

Central Administrative Tribunal  
Jabalpur Bench, Jabalpur

OA No. 767/05

Dated Friday this the 3<sup>rd</sup> day of March, 2006

CORAM

Hon'ble Mr. Justice G. Sivarajan, Vice Chairman

Bahadur Khan  
Son of Late Shri Natthu Khan  
Bazaria No. 7, Murshid Baba's Majhar  
Damoh, District Damoh  
Madhya Pradesh.

Applicant

(By advocate: None)

Versus

1. Union of India through  
General Manager  
Western-Central Railway  
Mumbai.
2. Divisional Railway Manager  
Western-Central Railway  
Jabalpur.
3. Dr. K. K. Verma (Cardiologist)  
Railway Hospital  
Jabalpur.

Respondents.

(By advocate Shri H. B. Shrivastava)

ORDER (Oral)

By G. Sivarajan, Vice Chairman

Though this case was posted on 24.1.06, there was no representation for the applicant. The respondents have filed their reply on 28.11.05. The applicant has not filed any rejoinder. However, the case was adjourned to 2.3.06. On the said date also, there was no representation for the applicant. Shri H. B. Shrivastava, learned standing counsel for the Railways, was present and argued the matter

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on 2.3.2006. However, the matter was posted for final orders today in order to afford an opportunity to the applicant. Even today, there is no representation for the applicant.

2. Heard the learned standing counsel again.

3. I have considered the matter with reference to the pleadings in this case and the submissions made by the learned counsel for Railways.

4. The applicant entered the Railway service on 31.5.1963 as a Group-D employee. By successive promotions he became a Station Master. On 1.4.2002, while working as Station Master, the applicant suffered a chest pain and consequently he remained under treatment from 1.4.02 to 30.5.2003. He retired from service on 31.5.2003. The applicant had initially requested for compassionate appointment to his son on the ground of his medical disablement. He also claimed full leave encashment with interest on the date of his retirement.

5. Since the respondents had not granted the aforesaid leave encashment, he approached this Tribunal by filing OA No.601/04 and this Bench by its order dated 13.10.2004 directed the applicant to file a fresh representation within 15 days from the date of the order and the respondents were directed to consider the said representation within two months, sympathetically and as per rules. Pursuant to the said directions the applicant filed the representation and the second respondent passed an order-dated 6.4.2005 (Annexure A6) as directed. The claims made by the applicant, as afore mentioned, were rejected. Thus the applicant is aggrieved.

6. Respondents have filed a reply on 28.11.2005 in which it was contended that the applicant is not entitled to any of the reliefs sought for in this OA. No rejoinder is filed by the applicant.

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7. Mr. H.B. Shrivastava, learned counsel for the Railways, submits that the applicant was on leave from 1.4.2002 till 30.5.2003, that the applicant was referred to a Medical Board for assessing his physical condition and for deciding his medical category, that the applicant was found unfit for A-2 medical category but found fit for C-1 medical category by the Medical Board, that the accepting authority (Chief Medical Director) directed that the employee should be subjected again to medical scrutiny at the Byculla Hospital, Mumbai, that on 24.3.03, Dr.K.K.Verma, the Cardiologist, decided that the employee should be referred to a specialized hospital for coronary disease at Perambur, Chennai but the employee did not report to Perambur Hospital and that the applicant had retired from service on 31.5.2003. The counsel further submitted, based on the averments in the reply, that as per the provisions of the Rules, his sick period has been debited to his leave due as under:

- A: 2.4.02 to 23.4.02 = 25x2 = Half pay commuted as full pay.
- B: 24.4.02 to 30.6.02 = 68 days sick APL.
- C: 1.7.02 to 5.7.02 = 5x2 = 10 days half pay commuted as full pay.
- D: 6.7.02 to 16.7.02 = 11 days sick APL.
- E: 17.7.02 to 31.12.02 = 83 sick APL
- F: 1.1.03 to 4.1.03 = 4x2 = 8 days debited to commuted HPL as FP.
- G: 5.1.03 to 28.2.03 = 55 days sick APL.
- H: 1.3.03 to 31.3.03 = 31 days sick APL.
- I: 1.4.03 to 10.4.03 = 10 days sick HPL.
- J: 11.4.03 to 31.5.03 = Sick without pay as no leave either APL or HPL due.

