

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.950 of 1998

New Delhi, this the 24th day of May, 1999

HON'BLE SHRI N.SAHU, MEMBER(A)

Chatter Singh s/o Sh.(Late) Tika Ram,  
R/o Quarter No. 21A,  
Railway Colony,  
Tuglakabad, New Delhi.

-APPLICANT

(By Advocate: Shri A.K.Bhardwaj)

Versus

1. Union of India, through

The General Manager,  
Northern Railway, Baroda House,  
New Delhi.

2. The Divisional Railway Manager,  
Delhi Division,  
Northern Railway,  
DRM Office, Paharganj, New Delhi.

3. The Sr.Divisional Personnel Officer,  
Delhi Division,  
Northern Railway,  
DRM Office, Paharganj, New Delhi.

4. The Sr.D.M.O.  
Northern Railway,  
Railway Colony, Tuglakabad,  
New Delhi-44.

-RESPONDENTS

(By Advocate: Shri O.P.Kshatriya)

O R D E R (ORAL)

By Hon'ble Shri N.Sahu, Member(A)

Heard.

2. The undisputed facts are that the applicant joined as a Khalasi in 1964 and after three promotions became a Fitter grade-I in 1991. He was hurt while on duty on 8.5.96 in the Railway Yard, Tuglakabad. The D.R.M. by his letter dated 5.11.96 sanctioned Hospital leave from 8.5.96 to 31.8.96. On 17.9.96 he was referred by the Medical Officer Tuglakabad to the Medical Superintendent, Delhi, who constituted a Medical Board to

examine him on 28.10.96. The Medical Board's recommendation of putting the applicant on a sedentary job was conveyed by Chief Medical Superintendent's letter dated 28.1.97. Para 4.7 of the averment which had not been denied in the counter runs as under:-

"4.7 That notice dated 20.2.1997, the DPO directed that the applicant should be kept on leave for six months for the purpose of locating alternate job for him. And vide letter dt. 2.3.1997, the CWS/TKD directed the applicant to attend DPO office on 3.3.1997 at 10.00 A.M. for his examination for alternate job. On 3.3.1997 the applicant attended the DPO office. And the DPO informed him that they had no alternate job of sedentary nature available for him so he should give in Writing that he has no objection if he is retired from Railway service on Medical ground. And the DPO directed some clerk in Security Cell to scribe an application on behalf of the applicant, as no Proforma for the said purpose was available (being out of stock)."

3. As they did not find any alternative job, he was retired on 4.4.97 on medical invalidation. The respondents regularised Railway Quarter No.21-A at Tughlakabad in the name of applicant's son Devandar Kumar with effect from 1.10.97. And from 5.4.97 to 4.12.97, Annexure I and II of the rejoinder, he was allowed to retain the quarter, on payment of regular licence fee of Rs.68/- for first four months and double the amount during next four months. Before discussing this issue further, I must record three findings:

(i) The Medical Officer, Tughlakabad had no business or jurisdiction to send a Fit Certificate dated 29.1.97 to C.W.S. Tughlakabad when the Medical Board was seized of the matter. Hence the 'fit' certificate sent by him is hereby declared as 'nonest'.

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(ii) There is no unauthorised occupation of the quarter. Hence there is no question of deducting penal rent. Even the respondents admitted that no penal rent was deducted.

(iii) The applicant had been paid his full salary on average pay or such amount as would be appropriate, treating him on medical leave upto the date of his retirement.

4. Recovery of the amount from his gratuity without issuing the applicant a show-cause notice is bad in law in view of the following Supreme Court decisions: Bhagwan Shukla Vs. Union of India, 1994 SCC (L&S) 1320. The second decision is that of Shyam Babu Verma and others Vs. Union of India and others, 1994 SCC (L&S) 683. In Shyam Babu's case a higher pay scale was erroneously given to petitioners since 1973 and this pay scale was reduced in 1984. The Hon'ble Supreme Court held that since the petitioners received the higher scale due to no fault of theirs, it shall be only just and proper not to recover any excess amount already paid to them. In the case of Gabriel Saver Fernandes and others Vs. State of Karnataka and others, 1995 (1) S.C. S.L.J. 24 also the Hon'ble Supreme Court unequivocally ruled "Government cannot recover the amount from the unqualified persons which they had already received though they were not eligible for the same". In the case of Sahib Ram Vs. State of Haryana, (1994) 28 ATC 747 their Lordships have again held that recovery of excess payment of pay is not permissible when an upgraded pay

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scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee.

