

CENTRAL ADMINISTRATIVE TRIBUNAL**PRINCIPAL BENCH****O.A. No.2943/2015****M.A. No.2608/2015****Reserved on:08.09.2017****Pronounced on :19.9.2017**

Sh. Thakur Dass (Aged about 62 years)

Ex-Postman

S/o late Sh. Mathura Prasad

R/o H.No.346, Nand Nagri (Village)

Delhi-110093.

.... Applicant

(By Advocate :Shri Lalta Prasad)

Versus

Union of India Through

1. Secretary (Post)

Ministry of Communication

Deptt. Of Post

Dak Bhawan, Sansad Marg,

New Delhi-110001.

2. Chief Postmasters General

Delhi Circle, Meghdoor Bhawan,

Link Road, New Delhi-110001

3. Director of Post & Accounts

Old Secretariat,

5, Sham NathMarg,

New Delhi-54

4. Sr. Supdt. Of Post Offices,

East Division, Delhi-110051

.... Respondents

(By Advocate: Shri R.K.Jain)

ORDER**HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)**

The present OA has been filed by the applicant stating that the respondents have not made payment of 24 days of leave encashment to which is due to him. He has requested to set aside order dated 11.05.2015, rejecting his claim and to direct the respondents to make the payment of 24 days of interest on delayed payment of leave encashment.

2. The brief facts of the case are that the applicant was posted as Packer/Group 'D' w.e.f. 19.02.1981 and subsequently promoted to the post of Postman w.e.f. 26.03.1981. The applicant has completed 33 years regular service under the respondents and accumulated leaves as per relevant rules. Hence, he avers that he is entitled to leave encashment of 300 days at the time of retirement. After receiving his retiral benefits, the applicant felt that amount of leave encashment was less, hence he made a representation on 21.07.2014 to the competent authority. He submitted that he was on medical leave from 07.01.2013 to 15.01.2013 and 27.05.2013 to 06.06.2013. The above leave, he submitted has been deducted from his E.L., he requested that same may be deducted from his commuted leave. In response to the above representation,

the respondents passed the order dated 11.08.2014 which reads as under:

“Under the provisions of Rule 10 of CCS Leave Rules, is hereby permitted to commuted EL into commuted leave w.e.f. 07.01.2013 to 15.01.2013 (9 days) and 27.01.2013 to 06.06.2013 (11 days) if official submitted the medical certificate at the time of granting leave.”

3. In view of this communication, on 12.09.2014, the applicant again submitted a representation to the Post Master Jhilmil, Head Post Office, Delhi requesting for grant of monetary benefit due to him. To this, a communication was sent by Post Master Jhilmil to Postmaster Nand Nagri, on 22.09.2014 stating that the applicant had retired from service on 31.01.2014. His 20 days of EL has been converted into commuted leave which cannot not be done post retirement. The applicant again approached the department to stake his claim through various representations, the last being 25.04.2015 regarding encashment of EL with details. To reacting, the respondents have passed an order dated 11.05.2015 and finally rejected the claim of the applicant which is the order impugned in the OA.

4. In the counter, the respondents have stated that the applicant has challenged the respondents' letter dated 11.05.2015 for payment of leave period from 07.01.2013 to 15.01.2013 (9 days) only whereas in the prayer clause he has

sought directions for the respondents to make payment for 24 days. This is contradictory and the OA needs to be dismissed on this ground alone. It is stated that the OA is time barred under section 21 of the Administrative Tribunal Act, 1985. In the OA the purported cause of action arose on January, 2013 when the applicant was granted leave and the OA against the said order ought to have been filed by the end of January, 2014. But the present OA filed under Section 19 of A.T. Act, 1985 has been filed only in the month of August, 2015. Hence, the OA has not been filed within the period of one year as required under section 21 of the A.T. Act, 1985. The respondents relied on the case of **S.S. Rathore Vs, State of MP (AIR 1990 SC 10)** stating that an aggrieved person must approach the court for relief within one year if no representation/appeal has been filed and six months after if an appeal/representation has been preferred. It is also stated in the said judgment that repeated representations do not give rise to fresh cause of action. Hence, the OA is liable to be dismissed.

5. Heard both the counsels and perused the records.

6. Learned counsel for the applicant stated that the amount of leave encashment received by him is less by 24 days. He submitted that the respondents had converted his EL to

commuted leave, so the 24 days of EL at his credit should now be paid to him as per rules governing leave encashment. The counsel for the respondents rebutted the arguments and drew my attention to para 4.7 of their counter stating that the applicant himself have claimed no kind of leave for the period 7.1.13 to 15.1.13 (9 days). The representation of the applicant has been decided based on that. It is also stated that in the instant OA the purported cause of action arose on January, 2013. The applicant should have approached the appropriate forum at relevant point of time, which he chose not to. He argued that the Hon'ble Supreme Court has laid down the law in a catena of judgments that an aggrieved party has to approach the court within the prescribed statutory period. After the expiry of that period, the court cannot entertain the relief claimed or prayed for. He relied upon the judgment of Hon'ble Apex Court in the case of **D.C.S. Negi Vs. Union of India** SLP (C) CC No.3709/2011 wherein the Administrative Tribunals have been advised not to admit cases which are time barred. The operative part of the aforesaid judgment reads as under:

“Before parting with the case, we consider it necessary to note that for quite time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21....

Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)."

7. Learned counsel for the respondents submitted that the applicant has not filed an application for condonation of delay nor has he given any cogent reasons for not filing the present OA within the period of limitation. Hence, the OA is hopelessly time barred and is liable to be dismissed.

8. On going through the facts of the case, I find that on superannuation, the applicant was sanctioned, and paid, leave encashment of 276 days, as per rules on the subject. In his representation dated 25.4.2015 to the Sr.Supdt.Post Office, Delhi East. Division, Delhi, the applicant has requested that, Medical leave for 9 days from 07.01.2013 to 15.01.2013 were granted by the competent authority. The same was deducted from his E.L. account with the malafide intention to cause him financial loss of encashment of 9 days E.L. He submits that in lieu of 9 days E.L. on medical ground, commuted leave for 18 days should have been deducted from the account of Half Pay Leave as required under the Rules.

9. This representation was decided by the competent authority on 11.05.2015, informing the applicant about rejection of his claim. It has categorically been mentioned that as per Service Book the EL w.e.f 07.01.2013 to 15.01.2013 has been deducted and Medical Leave is not any kind of leave. As per CCS Leave Rule, there are only EL, HPL and Commuted Leave and EOL leave, which has accordingly been sanctioned by the competent authority. The correction of leave is not admissible after retirement or quitting service vide Rule 10 of Leave Rules.

10. The applicant has not been able to make out a convincing case in his favour. Correction of leave, if any, (whatever be the number of days) should have been got done prior to his superannuation. The OA lacks merit and is dismissed accordingly. No costs.

(Praveen Mahajan)
Member(A)

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