

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 19/11/2001

OA 169/2000

Dinesh Lal s/o Shri Kanti Lal (Retired Mistry, Loco Foreman, Ajmer) r/o Bhandarion ka Bas, Sojat City, Distt. Pali (Raj.).

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Engineer), Western Railway, Ajmer.
3. Divisional Accounts Officer, Western Railway, Ajmer.

... Respondents

CORAM:

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

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.C.Jain

For the Respondents ... Mr.T.P.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

Grievance of the applicant in this OA is that on his retirement he has not received his full leave encashment. He had earlier filed an OA (No.97/99) on the same account, which was disposed of by this Tribunal on 5.3.99, at the stage of admission, with a direction to the respondents to decide applicant's representation dated 26.8.97 within a period of three months from the date of receipt of that order. The applicant was given liberty to file a fresh application, in case he was not satisfied with the disposal of the said representation. In compliance of the said direction, DRM Ajmer communicated his decision to the applicant vide letter dated 29.6/10.8.99 (Ann.A/2) informing the applicant that in



addition to leave encashment already paid for 74 days, the applicant was due encashment of another 7 days LAF, for which an amount of Rs.1225/-, as encashment, was paid to him. The applicant is not satisfied with this decision and has challenged the method of working out the leave in his favour for the period for which the leave records were missing and his prayer is that the impugned order dated 29.6.99 (Ann.A/2) may be quashed and set aside and the respondents be directed to make payment towards encashment of the balance leave due in his credit alongwith interest @ 18% per annum w.e.f. 29.2.96 i.e. the date of his retirement, uptill the date of payment.

2. It is admitted by the respondents that the leave record of the applicant was missing for the period from February, 1957 to 30.6.68. Case of the applicant, as argued by the learned counsel on his behalf, is that it is the responsibility of the department to maintain leave records correctly. By negligent handling and misplacing the leave records they cannot act in a manner which is detrimental to the interests of the employees. The applicant submits that the provisions of maintaining the leave records and regulating the leave accounts are contained in the Fundamental Rules and Railway Establishment Code. In the event of lapse on the part of the department, no whimsical approach can be adopted which may adversely affect the employees' interests. In the instant case, the respondents have whimsically adopted some procedure, which does not have the sanction of rules, to reconstruct the leave account for the period for which it is missing. The learned counsel submitted that only correct approach in such an event should have been to reconstruct the leave account from Pay Bill Ledgers or entries in the Service Register or any other related documents like absentee statements etc. Instead of doing that, the respondents are stated to have adopted irrational approach inasmuch as for the entire



period the respondents have shown that the leave earned by the applicant is 228 days upto 30.6.68, out of which he has availed of 221 days. It is obvious that this approach is totally illogical and unreasonable.

3. The respondents, while admitting that the leave record in respect of the applicant for the period from 12.3.57 to 30.6.68 was not traceable, contend that they have followed the laid down procedure correctly. For this, the learned counsel for the respondents referred to Railway Board's letter dated 13.1.93 (Ann.F/1), which lays down instructions as to the steps to be taken in the event some leave record in respect of an employee is missing. The learned counsel stated that under the said letter the Zonal Railways have been advised to adopt the practice which was being followed by the Eastern Railway. The practice followed by the Eastern Railway is indicated in that Railways' letter No.E.637/0/Ft.II, dated 5/17.9.91. In view of this letter, the learned counsel submitted that there was no arbitrariness on the part of the respondents as the practice followed by the Eastern Railway describes the steps quite logically for reconstructing the missing leave record.

4. We have carefully perused the contents of the Railway Board's letter dated 13.1.93 (Ann.F/1) and the calculation done by the respondents for recasting the leave account of the applicant (Ann.F/2). From the very face of these calculations, we have no hesitation in saying that this procedure, in respect of the period specially relating to pre 1966, is illogical. The practice adopted by the Eastern Railway relates to the time period when 31 days leave was earned by an employee in a year, whereas prior to 1.1.1966 the leave earned came to only 17 days per year. The entire practice is based on working out the average leave availed of by the employee per year by taking into account the leave actually availed of by him during the five years' period from the date



the leave record is available. It is natural to presume that when the leave earned during the year is more, employee may like to avail of more number of days on the presumption that he can still be left with some leave which could be availed of in future. There would very rarely be an occasion when during all the five years the entire leave earned is availed of by the employee. Such a situation could only arise incase of grave sickness or prolonged absence for certain reasons which may be regularised against the leave due to the employee. It is seen that from 1.1.66 onwards the leave which could be earned in a year was 31 days. It is also seen that the respondents have taken into account the period from 1.7.63 to 30.6.73, during which period the applicant had availed of 142 days of leave. By making average of the same i.e. 28 days per year, to debit the same for the period for which the record was missing on year to year basis. Irrationality of this formula is apparent from the annexures where the respondents could not have debited 28 days of leave in the years from 1957 to 1965 as the leave earned itself had a limit of 15 days or 17 days. It is only from 1.1.66 that the leave earned was 31 days and the debit for each year has been shown as 28 days. In this manner, the respondents have worked out that they could permit leave encashment of another seven days in addition to 74 days which was already shown in their leave records and which had been encashed at the time of applicant's retirement. We find the entire method adopted as totally unreasonable and irrational. Eastern Railway evolved a practice based on the admissibility of leave in 1991 and this method can have no relevance for the period prior to 1.1.66. In any case, adopting a practice, which is being followed on any of the Zonal Railways, cannot obtain a colour of rule which could be legally enforceable. It was the duty of the respondents to ensure that leave records are properly maintained and those entrusted with this responsibility taken up in exemplary manner in case they fail to discharge their duties properly.

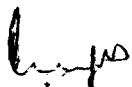
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There is not even an iota of evidence brought before us that respondents have ever considered it necessary to take action against the defaulting officers and staff. Instead, they have taken an action which becomes a punishment for the employee i.e. the applicant in this case and this situation cannot be permitted. We are of the considered view that in absence of any record to indicate the leave actually earned by the employee during the period, for which the leave record is missing, there cannot be any presumption of having availed of any leave. Only appropriate course of action, under the circumstances, is to accept that as on 30.6.68 220 days leave was due at the credit of the applicant, which was carried forward to 1.7.68. From 1.7.68 onwards, the leave record is available and the respondents need to recast the same on this presumption and in case additional leave encashment becomes due to the applicant, the same must be paid. We would also like to observe, however, that the applicant himself had not been careful about his own rights during the service. Every employee has a right to ask for his leave account from year to year basis. He can also, on his own, keep his personal leave record with him. It is apparent that while in service no serious efforts were made by the applicant to see his own leave record and make timely request to the appropriate authorities to update the same from time to time. Because of this lack of diligence on the part of the applicant, we are of the view that he is not entitled to receive any interest on the additional amount of encashment, which may become due because of our orders.

5. In the light of the aforesaid discussion, we direct the respondents to recast the leave account of the applicant from 1.7.68 onwards by reckoning 220 days as having been carried forward in his leave account as on 30.6.68. By taking into account this basis and further leave earned by the applicant during the balance portion of his service and

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the leave availed of by him, the net leave at his credit on the date of his retirement shall be worked out and if the number of days comes to more than 81, already encashed, encashment for additional amount shall be paid to the applicant within a period of one month from the date of receipt of this order. The applicant is not entitled to receive any interest on this payment provided the same is made within one month of the receipt of the order. For any delay beyond one month, the respondents shall pay interest to the applicant @ 12% per annum. No order as to costs.



(A.P.NAGRATH)



MEMBER (A)



(S.K.AGARWAL)



MEMBER (J)