

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH

...

OA No.291/00315/2015

Reserved on: 24.01.2018

Pronounced on:10.04.2018

...

HON'BLE Mr. SURESH KUMAR MONGA, MEMBER (J)

M.N.Baig S/o Shri Sardar Baig, aged about 68 years R/o Bapu Colony, Ganeshpura Road, Kota Junction Rajasthan, Jaipur.

...APPLICANT

BY ADVOCATE : Mr. S.S.Ola

VERSUS

1. Union of India, through the General Manager, West Central Railway, Jabalpur (MP).
2. The Divisional Railway Manager, North Western Railway, Kota Division, Kota.
3. Chief Workshop Manager, Mal Dibba Repairs Workshop, Kota Division, Kota.

..RESPONDENTS

BY ADVOCATE: Mr. Anupam Agarwal

ORDER

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The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant seeking the following relief:

"(i) The impugned order (Annexure-A/1) dated 9.7.2014 may kindly be quashed and set aside and further the respondents be directed to give

leave encashment for the period of 76 days to the applicant with all consequential benefits.

(ii) Any other relief which is found just and fit and proper in the facts and circumstances of the case may very kindly be passed in favour of the applicant”.

2. The factual matrix of this case is that the applicant was relieved by the respondents to join Territorial Army Operation Exercise, 'Lalkar' for the period commencing from 01.11.1995 to 21.11.1995. He met with an accident during the said period. He was admitted in the Railway Hospital Jodhpur and thereafter shifted to Mahatama Gandhi Medical College, Civil Hospital, Jodhpur where he remained under treatment uptill 24.11.1995. Thereafter, he was shifted to Railway Hospital Jodhpur and remained under treatment. Later on, he was shifted to Railway Hospital, Kota from where he was discharged on 16.03.1996 and returned back to his Unit on the same day. The period during which he remained absent was regularized by the respondents by granting benefit under Rule 33 of TA Regulations, 1949 (reprint 1976). After attaining the age of superannuation, the applicant retired from the service of the respondent on 31.08.2006. At the time of his retirement, he was paid the amount of leave encashment for 282 days.

3. Learned counsel for the applicant submitted that the period during which the applicant remained absent from duty because of the injury suffered by him, was treated as injured on duty/medical leave by the respondents and since he has been held entitled to leave on average pay, therefore, he is entitled to get leave encashment for the entire period of 76 days, which was duly credited to his leave account by the respondents.

4. Per contra, learned counsel for the respondents contended that the applicant stood retired on 31.08.2006 and he was paid the amount of leave encashment for 282 days. Later on 76 more days were credited in the applicant's leave account and out of those 76 days, leave encashment of further 18 days could be allowed as the maximum permissible limit for leave encashment is 300 days only. Since the applicant has already got the benefit of leave encashment of total 300 days, therefore, no cause survives in his favour and the OA deserves to be dismissed.

5. Considered the rival contentions of the learned counsels for the parties and perused the record.

6. Admittedly, at the time of retirement on 31.08.2006, the applicant was granted the benefit of leave encashment of 282 days by the respondents. There is no dispute with regard to the

fact that he has also got further benefit of 18 days of leave encashment after getting the credit of 76 more days in his leave account. As per the provisions of Rule 523 (1) (a) (i) of the Railway Services (Liberalized Leave) Rules, 1949 (hereinafter called as "1949 Rules"), a Railway Servant permanent or temporary other than one who is serving in a railway school becomes entitled to 30 days leave on average pay in a calendar year. Sub clause (b) of Sub Rule (ii) of the said Rule further makes a provision of a leave to be granted at the close of the previous half year to the next half year subject to the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 300 days. Rule 550 of '1949 Rules' makes a provision for cash payment in lieu of unutilized leave of average pay on the date of retirement of an employee. According to the provisions of the said Rule, the payment of cash equivalent to leave salary is limited to a maximum of 300 days of leave on average pay and the said amount becomes payable on retirement of an employee. The relevant provisions of Rule 550 of the '1949 Rules' are reproduced here as under:

"A. In case of retirement on attaining the age of superannuation –

(1) (a) The payment of cash equivalent to leave salary shall be limited to a maximum of 300 days of leave on average pay;

(Original Application No.315/2015)

(b) The cash equivalent to leave salary thus admissible will become payable on retirement and will be paid in one lump sum as one time settlement;

7. Since in the case in hand, the applicant has already got cash payment in lieu of unutilized leave on average pay uptill the maximum permissible limit of 300 days, therefore, I do not find any infirmity in the order dated 09.07.2014 (Annexure A/1).

8. Finding no merit, the instant OA fails and accordingly it is hereby dismissed. However, there shall be no order as to costs.

(SURESH KUMAR MONGA)
MEMBER (J)

/kdr/