Balance of leave on 31.5.03 = Nil

It is stated that the above details would clearly demonstrate that there was no leave to his credit as on 31.5.03 at the time of his retirement, for encashment. The counsel for the Railways in the circumstances submitted that there is no merit in the claim made by the applicant.

8. I have considered the claim made by the applicant in this OA and the submissions made by the learned counsel for the Railways, based on the averments in the reply as also the impugned order.

*gsk*

Though the facts are clearly delineated in the impugned order, on the question regarding payment of leave encashment, the matter is dealt with only i. Para 6 of the said order, which reads as under:

"As far as reduced leave encashment is concerned, it is seen that his leave was utilized for his own treatment, therefore, his claim that he should be given complete leave encashment is unfounded and without any justification. Allowing full leave encashment (while the balance leave is less than 300) is also not permissible as per the provisions of Railway Servant (Liberalized Leave) Rules, 1949."

g. Though an attempt was made by the learned Railway counsel to demonstrate that the applicant had no leave to his credit on the date of his retirement i.e. on 31.5.03 for leave encashment, the details furnished in the reply does not appear to be sufficient to support the same. Admittedly, the applicant commenced service under the respondents on 31.5.63, which shows that as on 31.5.2003, the applicant had completed 40 years of service under the respondents. It is seen from the provisions of Rules 523, 526 and 527 that a Railway servant, be he a permanent employee or a temporary employee, is entitled to leave on average pay of 30 days in a year, leave on half average pay of 20 days in respect of each completed year of service and commuted leave not exceeding half the amount of leave on average pay to be granted on medical certificate, subject to certain conditions. As already noted, the contention of the respondents is that the sick period of the applicant was adjusted against the eligible categories of leave and that there was no leave to his credit at the time of his retirement, for leave encashment. To take such a view, the material available in the reply is insufficient for the reason that the applicant had 40 years of service under the respondents as on the date of his retirement and that the calculations made in the reply extracted herein above were only in respect of the period from 2.4.02 to 31.5.03. It will not be possible for the Tribunal to effectively adjudicate the question as to the entitlement of the applicant for leave encashment with this meagre materials regarding the various kinds of

*Ans*

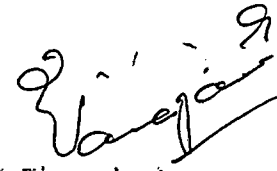
leave earned by the applicant during his service. Though the applicant was not in a position to establish that he is entitled to leave encashment of either full 300 days or any lesser number of days.

Since the service book and other details relating to the applicant are available with the respondents it is for the respondents to consider the entitlement of the applicant for leave encashment with reference to those materials. I do not find that any such effort has been made in the impugned order. In that respect the impugned order is a cryptic one. Even the reply filed by the respondents, as already stated, does not satisfactorily explain the position. In the circumstances, I have no other go but to remit the matter before the second respondent for a de-novo consideration of the question of entitlement of leave encashment claimed by the applicant in this OA.

10. I accordingly set aside the impugned order in so far as it relates to grant of leave encashment and direct the second respondents to consider the matter afresh in accordance with the rules and in the light of the observations made herein above and to take a decision sympathetically as already directed by the Tribunal in the earlier proceedings, within a period of 3 months from the date of receipt of a copy of this order. Needless to say that the order to be passed as directed herein above must deal with different kinds of leave earned by the applicant during his service, why the entire leave period from 1.4.02 to 31.5.03 could not be adjusted towards commuted leave to the extent permitted under Rule 527 of the leave rules of the Railways and pass a detailed, speaking and reasoned order in the matter.

11. Learned Railway counsel will furnish a copy of this order to the second respondent for compliance and the office will forward a copy to the applicant/his advocate.

12. The O.A. is disposed of as above. In the circumstances the parties will bear their respective costs.

  
(G. Sivaraman)  
Vice Chairman

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पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

परिचयित पत्रिका.....

- (1) श्री. राजेश चन्द्र शर्मा, जबलपुर
- (2) श्री. राजेश चन्द्र शर्मा, जबलपुर
- (3) श्री. राजेश चन्द्र शर्मा, जबलपुर
- (4) श्री. राजेश चन्द्र शर्मा, जबलपुर

Shri S D Khan  
Shri H B Shrivastava

6/11/06

सूचना एवं आचार्यक दायित्व

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