a period of 128 days only. Aggrieved he has approached this Tribunal to claim the aforesaid relief.

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that on a direction given by this Tribunal vide its order dated 14.8.95 (Annex.A9), the respondents have recasted the leave account of the applicant in terms of the Railway Board's letter dated 13.1.93 and consequently there has been no irregularity on the part of the respondents while recasting the

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applicant's leave account. The respondents have stated that as per the record as communicated by letter dated 15.2.93 (Annx.R1) issued by the Station Superintendent, Ajmer, the balance leave account of the applicant as on 31.1.93 was as under:

L.A.P	145 days
L.H.A.P	31 days
C.L	15 days

It has, therefore been urged that the claim of the applicant that he is entitled for payment of 240 days leave encashment is totally false and incorrect and the O.A deserves rejection.

4. I heard the learned counsel for the parties at great length and have examined the records made available in pursuance of the directions on 21.4.98.

5. Although the respondents have tried to assert that the balance leave account of the applicant on 31.1.93 as detailed in their letter dated 15.2.98 (Annx.R1) has been:

L.A.P	145 days
L.H.A.P	31 days
C.L 1993	15 days

yet they have not been able to satisfy that in the aforesaid leave account the balance of leave account for the period when he was posted at Gandhidham has been included. The applicant has been asserting right from the very beginning that when he was transferred from Gandhidham to Ajmer his balance of leave account was as under:

L.A.P	180 days
L.H.A.P	200 days

which also included the balance of leave account of the applicant for the period between 11.10.1965 to 2.10.1975. The balance of leave account indicated in the respondents' letter dated 18.3.93 (Annx.A3) is in contradiction to the letter dated 15.2.93 (Annx.R1) of the respondents. In their communication dated 15.2.93 (Annx.R1) it has been specifically indicated that the balance of leave account

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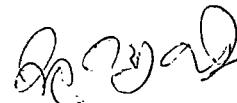
mentioned in this letter pertains to the period October 1975 to January 93. It has further been specifically mentioned in this letter that the balance of leave account of the period prior to the period indicated in this letter is not available with them as the applicant was posted for that period at Gandhidham. Therefore, it is abundantly clear that in spite of the respondents recognising in their letter dated 18.3.93 (Annex.A3) that the applicant was posted between the period from 11.10.1965 to 2.10.1975 under the Station Master, Gandhidham and that the leave account of the applicant is being sent to the Divisional Commercial Superintendent (ET), after being called from Gandhidham, it cannot be said that the balance of leave account in this letter dated 18.3.93 by the respondents themselves as L.A.P 180 days and L.H.A.P 200 days is incorrect. It appears that subsequently also after the directions given by this Tribunal on 14.8.95 in the earlier O.A, the respondents have tried to recast the balance of the applicant's leave account without taking into consideration the balance of leave account communicated to them by the Station Master, Gandhidham and as incorporated by them in their letter dated 18.3.93 (Annex.A3). It cannot therefore be said that the claim made by the applicant is without any foundation. It may also be observed that though the respondents have placed before the Tribunal the record pertaining to the balance leave account of the applicant on the basis of which they have recasted the balance of leave account of the applicant vide their impugned order dated 10.4.1996; yet they have failed to produce the balance of leave account for the period in dispute during which the applicant remained posted at Gandhidham. However it cannot be ascertained from the record made available by the respondents as to how they have recasted the balance of leave account of the applicant in the absence of the original leave record during which he remained posted at Gandhidham.

6. In view of it the applicant's claim has substance and the applicant is entitled to get the appropriate relief.



7. Consequently, while allowing this O.A, the impugned order dated 10.4.96 (Annex.A1) is hereby quashed. Respondent No.2 is directed to include the unutilised leave of the applicant as communicated by them in their letter dated 18.3.93 (Annex.A3) which also include the balance of leave account of the applicant for the period from 11.10.1965 to 2.10.1975, and to arrange payment of his unutilised leave on Average Pay as per rule to the applicant within a period of two months from the date of the receipt of a copy of this order. The applicant shall also be paid interest at the rate of 12% per annum on the balance of payment to be paid to the applicant for the unutilised leave as aforesaid, with effect from 1.5.1993 till the date of payment.

8. The O.A is disposed of accordingly with no order as to costs.



(Ratan Prakash)

Member (Judicial).