5. In reply to Paras 4.4-4.9 of the OA, the respondents in their counter give the material facts extracted as under:-

"4.4 -4.9 Not admitted as stated. The retirement notice on account of invalidation was received in the concerned Settlement Section on 10.4.97. The Pension papers complete in all respects received on 21.4.97. The Service Card and Leave Account was received on 30.9.1997. The case of the applicant for pensionary benefits was delivered to the concerned Accounts Section on 21.10.1997. As the applicant had been allotted a Railway quarter which was not vacated after the retirement he was liable to pay charges for its occupation till its regularisation which was done w.e.f. 1.10.97. The applicant has been paid the following dues as detailed below:-

- 1.Provident Fund - A sum of Rs.34,078 with interest of Rs.668/- has been paid on 16.6.1997 (Copy of Bill is attached as R-1)
- 2.G.I.S. - A Cheque for Rs.7,644 has been received on 27.12.1997 (Copy of Bill is attached as R2)
- 3.DCRG - A sum of Rs.19,166/- was paid after adjusting the sum of Rs.32842/- as Railway Quarter Rent, Electricity Final Bill charges and Excess Leave Taken by the applicant on 27.3.1998. (A copy of the Bill sent by Regd. post is attached as Annexure R-3)

As no earned leave was due to the applicant so question of payment of any Leave Encashment does not arise. The Pension P.P.O. No. 0197021084 ~~120721084~~ was issued soon after receiving of the Pension Papers in the concerned Settlement Section."

6. Learned counsel for the applicant submits that according to the copy of Board's letter NO.E(P&A)1-89/JCM/DC-5 dated 14.1.93, it is laid down

① Corrected under Counter order dated 9.8.99

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that in individual cases meriting sanction of Hospital leave beyond a period of 120 days on leave salary, Divisional Railway Managers or Chief Workshop Engineers are empowered to relax the provisions of Rule 554. The O.A. shows that leave was held to be granted from 1.1.97 to 28.1.97 at annexure A-16 pursuant to annexure A-9 and the correspondence thereafter. Shri Bhardwaj states that after 28.1.97, there is no record that the applicant had been granted any leave whatsoever.

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7. In the circumstances of this case, respondent no.3, the Sr.D.P.O. shall on a representation to be made by the applicant, hear him fully on the subject and pass an order. By annexure A-4, the applicant had been given HOD leave on full pay from 8.5.96 to 31.8.96 by the letter of the D.R.M. dated 5.11.96 (refer to page 17 of the paper book). We have also annexure A-16 where the railway doctor says that the applicant is likely to be unfit to perform his duties from 1.1.97 to 28.1.97.

8. Shri Bhardwaj submits that there is no order on record in accordance with the instructions cited above, regularising the leave upto 28.1.97. Accordingly, the Sr.D.P.O., respondent no.3 shall examine this case and comply with the instructions of the Board and put all the papers including the medical certificate to respondent no.2, the D.R.M., Delhi Division, Northern Railway, Paharganj, New Delhi, who within a period of 10 weeks from the date of receipt of a copy of this order, shall decide as to whether this is a fit case wherein his discretion should be exercised in accordance with the rules cited above. If the D.R.M. decides to relax the

*Para 8*

provisions of Rule 554 and extend the leave till 4.4.97, he shall say so by an order whereafter the applicant shall be treated to be eligible for full pay upto that date. If respondent no.2 grants the leave upto 28.1.97, then the period for which full pay would not be paid would be a very limited period of February and March, 1997 upto the date of retirement. Respondent no.2 shall personally hear the applicant, take assistance of all the papers available with him and pass a final order. Whatever be the decision of respondent 2 on grant of leave, as held by me above recovery from gratuity on account of salary paid upto 4.4.97 on the ground that leave was not due without issuing a show-cause notice is bad in law and the said amount shall be refunded with interest as discussed below.

9. In accordance with decision of the Supreme Court in the case of Dr. Uma Agrawal vs. State of U.P. & anr. - JT 1999 (2) SC 359, the respondents shall pay interest for the entire period of delay at the rate of 12% per annum. The applicant retired on 4.4.97. A sum of Rs.19,166/- by way of gratuity was paid to him on 20.4.98. The amount of pensionary benefits was paid on 21.4.98 whereas it should have been paid within three months from the date of retirement. The G.I.S. was paid on 1.1.98. The commutation of pension was paid to the applicant on <sup>11.5.1999</sup> ~~15.9.97~~ at Rs.1,32,381/-. Respondent no.2 shall verify the dues and the amount and he shall, alongwith the order exhibiting the details of payment calculate interest at the rate of 12% after giving a gap of three months from the date of retirement on all

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⊗ Corrected vide order dated 9.8.99

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amounts due and paid and due and not paid and going to be paid and pay the same within a period of 12 weeks from the date of receipt of a copy of this order.

10. The O.A. stands disposed of with the above directions. No costs.

*N. Sahu*  
( N. SAHU )  
MEMBER(A)

/dinesh/