

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 17/7/2000

OA 308/98

S.P.Vashishta, Chief Section Supervisor in the office of Chief Engineer, Tele Communication (Civil), Jaipur.

... Applicant

Versus

1. Union of India through its Secretary, Ministry of Tele Communication, Sanchar Bhavan, New Delhi.
2. Chief Engineer (C), Tele Communication, Civil, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.S.BAPU, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.Shiv Kumar

For the Respondents

... Mr.Hemant Gupta, proxy counsel
for Mr.M,Rafiq

O R D E R

PER HON'BLE MR.S.BAPU, ADMINISTRATIVE MEMBER

The applicant was employed in the office of Chief Engineer in Telecommunication Department. He retired from service w.e.f. 30.4.98. His only grievance is that he has not been paid cash equivalent to 49 days of Earned Leave (EL, for short) to his credit at the time of his retirement. It appears that he had earlier moved this Tribunal by filing OA 201/98 and the same was withdrawn by him on 29.5.98 with liberty to pursue the matter with the department through a representation. He made a representation dated 25.9.98 to respondent No.2 but it was rejected by communication dated 13.8.98, which is the impugned one in the present application.

2. Heard the learned counsel for the parties and perused the record.
3. According to the applicant, at the time of retirement on 30.4.98 he had to his credit 265 days of EL and he was paid cash equivalent to only 216 days of EL and, therefore, the respondents had to further pay cash equivalent to the remaining 49 days.
4. The case of the respondents, on the other hand, is that there was a mistake in the leave account. According to them, the applicant was on EL in two spells - the first one from 25.3.93 to 30.4.93 (for a period of 37 days) and the second spell from 13.2.95 to 24.2.95 (for a period of 12 days) and

subsequently by an order the two spells of EL aggregated to 49 days. They were converted into Commuted Leave but that was mistake and, therefore, the wrong credit was deducted from the leave account and thus the applicant was entitled to cash equivalent to EL for 216 days only ($265 - 49 = 216$). It is not disputed that the 49 days of EL originally granted to the applicant in two spells in 1993 and in 1995 ~~and~~ were converted at the applicant's request by the leave sanctioning authority into commuted leave by order No.SE/TC/JP/1(1)4592-93 dated 24.9.96 and No.SE/TC/JP/4594-95 dated 24.9.96. It is only the case of the respondents that this conversion was irregular. We find from the leave account copy of the applicant or one annexed by the respondents to the reply statement that 49 days have been deducted from the leave account with the following note:

"As per approval by CEW,JP on NS/5 of file No.CE/TC/JP/1(1), irregular conversion of leave for the period of 49 days (25.3.93 to 30.4.93 & 13.2.95 to 24.2.95) has been deducted from the balance of EL at the time of retirement."

5. We are unable to understand how the original orders of the sanctioning authority issued in September, 1996, permitting conversion of EL into Commuted Leave, were altered in 1998. No valid reasons have been given by the respondents for the same. Strangely in the reply they are referring to the absence ~~of~~ medical certificates at the time of application for EL or at the time of joining at the expiry of the leave spells in 1993 and 1995. These objections are totally irrelevant as both the request for commutation and the actual commutation took place much later in September, 1996. They have also stated that the medical certificates given later were not in proper form as prescribed under the rules. This is also without substance as this ~~had to~~ ^{would} have been take into account before the concerned authority passed the sanction order for commutation. Similarly, objections that the applicant misused his post as Chief Section Supervisor to get a favourable order from the sanctioning authority and further that the applicant cannot claim such commutation as a matter of right are wholly irrelevant in a situation where the conversion order has already been passed by the proper authority. If at all the respondents had any valid material to conclude that the sanctioning authority's conversion order was totally illegal and irregular then they had to have given the applicant an opportunity of being heard before cancelling the earlier orders dated 24.9.96 and debiting the applicant's leave account by 49 days. Admittedly, this has not been done.

6. In the circumstances, we are of the view that the applicant is entitled to cash equivalent to 49 days of EL in addition of whatever has

been paid to him. We direct the respondents to pay to the applicant, within two months from the date of receipt of a copy of this order, cash equivalent to EL of 49 days to his credit at the time of his retirement. The applicant has prayed for a direction to the respondent to pay interest. On the facts and circumstances of this case, we do not find it necessary to order payment of interest at this stage. The OA is ordered accordingly. No costs.


(S.BAPU)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)