

13

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1776/2003

New Delhi this, the 14th day of May, 2004

Hon'ble Shri S.K.Naik, Member (A)

Hari Dass
F-235, Vijay Vihar
Delhi-110055 .. Applicant

(Shri R.S. Rawat, Advocate)

VERSUS

Union of India, through

1. Secretary
(Dept. of AH & Dairying)
Ministry of Agriculture
New Delhi.
2. General Manager
Delhi Milk Scheme
West Patel Nagar, New Delhi .. Respondents

(Shri J.B. Mudgil, Advocate)

ORDER

1. By virtue of the present OA, applicant seeks a direction to the respondents to pay him leave encashment for 119 days which were at credit at the time of his superannuation from service on 31.5.1996. He has based claim on the strength of respondent-department's order dated 6.6.96 sanctioning leave to him from 8.4.96 to 13.4.96 and 22 to 27.4.96 showing the balance of 119 days of earned leave. His grievance is that he has been paid leave encashment for 19 days instead of 119 days.

2. While contesting the case, respondents in their reply have stated that the present OA is time barred inasmuch as the applicant had retired from service on 31.5.1996 and has approached this Tribunal on 8.7.2003, after more than 7 years. They further contend that the applicant had earlier filed a case before the Labour Court, Tis

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Hazari seeking the same relief which was dismissed vide judgement dated 11.12.2001, concluding that it was "not legally maintainable".

3. I have heard the learned counsel for the parties and perused the records.

4. Applicant's counsel has drawn my attention to a large number of leave sanction orders of the respondent-department in which the balance of leave available at applicant's credit was always shown to be more than 100 days and therefore contended that payment of leave encashment for 19 days only is not justified.

5. Though there is no specific averment in the reply filed by the respondents as to how they had arrived at the conclusion that the applicant was having only 19 days of EL at his credit at the time of retirement, learned counsel appearing on their behalf produced the service Book which contains the leave account of the applicant and explained how the mistake had occurred. He has drawn my attention to the entries made in the leave account of the applicant to show that after sanctioning one day EL on 10.5.93, there was a balance of 42 days at his credit. However, when he was sanctioned leave again for one day on 21.5.93, the balance was shown as 141 instead of 41. In other words, according to the counsel, some dealing hand has added one before 41 making it to show as 141. This had resulted in wrongly mentioning the balance of EL as and when sanctioned from time to time to main

be of more than 100 days. However, when this mistake was later on detected, the entries were recast to reflect the correct position of leave available at the credit of the applicant which came to 19 days. Accordingly the applicant was given leave encashment for 19 days in accordance with rules and therefore the applicant is not entitled to the relief prayed for. The counsel also contended that the entires were duly verified by the applicant's counsel when he was working as Administrative Officer in the department where the applicant was working and that the counsel was aware of this mistake.

6. The leave account was also shown to the learned counsel for the applicant who has not disputed the signatures available in it.

7. All said and done, logically speaking when the applicant was having only 42 days EL at his credit after sanction of one day EL on 10.5.93, it is but natural that the applicant cannot get additional 100 days EL on 21.5.93. Even the applicant's counsel has no answer for this. The discrepancy having been detected at the time of finalisation the retiral benefit as per the correct entitlement. The applicant cannot be allowed to take advantage of mischief or mistake committed by some dealing hand in the past.

8. I am satisfied that the applicant was having a balance of only 19 days on the date of his retirement and he has been rightly given encashment for the same. Cases

300

of some other employees cited by the applicant have no similarity to this case and would not support the applicant. I find no merit in the present OA and the same is accordingly dismissed. No costs.

Naik
(S.K. Naik)
Member (A)

/gtv/