

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 1386 of 2016

Reserved on : 9.1.2020

Date of order: 20-01-2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. A.P. Mondal,
Son of Late J.C. Mondal,
Working as Assistant Director (Admn.),
Under SAIL,
Residing at New Road, Kult, i
P.O. - Kult, i
Burdwan,
Pin - 713343.



... Applicant

- V E R S U S -

1. Union of India,
Through Secretary,
Ispat Bhawan,
Lodhi Road,
New Delhi - 110003.
2. To AGM (P&A),
Steel Authority of India Limited,
IISCO Steel Plant,
Ramnagore Colliery,
1, Stadium Road,
P.O - Kult, i
District - Burdwan Pin 713343.
3. The Managing Director,
Steel Authority of India Limited,
IISCO Steel Plant,
Burnpur,
P.O. Burnpur,
District - Burdwan.
4. General Manager,
Steel Authority of India Limited,
IISCO Steel Plant,
Ramnagore Colliery,
1, Stadium Road,
P.O - Kult, i

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District – Burdwan,
Pin 713343.

5. The Senior Manager, Finance,
Steel Authority of India Limited,
IISCO Steel Plant,
Ramnagore Colliery,
1, Stadium Road,
P.O – Kulti,
District – Burdwan Pin 713343.

--Respondents.

For the Applicant : Mr. G.C. Chakraborty, Counsel

For the Respondents : Mr. L.K. Pal, Counsel

ORDER

Per Dr. Nandita Chatterjee, Judicial Member:



The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-


- i) Quash and set aside the impugned illegal deduction of total amount of Rs. 3,99,434 from the payment of retirement gratuity including deducted amount of income tax for Rs. 13249 on the retirement benefits.
- ii) Pass an appropriate order directing the respondents to pay the refund of Rs. 3,99,434 after adjustment of amount of rent, water charges and electricity charges at normal rate as prevailed before the date of retirement.
- iii) Pass an appropriate order for forthwith payment of interest cumulative rate not below the rate of interest declared by the Govt. in each relevant year on GPF accumulation on total amount of retirement benefits before any deduction pertaining to the period from the 1.4.2008 to the date of payment of retirement benefits."

2. Heard rival contentions of Ld. Counsel, examined pleadings, documents on record as well as judicial decisions cited in support by both Ld. Counsel.

3. Ld. Counsel for the applicant would submit that the applicant had superannuated from his service with the respondent authorities on 31.3.2008, and, that, upon superannuation, an amount of Rs. 17,28,628/- was due and payable to the applicant on account of Gratuity and Leave Encashment respectively. That, immediately after expiry of the

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permissible period, the applicant, vide his letter dated 3.6.2008, had requested the respondent authorities to take over vacant possession of his official accommodation but, as the authorities did not respond, the applicant, being of the impression that leasehold right to the said residential quarters would be conferred upon him as a superannuated employee, requested for such lease hold rights vide his letter dated 12.1.2009 and continued to stay in such official accommodation.



The respondent authorities, however, vide their communication dated 19.7.2011 desired to take over vacant possession of his flat without any due process of law as laid down under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued a notice vide their letter dated 3.3.2015 followed by a letter dated 20.3.2015 to vacate the official accommodation. The applicant responded on 24.3.2015 expressing his desire to stay for few more days in his quarter so as to obtain leasehold rights to the said quarters, but ultimately handed over vacant possession on 1.4.2015.

The respondent authorities, however, illegally withheld payment of Gratuity and Leave Encashment for more than 7 years and, thereafter, paid such retirement benefits to him after making an unlawful recovery of Rs. 3,94,434/- towards penal rent for electricity and water charges as well as Income Tax. Hence, being aggrieved, the applicant has approached this Tribunal challenging the illegal activities of the respondent authorities and also praying for refund (with interest) of the purportedly unlawful recovery made by the respondent authorities.

The applicant would, inter alia, furnish the following grounds in support of his claim:-

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(i) That, while the respondents in the first instance had assured to take up the issue of retention of quarters as per similarly situated executives, they denied him such privileges thereby discriminating him from other retired officers.

(ii) That, although it is mandatory under the statute to pay retirement benefits on the date of superannuation of the employee, particularly when no dues are outstanding against him, the applicant was deprived of his Gratuity and Leave Encashment for a long period.

(iii) That, deduction of rent and water charges and electricity charges after more than six years from retirement from public service is impermissible as held by the Hon'ble Apex Court.

(iv) Since the applicant had asked the authorities to take over the flat within the permissible period, he could not be treated as an unauthorized occupant and any penal action on the part of the respondent authorities is unfair and morally unjustified.

4. The respondents, per contra, would dispute the claim of the applicant by arguing as follows:-

(1) The applicant had superannuated on 31.3.2008 and for seven long years since his superannuation, he continued to occupy the companies premises unauthorisedly and only handed over such possession on 12.5.2015.

(2) An amount of Rs. 2,96,079/- was recovered from his retiral benefits as per rules as for the seven long years of unauthorized occupation, the applicant had not paid any house rent/electricity charges and other dues on account of occupation of office quarters.

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(3) That Clause 3.2 of the SAIL Gratuity Rules clearly states that such amount can be deducted on account of unauthorized occupation and the provisions of the said Gratuity Rules were made applicable in case of the applicant.

In particular, Rule 3.2.1 (c) and (d) of the said SAIL-Gratuity Rules provides as follows:-

3.2.1(c) The Company will have the right to withhold the gratuity amount payable to an ex-employee or his nominee/legal heir(s), in case of his death, for non-compliance of Company's Rules including non-vacation of Company's accommodation. No interest shall be payable on the gratuity amount so withheld for the period of unauthorized occupation of Company's accommodation and upto one month after the vacation of the Company's accommodation.

