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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 942 of 2001

New Delhi, this the 5th day of March, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Pushpa Devi
widow of Shri Parkash Chand Tyagi
Retired Train Examiner,
Northern Railway,
Delhi Sarai Rohilla.

Residential Address

Pushpa Devi
Quarter No. 123-E, DCM Railway Colony,
Loco Shed Delhi Kishanganj,
Delhi.

-APPLICANTS

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway Headquarters Office,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway Divisional Office,
Bikaner.

-RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant, who is a widow of deceased Shri Parkash Chand Tyagi, who had retired as TXR DEE on consideration on superannuation on 28.2.1994 and expired on 23.8.99 has a grievance that the action of the respondents for non-payment of retiral dues, i.e., gratuity, commutation of pension, leave encashment etc. since has not been released so the applicant's husband has acquired a vested and prescriptive right as the same has not been paid despite repeated requests, representations and demands made by the applicant, so the applicant has sought a direction that the respondents be

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directed to release the payment of gratuity, commutation of pension etc. with 18% interest.

2. It is also submitted that the respondents are retaining the amounts since the applicant has not vacated the official accommodation allotted to her husband and in the prayer for interim relief the applicant has submitted that she volunteers to vacate the quarter simultaneously subject to the condition that the respondents should make payment of gratuity, leave encashment etc.

3. Respondents are contesting the OA,. They submit that on attaining the age of superannuation the the retiral benefits of the applicant's husband were immediately arranged and as per rules PF amount has been passed and paid. Similarly CGIS, leave encashment was also paid and PPO was also issued and passed. However, DCRG was retained as the applicant's husband had made a request for retention of Railway Quarter and the respondents had submitted that as per Rule 15 of the Railway Services (Pension) Rules, 1993, they are eligible to withhold the amount of DCRG till vacation of Railway quarter.

4. I have heard the learned counsel for the parties and gone through the records of the case.

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5. As regards the dispute with regard to other retiral benefits are concerned, the applicant did not raise the issue. The only issue raised by the applicant is with regard to commutation of pension and withholding of DCRG.

6. However, during the course of arguments Shri Dhawan appearing for the department brought the record and showed the letter vide which the commutation of pension was also released so no issue with regard to release of commutation of pension survives.

7. The only issue which survives is with regard to DCRG. Shri Bhandari suggested that the applicant would hand over the possession of house immediately on release of DCRG amount. He has also referred to certain judgment one of such is Union of India and Others Vs. Shiv Charan and Mahadev Singh Kapoor Vs. U.O.1. Besides that he has also referred to a recent judgment of the Hon'ble Supreme Court decided on 28.2.2002 entitled as U.O.1. & Others Vs. Mohan Prasad wherein it has been held that non-vacation of Railway quarters cannot be a ground to withhold DCRG and Leave Encashment and on the basis of this judgment the counsel for the applicant submitted that DCRG cannot be held by the Railway Authorities. However, in reply to the same, the learned counsel for the respondents submitted that in the case of U.O.1. Vs. Madan Mohan Prasad the applicant had retired on 31.7.82 and the rules as prevalent on the date of his retirement were applicable. But the pension rules were

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amended in the year 1993 under which the respondents are entitled to withhold DCRG and particularly Rule 16 sub-rule (8), which is reproduced hereinbelow:-

" (8) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement, or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on the vacation of such railway accommodation". of such railway accommodation".

8. After referring to this Rule, as amended in the year 1993, the learned counsel for the respondents submitted that now as per Rule 16 sub-rule (8) the respondents are entitled to withhold DCRG amount till the railway accommodation is vacated.

9. In my view also all these judgments which are referred to by the learned counsel for the applicant are of the period prior to the coming into force of Railway Services (Pension) Rules, 1993, so these are not applicable to the present facts of the case as the applicant in this case had retired on 28.2.1994 after the Railway Services (Pension) Rules, 1993 had come into force which entitles the respondents to return DCRG if Railway accommodation is not vacated. Hence, respondents are within their right to hold the DCRG amount till the Railway accommodation is vacated.

10. Accordingly, no interference is called for and the OA is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh