

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 958 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Bana Bihari Das, aged about 74 years, S/o Late Binod Bihar Das, retired OS Grade-I, O/o Deputy Chief Engineer/Con./HQ/East Coast Railway/BBS, permanent resident of At/PO-Lakshannath, PS-Jaleswar, Dist.-Balesore, Odisha.
.....Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Chief Personnel Officer/East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
3. Senior Personnel Officer/Con./Co-ordn./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.

.....Respondents.

For The applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 18.2.2020

Order on : 20.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(a) To direct the Respondents to refund the recovered amount of Rs.1,64,495/- from the DCRG with 12% interest for the entire period;
And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;
And for which act of you kindness the applicant as in duty bound shall ever pray.”

2. In this case, the respondents deducted an amount of Rs. 1,64,495/- from the DCRG of the applicant while releasing it at the time of his retirement on 30.11.2001 on the ground that he had occupied the railway quarters at Cuttack even after his transfer to Bhubaneswar and for such period, the damage rent as per the rules were imposed and deducted from the applicant's DCRG. The applicant submitted a representation on 17.2.2014 (Ann.-A/2) to the authorities for release of the withheld amount of Rs. 1,64,495/-. As stated in the representation, the General Manager had recommended for regularization of the period of overstay of the applicant and sent a proposal to the Railway Board for consideration. Since there was delay on the part of the Railway Board in taking a decision, the applicant submitted the representation on 17.2.2014.

3. The applicant filed the OA no. 689/2014 when no decision was taken on his representation. That OA was disposed of by the Tribunal vide order dated 16.9.2014 (Ann.-A/3) directing the respondent no.1 to dispose of the said representation. Thereafter, the respondent no.

1 passed the order dated 18.11.2014 (Ann.-A/4) informing the applicant that the amount in question was recovered from the DCRG towards damage rent from 18.9.1993 to 30.11.2002 and the proposal was sent to Railway Board for regularization of the said period to enable refund of the amount deducted from the DCRG. It is stated in the said order at A/4 that the Railway Board in letter dated 10.9.2014 has informed that the post-facto sanction for retention of the quarter for the period in question was under 'active consideration' of the Board. Accordingly, the applicant was informed that the amount in question would be considered for release after decision of the Railway Board in the matter.

4. The applicant, thereafter, filed another OA No. 321/15, which was disposed of by this Tribunal on merit after hearing the parties vide order dated 20.5.2016 (Ann.-A/5) in which it was held as under:-

“2. The applicant in OA 321/15 is 73 years of age, and is a retired Railway employee, who at the time of superannuation was holding the post of OS Grade-I in the Office of Dy. Chief Engineer, Construction, East Coast Railways Headquarters at Bhubaneswar. He has approached the Tribunal seeking a relief that respondents be directed to refund the amount of Rs.1,64,685/- which was recovered from DCRG as penal rent for retention of quarters at Cuttack, to the applicant along with 12% interest⁴ from the date of recovery to the date of actual refund.

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18. These observations and directions shall also apply to the applicant in case of OA 321/15. Accordingly, both the O.A. Nos.320 and 321 of 15 are thus disposed of, with no cost to the parties.”

5. The withheld DCRG amount was finally released by the respondents on 17.11.2016 (Ann.-A/7) in compliance of the Tribunal's order dated 20.5.2016. Now this OA has been filed by the applicant claiming interest on the delayed payment of the withheld DCRG as per the rules.

6. In the Counter filed by the respondents it is averred that the respondents have complied the order dated 20.5.2016 of the Tribunal by releasing the withheld DCRG amounting to Rs. 1,64,495/- after deducting the damage rent for the period of overstay beyond permissible time after retirement in compliance of the Tribunal's order. In the letter dated 17.4.2018 of the Railway Board (Annexure-R/1) it was finally clarified by the Board that the damage rent for overstay after transfer as per the Railway Board's letter dated 15.1.1990 was not attracted in this case as the said letter permits retention of quarter in such cases. It is also averred in the Counter as under:-

“Here it is pertinent to mention that although the applicant had made a specific prayer while filing O.A.No.321/2015 for payment of interest, still this Hon'ble Tribunal while disposing of the aforesaid O.A., consciously did not grant such benefit in favour of the applicant. This by itself implies that this Hon'ble Tribunal had declined such benefit to the applicant. The retention of Railway quarter at Cuttack by the applicant beyond the permissible retention period being in violation of the extant rules, the regularization of such excess period of retention required a policy decision to be made by the Railway board. Only as a good gesture to its employees, the Railway made several correspondences to the Railway Board for regularization of such excess retention period.”

7. No Rejoinder has been filed in this case. Learned counsel for the applicant was heard. He reiterated the stand taken in the OA in favour of the claim of interest due to delay in release of the withheld DCRG to the applicant.

8. Learned counsel for the respondents was heard. He submitted that there was no lapse on the part of the authorities for the delay and it was released after efforts were made by the authorities to make a case to move Railway Board for regularizing the period of overstay. He vehemently opposed the claim for interest since the delay was not on account of administrative lapses. He further stated that the applicants remained silent from 2001 till 2014 to claim refund of the withheld amount in question. He further submitted that the claim of interest was made by the applicant in OA No. 321/15 and the same was not allowed by the Tribunal as stated in the Counter.

9. I have given due consideration to the matter with reference to the pleadings and submissions made on behalf of both the parties. In this case the authorities have acted upon the audit report for recovery of penal rent from the applicant's DCRG without properly examining whether such recovery was as per the policy guidelines/rules, since as per the Railway Board in letter dated 17.11.2018 (Annexure-R/1 of the Counter), it was not necessary to recover the amount from the DCRG in view of the circular dated 15.1.1990 of the Railway Board which was not considered by the competent authority before ordering recovery of the amount in question. It is a matter of concern that this issue could be resolved only after such a delay which led to a number of litigations.

10. From the facts of the case, it is noticed that the applicant had also claimed interest in OA No. 321/15 as observed in paragraph 2 of the order dated 20.5.2016 of the Tribunal (Ann.-A/5) and there was no mention of the interest in the operative part of the order, which has attained finality as no action was apparently taken by the applicant to challenge the aforesaid order as per law to allow interest as claimed in the OA No. 321/2015. The stand of the respondents in the Counter to this effect (as discussed in paragraph 6 of this order) has not been contradicted by the applicant in his pleadings.

11. In view of the discussions above, I am of the view that since the applicant's claim for the interest on delayed release of withheld amount was not accepted by the Tribunal in order dated 20.5.2016 passed in OA No. 321/15 filed by the applicant, such a claim is not permissible in this OA. Hence, the OA is liable to be dismissed and accordingly it is dismissed. Under the circumstances as discussed at paragraph 9 of this order, the respondents are to pay a cost of Rs.3000/- (three thousand) only to CAT Bar Association.

(GOKUL CHANDRA PATI)
MEMBER (A)