

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1306/95
T.A. No.

199

(3)

DATE OF DECISION 13.09.1996Sh. V. P. Gupta

Petitioner

Sh. S. P. Singha

Advocate for the Petitioner(s)

Versus

U. O. I. & Ors.

Respondent

Sh. M. M. Sudan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *Y*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1306/95

New Delhi this the 13th day of September, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri V.P. Gupta,
Retd. Section Supervisor
(Operating),
R/o Qr.No.2/1, P&T Colony,
Raj Nagar, Ghaziabad(UP).

Applicant

(through Sh. S.P. Singha, advocate)

versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Sanchar Bhavan,
New Delhi.
2. General Manager, Telecom.,
Department of Communication,
4th Floor, Jaina Tower,
Raj Nagar,
Ghaziabad(UP).
3. Accounts Officer(TA),
Office of General Manager(Telecom.)
6th Floor, Jaina Tower,
Raj Nagar,
Ghaziabad(UP).
4. Sh. Virendra Singh,
Estate Officer,
Office of G.M., Deptt. of Telecom.,
6th Floor, Jaina Tower,
Raj Nagar,
Ghaziabad(UP).

Respondents

(through Sh. M.M. Sudan, advocate)

ORDER(ORAL)

The applicant who has retired from the service of the respondents as Section Supervisor (Operating) on 31.8.88, is aggrieved that he has not been given the pension with dearness relief and other pensionary benefits w.e.f. 1.9.90. The learned counsel for the applicant has submitted at the Bar that he is not pressing relief mentioned in para-8(d), namely, to direct the respondents to allow the applicant to continue in the Government accommodation. The main prayer is with regard to payment

of pension w.e.f. 1.9.90 and the withheld amount of dearness relief on pension which is stated to be from 1.3.89 with interest thereon. He has ^{also} sought a direction that his Pension Payment Order may be issued.

2. The learned counsel for both the parties have been heard at length and I have also perused the pleadings on record.

3. The learned counsel for the applicant has agreed that provisional pension of the applicant from 1.9.90 has been paid on 2.7.96 i.e. after filing of this O.A. on 19.7.95. His main grievance is that the respondents have deducted damage rent for occupying the Government accommodation after his retirement from the dearness relief which according to him is payable, even though admittedly the applicant has also not paid any rent in respect of his continued occupation of the Government accommodation beyond the permissible period under the Allotment Rules. The applicant's counsel has relied on the decision of the Hon'ble Supreme Court in case of U.O.I. & Ors. Vs. Shiv Charan (1992) 19 ATC 129; and Phani Bhushan Dasgupta Vs. U.O.I. & Ors. (1996 SLJ (2) 214).

4. The learned counsel for the respondents, Sh. Sudan, has submitted that as is evident from the annexures filed by the applicant himself, from time to time the applicant has been asked to collect his pension for the relevant period but he has not chosen to do so. He also drew attention to the fact that even though the applicant states that he did not receive any pension from 1.9.90, the first representation was made by him only on 22.6.95. This

16

itself shows that for whatever reasons known to him, the applicant himself did not approach the office to receive his pension amount, which admittedly was less than the damage rent which was payable by him for the unauthorised occupation of the Government accommodation for the long period after his retirement. With regard to the withholding of dearness relief in respect of the unauthorised retention of the Government accommodation by the applicant, he has referred to the relevant Rule 72(6) of the CCS Pension Rules, 1972 which reads as follows:-

"The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of (four months) after the date of retirement of allottee shall be the responsibility of the Directorate of Estates. (Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid may be ordered to be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief shall be disbursed until full recovery of such dues have been made.)"

5. The learned counsel for the respondents, therefore, submits that in accordance with the Rule 72(6) of the CCS Pension Rules, dearness relief can be withheld until full recovery of the Government dues in respect of the retention of the Government accommodation is made. However, he submits that the adjustment of this amount can be done in accordance with law i.e. proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. He has also submitted that the case of Phani Bhushan Dasgupta (supra) deals with the O.M. dt. 7.2.78 whereas Rule 72(6) has since been amended by S.O.No.409 dt.

6. It is seen that in this O.A. the applicant has not challenged the validity of the provisions contained in Rule 72(6) of the CCS Pension Rules, 1972. The Hon'ble Supreme Court in the case of U.O.I. & Ors. Vs. Shiv Charan had given the following directions:-

(17)

"2. This is an appeal from the judgment and order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated August 16, 1989. Having considered the facts and circumstances of this case and having heard counsel for both the parties, we are of the opinion that the appropriate order would be to allow this appeal and to direct that the possession of the railway quarter, now in possession and occupation of the respondent, should be handed over by the respondent and taken possession of by the appellants or their representatives on or about May 23, 1990 and the entire amount due and owing to the respondent, less the amount mentioned hereinafter, will be handed over by the officer taking possession then and there.

3. Rent for the period outstayed may be deducted from the payment to be made as aforesaid. The appellants will be entitled to make claim in accordance with law to which they are entitled to, for any excess or penal rent, and the respondent will be at liberty to make any claim for compensation in the appropriate forum which he claims to be entitled to."

7. The judgement in Phani Bhushan Dasgupta's case (supra) deals with the provisions under O.M. dt. 7.2.78 and Rule 71(3)(a) and ~~is~~ not, therefore, ¹⁸ relevant. Rule 72(6) of the CCS Pension Rules, 1972, empowers the respondents - the Directorate of Estates through the concerned Accounts Officer to recover the licence fee as dues under the Rules from the dearness relief, without the consent of the pensioner, and such dearness relief need not also be disbursed until full recoveries/dues have been made. In view of these provisions, applicant's claim for a direction to disburse the withheld amount of dearness relief cannot be ordered at

(18)

this stage. Further, the applicant has failed to vacate the Government accommodation even eight years after his retirement and he is, therefore, liable to pay damage rent for this period as per the rules.

18

8. In the facts and circumstances of the case and having regard to the decision of the Supreme Court in U.O.I. Vs. Shiv Charan (supra) and the provisions of Rule 72(6) of the CCS Pension Rules, 1972, the O.A. is disposed of at the admission stage with the following directions:-

(i) The respondents shall continue to pay the pension as due minus dearness relief regularly to the applicant; the claim for interest on the pension is rejected. The respondents shall issue the necessary Pension Payment Order to the applicant within two weeks from the date of receipt of a copy of this order, if not already done.

(ii) The respondents shall, however, take necessary action under Sections 4,5 & 6 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for assessment of the rent due and complete this action expeditiously, and, in any case, not beyond a period of 3 months from the date of receipt of a copy of this order. Any amount due to the applicant after

18

(19)

determination of the licence fee/damage rent payable for retention of the Government accommodation beyond the permissible period after retirement shall be forthwith returned ^{in any case} to the applicant, and not beyond a period of one month, provided he has also vacated the Government accommodation by that time. The claim for interest on such withheld amount is also rejected.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member(J)

/vv/