

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 581 of 1994.

New Delhi, this the

8th day of July, 1995.

HON'BLE MR J.P. SHARMA, MEMBER (J)

HON'BLE MR B.K. SINGH, MEMBER (A)

Shri R.P. Singh,
Rtd. Head Ticket Collector
Tundla.

.... Applicant.

(none appeared).

vs.

Union of India through

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

2. The Divl. Rly. Manager,
Northern Railway,
Allahabad.

.... Respondents.

(None appeared)

ORDER

(delivered by Hon'ble Mr B.K. Singh, Member (A))

This Original Application 581 of 1994 has been filed against the non-release of D.C.R.S. and passes and non-payment of three months salary as a result of quashing of the order of compulsory retirement in O.A. No. 2014 of 1988 decided on 24.6.1990.

The applicant, who worked as Chief Inspector Tickets (Head Ticket Collector) Tundla Junction, Northern Railway, filed the aforesaid O.A. No. 2014/10 under Section 19 of the Administrative Tribunals Act, 1965 against the order of compulsory retirement on

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17.7.1987. The judgment in the aforesaid O.A. was delivered by a Division Bench comprising of Hon'ble Mr T.S. Oborio, Member (J) and Hon'ble Mr I.K. Rasgotra, Member (A) on 24.7.1990 and the operative portion of that order reads as follows:

"In the facts of the case, we quash the order No. 831/E/A.C.I/Retirement dated 17.7.1990 ordering compulsory retirement of the applicant. The respondents are further directed that the applicant should be re-instated with all consequential benefits, with immediate effect."

It is admitted that the applicant was re-instated in service as a result of this order and that all the consequential benefits have been paid, as directed by the Court. It is further admitted that no formal notice for reinstatement was issued as he had retired from service on attaining the age of superannuation on 30.9.1990 (A.N.) whereas the order of the Tribunal was received on 30.5.1991 that is after the applicant had attained the age of superannuation but he was allowed all consequential benefits.

In the present O.A., the following reliefs have been claimed:

- i) release the gratuity of the applicant with interest @ 16% p.a. from the date when it was due to be paid immediately after retirement till the date of judgment.



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- ii) release all the post retirement passes, which have been withheld by the respondent;
- iii) to pay Rs. 6156/-, which was allegedly sent to the applicant through cheque but was not received by the applicant. The respondent is directed to pay interest on the said amount @ 18% p.a. also;
- iv) to promote the applicant in the grade of Rs. 700-900/2000-3200 from 1.1.1984 against upgraded post as a result of restructuring from 1.1.1984;
- v) to re-calculate the retirement benefits to the applicant on the basis of revised salary in the grade of Rs. 2000-3200."

A Notice was issued to the respondent, who have filed their reply, contesting the application and grant of relief prayed for. The matter has been coming on the cause-list for quite sometime. None appeared on 17.5.1995. The matter was listed on 20.7.1995 and no one appeared on that date also. Then a decision was taken to dismiss of the matter on the basis of the pleadings on record. The applicant is retaining the Railway Quarter and as contained in the Circular of the Railway Board P. S. 8045, D.C.R.G. has been withheld with a view to deduct the normal licence fee for four months, double the licence fee for another four months and market rent after the expiry of the period of eight months. Rule N.E(G)89 QR 2-15 dated 20.12.1989 lays down that,

(2) no claim certificate should be given unless

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(V)

the employee, after retirement has vacated the railway quarter and cleared all arrears of rent, electricity and other charges etc;

ii) while retirement/death gratuity or special contribution to P.R., as the case may be should be withheld in full for non-vacation of the Railway Quarter not only after superannuation but in all cases of cessation of service, namely, voluntary retirement, death etc. The amount so withheld should remain with the authority in cash without conversion into any type of security lest the very purpose of withholding the full D.C.R.C. should get defeated. Gratuity has to be released as soon as the quarter is vacated and the amount is not to be converted into any fixed deposit and can be in the form of cash so that the railway administration is not required to pay any interest on account of administrative lapses.

(iii) One set of post-retirement passes have to be withheld for every month of unauthorised retention of quarter by railway officers/ staff.

The provisions of Section 138 and 150 have been prescribed by the Indian Railways Act for the purpose of cancelling the allotment and realising the market rent from the unauthorised occupants and these provisions permit the authorities to withhold the gratuity and P.R. contributions. In the light of the provisions contained in the Indian Railways Act and also in the light of the aforesaid circular quoted above, the respondents are well within their rights to withhold the D.C.R.C. and P.R. contributions as demanded.

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his house is retained unauthorisedly.

As regards the relief of promotion, it has been stated in the counter-reply that the written test was held but via-voce could not be held till 24.9.1990 due to the present Court case. It was held on 25.9.1990 and 31.10.1990 and 13 staff were placed on the panel. Further selections were held in terms of Headquarters office letter No. S.P.O.(T &C) Misc./90/ dated 5th September, 1991, in which 21 staff were placed on the panel. Since the applicant had been compulsorily retired on 17.7.1987 and the judgment of the CAT, Principal Bench was delivered on 24.8.1990 in O.A. No. 2014/88 quashing the order of compulsory retirement and directing the respondents to re-instate the applicant and since the order was received on 30.5.1991 for its implementation and Shri R.P.Singh had attained the age of superannuation on 30.9.1990, therefore, the question of promoting him in the grade of Rs.700-900 did not arise. Had the Tribunal passed an order for holding a review D.P.C., to consider his case on merit, the same could have been considered but since he had retired and there was no direction to that effect in the previous O.A., the review D.P.C. could not be held after retirement. The various averments made in the O.A. have been denied on the ground that the via-voce tests were held on 25.5.1990, 31.10.1990 and 19.11.1990 when the applicant was not in service as such the question of considering him for promotion in the grade of Rs.700-900 did not arise.

(b)

The pleadings would show that all retiral benefits have been paid. The provisions of the Indian Railway Act and the Circular quoted above envisage withholding of D.C.R.G. to realise rent normal/double/market and these provisions of the Railway Act and also the instructions contained in the Circular have not been quashed by any Court of competent jurisdiction, and, therefore, the withholding of gratuity for deducting rent cannot be said to be arbitrary and illegal. These are all matters linked with the vacation of the quarter and the respondents are competent to take recourse either to the provisions contained in the Indian Railways Act (Sections 138 and 190) and the Circular quoted above or to follow the alternative procedure contained in Section 7 of the PPE Act, 1971 to declare the applicant as unauthorised occupant and to realise the market rent after the expiry of a period of 8 months and to release the remaining amount of gratuity after deducting the same. After retirement, this Tribunal cannot pass any order for holding a review D.P.C. for considering the applicant for promotion in the grade of Rs. 700-900 because the promotion is by selection on merit, and this Court is not inclined to order a review D.P.C. for considering his case for promotion for the purposes of re-calculating the retiral benefits.

The respondents are directed to pay Rs. 6,156/-, to the applicant if not already paid since it has been stated in the D.A. that the cheque issued by the respondents has not been received by the applicant. The respondents may check up the actual position and if this has also been credited to the account of the applicant, no action

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need be taken. The Hon'ble Supreme Court has held in Wahi's case that the railway passes should be released prospectively after the railway quarter is vacated by the railway servant.

With those directions, the O.A. is disposed of leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)

J. P. Sharma
(J.P. Sharma)
Member (J)

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