

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A.No.998/2016

Order reserved on 12<sup>th</sup> February 2018

Order pronounced on 16<sup>th</sup> February 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)**

Mohd. Salim Khan, retired CIT/SRE  
Aged about 62 years  
s/o Mohd. Umar Khan  
r/o H.No.11/1432  
Mohalla Topia Sarai  
Near Bilal Masjid, Saharanpur  
U.P.- 247001

..Applicant

(Mr. Suresh Sharma, Advocate)

Versus

1. General Manager (Northern Railway)  
Baroda House, New Delhi – 110 001
2. Divisional Railway Manager (DRM)  
Ambala Division (Northern Railway)  
Ambala Cantt. Haryana – 133004
3. Senior DPO, Northern Railway  
Ambala Division  
Ambala Cantt., Haryana – 133004
4. Mr. Arun Kumar  
WLI (Welfare Inspector)  
Northern Railway  
Ambala Cantt.  
Haryana – 133 004

..Respondents

(Mr. R N Singh, Advocate)

**O R D E R**

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(i) To declare the action of respondents in short payment of the leave encashment by 113 days of LAP and 7 days of HAP as arbitrary, illegal, malafide and vindictive.

(ii) To declare the action of respondents in short payment of Gratuity by Rs.5732 and delaying the payment of Gratuity by eight months without payment of interest, in violation of the Government of India instructions on the subject issued vide O.M. dated the 5<sup>th</sup> October, 1999, as arbitrary, illegal malafide and vindictive

(iii) To direct the respondents to initiate action to fix responsibility at all levels to recover the amount of penal interest on the delayed payment of Gratuity from the concerned dealing official, Supervisor and Head of Office in proportion to their salary.

(iv) To issue suitable directions to the Government Respondents to take strict disciplinary action against Arun Kumar for demanding bribe and for falsification of Service Record of the applicant with a view to harass him for denying to pay the bribe.

(v) To direct the respondents to pay the additional leave encashment of 113 days of LAP and 7 days of HAP to the applicant within a specified period, with interest till the date of retirement of the applicant @ 12% P.A.

(vi) To direct the respondents to pay the Gratuity of Rs.5372, short-payment made earlier, with interest till the payment of the same from the date of retirement of the applicant, along with interest for the delayed payment of gratuity of Rs.8,27,918/- at the rate of 12% per annum to the applicant for the 8 months to the applicant within a specified period.”

2. Factual matrix of the case, as is noticed from the case, is as under:-

2.1 The applicant retired from the service of respondents – Railway Department from the post of Chief Ticket Inspector (CTI) on attaining the age of superannuation. He was then working under the Ambala Division of Northern Railway. Pursuant to his retirement, the respondents issued Annexure A-2 particulars of pension *qua* the applicant, in which, *inter alia*, it has been mentioned as under:-

Emoluments for DCRG	₹827918/-
40% commutation value of pension	₹476695/-
Leave encashment (LAP and HAP)	₹266773/-

2.2 As per Form for Leave Account (FLA) (Annexure A-3), 93 days of LAP and 133 days of HAP were credited to his account. It is alleged that for release of retiral dues of the applicant, respondent No.4 had demanded a bribe of ₹30,000/-, which the applicant refused to pay; as a result of which, respondent No.4 used his influence in the Department and got his leaves altered adversely. As a result, the applicant has been granted leave encashment in respect of only 29 days of LAP and 126 days of HAP amounting to ₹1,53,870/-. It is further stated that alteration of leave account has also impacted the DCRG amount payable to him. Instead of earlier sanctioned amount of ₹8,27,918/- as per Annexure A-2, the applicant has indeed been paid only ₹7,88,306/- towards DCRG.

Aggrieved by the reduction of DCRG and leave encashment amounts, the applicant has filed the present O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their counter reply in which they have made the following important averments:-

3.1 The leave account of the applicant was received from CTI/SRE, according to which he was having 93 days of LAP and 133 days of HAP in his credit, and after its receipt, it was checked by Sectional Welfare

Inspector. On verification, it was found that the applicant was indeed having 85 days of LAP and 129 days of HAP to his credit. It was further got counterchecked by the Accounts, who verified and confirmed that only 29 days of LAP and 126 days of HAP were, in fact, into his credit. The Accounts noticed the following discrepancies in the leave account of the applicant:

- “1) 75 days excess credit was given in the year (1/1986 to 1/1988).
- 2) 14 days excess LAP availed in the year 1995.
- 3) 48 days excess LAP availed in the year 2000.
- 4) 04 days excess LAP availed in the year 2001.
- 5) 01 day excess LAP availed in the year 2004.
- 6) 10 days discredit was given due to LWP of 103 days. As per extant rules, 1/10 discredit of LWP is given.”