3.2.1(d) The Company will always have the right to deduct from the Gratuity payable and admissible under these rules to an employee such amount as may be due from the employee.

5. Ld. Counsel for the applicant would cite the decision of the Hon'ble Apex Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others (2015) 4 SCC 334*** to urge that recovery from retired government employees is not permissible.

Ld. Counsel would also refer to the judgment of the Hon'ble High Court of Orissa in ***Kali Prasanna Dash v. Orissa Construction Corporation Ltd. and others 2015 LAB. I.C. 3316*** to, particularly agitate that as no proceedings had ever been initiated against the applicant, in accordance with the ratio in ***Kali Prasanna Dash (supra)***,

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the action of the respondents is totally unjustified with withholding the amount which the applicant is entitled to get after his retirement.

6. Ld. Counsel for the respondents, on the other hand, while reiterating the rule position as per SAIL Gratuity Rules, would refer to a decision in **Sardar Sohan Singh v. Union of India & ors. 2007 LAB I.C. 1345** wherein the Hon'ble High Court at Calcutta had dealt with a similar matter when the petitioner was overstaying in his quarters to hold that the employer is entitled to deduct such amount from Gratuity, if rules so permit. In particular, Ld. Counsel would refer to the following paragraphs of the above noted judgment:-



"3. He was occupying quarters allotted him by him employer. Though according to rules and regulations of the company he was entitled to keep the quarters for two months after his retirement, he continued to occupy it till November 6, 2004, when he gave possession thereof to the company. In the circumstances, gratuity payable to him paid on October 5, 2005 after deducting Rs. 3600 by way of recovery of excess payment in terms of the minor penalty order of Rs. 16,320 on account of unpaid electricity consumption charges, and Rs. 31,394 on account of house rent (normal and penal added together). Feeling aggrieved he took out this writ petition.

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11. It was held in Wazir Chand's case that the employee unauthorisedly occupying quarters of railway was liable to pay penal rent, and that the dues could be adjusted by the employer against the death-cum-retirement dues payable to the employer. I do not think that decision is of any assistance for deciding the question involved here. In Grid Corporation's case also it was held by their Lordships of the Apex Court that it was permissible for the employer to recover penal rent from the retirement benefits of an employee of the corporation for withholding delivery of possession of the quarters after retirement. A question such as has arisen in the present case, was not considered in that case. In Chhetrapal Singh's case a Division Bench of the Allahabad High Court held that the employer would be entitled to deduct rent and penal rent from the retirement benefits including gratuity which were payable to the employee concerned.

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17. For these reasons, while I hold that in terms of its gratuity rules the company was empowered and entitled to deduct its dues on all accounts from the gratuity payable to the petitioner, I dispose of the writ petition ordering that after giving the petitioner an opportunity of showing cause and hearing, a reasoned decision determining the dues shall be given by the competent authority."

7. Upon a perusal of the judgment in **Sardar Sohan Singh (supra)** we infer that, in the said matter, the petitioner was an employee of erstwhile Indian Iron & Steel Company Limited, who had retired on June

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30, 2003. The petitioner was occupying quarters allotted by his employer and continued to remain therein till November 06, 2004 although he was entitled to retain such quarters only for two months after his retirement. In such circumstances, the Gratuity payable to him was released after deducting Rs. 3600/- by way of recovery of excess payment. The Hon'ble High Court after discussing the ratio in **Wazir Chand v. Union of India & ors. 2001(6) SCC 596** as well as **Chhetrapal Singh v. State of U.P. & ors. 2004 Lab IC 981** held that in terms of provisions of Rule 3.2.1(d) the company had the right to deduct the amount from Gratuity (payable and admissible under the rules to an employee) such amount as may be due from the employee as being clearly consistent with the provisions of the Payment of Gratuity Act, 1972, Ss 4 & 13.



8. In this matter, the applicant has been working with the same respondent authorities and had reportedly occupied the official quarters unauthorizedly for seven years on the presumption that the quarters will be allotted to him on the basis of a long term lease.

We do not find from the records any written assurance from the respondent authorities to such an effect that allotment under long term lease was under contemplation. We also infer that the Rule 3.2 of the SAIL Gratuity Rules and, particularly, Rule 3.2.1 (d) has never been successfully challenged in any judicial forum and the applicant herein has not questioned such provision of the SAIL Gratuity rules. Consequently, the applicant herein is bound by the provisions of the SAIL Gratuity Rules.

9. Ld. Counsel for the respondents, however, would fairly submit that no hearing was accorded nor was any opportunity given to the applicant prior to deduction of the actual amount of Rs. 3,94,434/- towards penal

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rent, electricity and water charges. In the case of **Sardar Sohan Singh (supra)**, the Hon'ble Court was of the view that although the company was empowered to deduct his dues on all accounts from the Gratuity payable to the petitioner, the petitioner should have been given an opportunity of showing cause consequent to which the authorities should have issued a reasoned decision determining the exact quantum of the dues.

We would, hence, in the light of the ratio in **Sardar Sohan Singh (supra)**, direct the competent respondent authority to issue a notice to the applicant herein, to accord him a personal hearing and thereafter to arrive at a conclusion on the actual amount recoverable, in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order.

The decision of the respondent authorities should be conveyed in the form of reasoned and speaking order to the applicant thereafter.

10. The O.A. is disposed of with the directions as above with liberty to the applicant to agitate afresh in case his grievance persists. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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