Accordingly, the leave encashment has been restricted to 29 days of LAP and 126 days of HAP amounting to ₹1,53,870/-.

3.2 The applicant's allegation of bribery charge against respondent No.4 was got duly investigated through Chief Welfare Inspector, Ambala, who submitted his report on 27.02.2016. The bribery charge against respondent No.4 was found to be frivolous. Even the applicant did not turn up to depose before the inquiry officer despite notice to him dated 09.03.2016 (Annexure R-2).

4. The applicant has filed a rejoinder to the counter reply filed on behalf of the respondents, in which, besides reiterating the issues raised in the O.A., it has been stated that the inquiry conducted in regard to the complaint of the applicant against respondent No.4 was a farcical inquiry.

It is further stated that it is wrongly mentioned in the inquiry report that the inquiry officer inquired with several department officials, viz. Messrs. Vinod Kumar, CIT, Line, Saharanpur, Avtar Singh, Deputy CIT, Saharanpur, Bhatia (no full name given), CIT, Saharanpur and Sunil Kumar, CIT, Saharanpur, who were believed to have said that the applicant had been making false complaint against several persons. However, on the contrary, the applicant submitted copies of sworn-in affidavits of such officials wherein they have said that they have not made any such complaint against the applicant.

5. With the completion of pleadings, the case was taken up for hearing the arguments of the parties on 12.02.2018. Arguments of Mr. Suresh Sharma, learned counsel for applicant and Mr. R N Singh, learned counsel for respondents were heard.

6. It is to be noted that the particulars of pensioner (Annexure A-2) document was issued indicating the DCRG amount as ₹8,27,918/-, commutation value of pension as ₹4,76,695/- and leave encashment as ₹2,66,773/-. This document has been jointly signed by the Divisional Manager (Finance), Divisional Personnel Officer and Chief Office Superintendent. Hence, such a document has got its own importance and authenticity. Without verifying the facts, including the leaves available to the credit of the applicant correctly, such a document could not have been issued.

7. The respondents in paragraph 3 of their counter reply have attempted to say that the applicant had availed excess LAP in the years 1995, 2000,

2001 and 2004, and have further pointed out certain discrepancies in regard to computation of discredit given due to LWP of 103 days. It is quite surprising as to how come such discrepancies had continued for almost 20 years and no action was taken by the respondents to correct them all these years.

8. The applicant has made direct charge against respondent No.4 of seeking bribe from him for settling his retiral dues. The applicant was got inquired into by the respondents by Mr. Om Prakash, Chief Welfare Inspector, Ambala, in which the charge of bribe was found to be untrue. The inquiry officer has mentioned in his report that he had made inquiry with some local officials (names given in paragraph (4) above), who were believed to have told him that the applicant was in the habit of making false complaints against many persons. This part of the report definitely comes under question in view of the sworn-in affidavits of these officials submitted by the applicant along with his rejoinder. The applicant has given his version of leave details in his rejoinder as under:-

“1) 75 days excess credit was given in the year (1/1986 to 1/1988).

The same was already adjusted vide entry on the Service Book/Leave account at Page 3 and Page 20.

2) 48 days LAP availed in the year 1995.

Already accounted for vide entries in the Service Book/ Leave Account on pages 10 and 19.

3) 48 days excess LAP availed in the year 2001.

Already adjusted vide entry on page 13 of the Service Book.

4) 04 days excess LAP availed in the year 2001.

Already accounted for vide entry on page 13/D.

5) 01 day excess LAP availed in the year 2004.

No excess leave availed as per Leave Account annexed with the O.A.

6) 10 days discredit was given due to LWP of 103 days. As per extant rules, 1/10 discredit of LWP is given

It should have been 4 days as LWP of 43 days was there. Excess deduction of 6 days Leave”

9. Under the circumstances, I dispose of this O.A. in the following terms:-

i) The respondents shall pay retiral dues to the applicant strictly in terms of Annexure A-2 particulars of pensioner. Since the applicant has received certain payments towards DCRG and leave encashment, the differential amount in regard to these two items shall be paid to him. This shall be done within a period of two months from the date of receipt of a copy of this order. The applicant, on his part, shall give an undertaking to the respondents that he shall return any excess payment made to him after re-verification of his leave account establishes such excess payment.

ii) The respondents shall get the leave account of the applicant re-verified by the Divisional Manager (Finance) and Divisional Personnel Manager afresh. The verified leave account shall be shared with the applicant. In case it is decided that the applicant was not entitled for the amounts indicated in Annexure A-2 particulars of pensioner towards DCRG and leave encashment, he shall be obliged

to pay back the differential amount to the Department within four weeks.

No order as to costs.

**( K.N. Shrivastava )**  
**Member (A)**

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