

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CAT/7/12

O.A. No. 1534/89
T.A. No.

199

DATE OF DECISION 14.8.1991.

Shri Nanak Chand Jain Petitioner

Shri A.P. Mahanty Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent


Shri P.s. Mahendru Advocate for the Respondent(s)

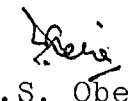
CORAM

The Hon'ble Mr. T.S. Oberoi, Member. (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? yes .
2. To be referred to the Reporter or not? no .
3. Whether their Lordships wish to see the fair copy of the Judgement? no .
4. Whether it needs to be circulated to other Benches of the Tribunal? no .


(I.K. Rasgotra)
Member (A)
14.8.91.


(T.S. Oberoi)
Member (J)
14.8.91.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1534/1989

DATE OF DECISION: 14.6.91.

SHRI NANAK CHAND JAIN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI A.P. MAHANTY, COUNSEL

FOR THE RESPONDENTS SHRI P.S. MAHENDRU, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Nanak Chand Jain, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the deduction of Rs.5,362 from the total amount of death-cum-retirement gratuity (DCRG for short) amounting to Rs.17,634.35. His claim is that he is entitled to receive full amount of DCRG, amounting to Rs.17,634.35, as the said amount was worked out by the respondents after deducting the recoveries due from him, as per their admission in counter-affidavit filed in OA-474/86.

2. The applicant retired on 28.2.1983 as Assistant Superintendent, Personnel Branch, Northern Railway Headquarters. He, however, continued to stay in the Railway quarter allotted to him till 8.10.1987. Apparently, the respondents withheld his DCRG to obtain vacant possession of the Railway accommodation allotted

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to him during the period of his service. He filed OA No.474/1986 in the Central Administrative Tribunal which was decided on 11.12.1987.

3. In the counter-affidavit filed by the respondents in the said OA (474/86) dated 8.7.1987 the respondents indicated that "the amount of gratuity after deducting the amount recoverable from him (applicant) would come to Rs.17,634.37." The present claim of the applicant is based on the above statement of the respondents.

4. The applicant's contention is that from the total amount of the DCRG worked out by the respondents, they are entitled to recover house rent only for the period 8th July, 1987 to 8th October, 1987, which according to him works out to Rs.172 only.

5. The respondents in their counter-affidavit have submitted that the applicant was due DCRG, amounting to Rs.17,635 less Rs.5,362 being rent and electricity charges. The net amount payable works out to Rs.12,273 only and that this amount has already been paid to the applicant. It is not disputed that the net amount of Rs.12,273/- as indicated above has been received by the applicant. The respondents further submit that the applicant has also been paid interest at the market rate for the period 1.2.1988 to 31.12.1988 on Rs.12,273 in consonance with the order of the Tribunal dated 6.1.1989 passed in CCP No.94/88. The respondents, therefore, submit that the application is not maintainable.

6. After the counter-affidavit was filed by the respondents, the applicant filed an MP No.33/90 praying for amending the reliefs prayed for in the O.A. The M.P. was allowed.

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In the amended OA filed on 14.2.1990 the applicant has claimed the following reliefs:-

- i) The applicant be paid interest at 12% per annum on the amount of Rs.17,634.37 since 1.3.1983 till 8.10.1987 less Rs.5,362 which the respondents claim to be recoverable from him towards house rent etc. According to him the amount of gratuity togetherwith interest at 12% per annum works out to Rs.27,364 and after deduction of Rs.5,362 the net amount he is entitled would work out to Rs.22,002/-. The applicant further claims interest from 8.10.1987 till 6.1.1989 on the amount of gratuity at 18% p.a. This additional interest works out to Rs.3,967 less interest paid by the respondents in accordance with the order of the Tribunal in CCP-94/88.
- ii) He be granted the benefit of 10 passes withheld during the period 1983 to 1986. He prays that the 10 passes may be issued during the period of 5 years commencing from 1990 till 1994 of the rate of two additional passes each year.

7. In the amended counter filed by the respondents on 7th June, 1990, they have traversed the same grounds as in the original counter. Briefly they are that the applicant retired on 28.2.1983 but did not vacate the Railway accommodation. Consequently his gratuity was withheld as per the extant rules. The applicant vacated the Railway accommodation on 8th October, 1987. Thereafter the gratuity was paid to him after recovering rent from the applicant for the period 1.3.1987 to 8.10.1987. The respondents further affirm that in accordance with the orders of the Tribunal dated 11.12.1987 the applicant has been paid the amount due after deducting the recoveries as per Annexure R-1 filed alongwith the original counter, togetherwith interest, as due, in terms of the order of the Tribunal

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dated 6.1.1989 in CCP-94/88. The applicant has also filed rejoinder to the amended counter. Since the amount of gratuity itself was in dispute the respondents were directed to show the original file indicating the calculations of the amount due on account of DCRG. From the file of papers submitted by the respondents, the applicant's DCRG works out to:

$$\text{Rs.750} + 318.75 \times 16\frac{1}{2} = \text{Rs.17,634.37/-}$$
 This calculation was accepted as correct by the learned counsel for the applicant. The learned counsel for the applicant, therefore, admitted that from the total amount of DCRG, as calculated above the respondents had to effect the recoveries on account of rent and other charges.

The learned counsel for the applicant, however, pressed for the payment of interest.

8. We have heard the learned counsel of both the parties and considered their submissions and records carefully. We are, therefore, of the view that the applicant had based his claim of DCRG at Rs.17,634.37/- merely on the basis of the inadvertant statement made by the respondents in their counter-affidavit in OA-474/86. The applicant having retired from a senior position should have been aware of his emoluments and the exact amount of DCRG. This claim is considered to be frivolous. Regarding the payment of interest and restoration of post-retirement complimentary passes, we reproduce below an extract from the judgement dated 27.11.1989 of the Hon'ble Supreme Court in the case of **Raj Pal Wahi & Ors. vs. UOI & Ors. SLP No.7688-91 of 1988**. Their Lordships observed:-

"In the Special Leave Petition the petitioners have taken a ground regarding interest. Learned counsel for the petitioners submits that according to this Circular the Railway Authorities should given interest also on the amount

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of death-cum-retirement gratuity withheld by them. It is relevant to refer to the aforesaid Circular. The relevant portion of the Circular is quoted hereinbelow:-

"The Government have had under consideration the question of raising the rate of interest payable to a Railway employee on delayed payment of gratuity where the delay occurs on account of administrative lapse or for reasons beyond the control of the Government servant concerned. In partial modification of this Ministry's letter No.F(E)III.79PNI/16, dated 3/9/1979, the President is now pleased to decide that where the payment of D.C.R.G. has been delayed the rate of interest will be as follows:

(i) beyond 3 months and upto one year -7% per annum.

(ii) beyond one year - 10% per annum


There is no dispute that the petitioners stayed in the Railway Quarters after their retirement from service and as such under the extant rules penal rent was charged on these petitioners which they have paid. In order to impress upon them to vacate the Railway Quarters the Railway Authorities issued orders on the basis of the Railway Circular dated 24th April, 1982 purporting to withhold the payment of death-cum-retirement gratuity as well as the Railway passes during the period of such occupation of Quarters by them. The delay that was occurred is on account of the withholding of the gratuity of the death-cum-retirement gratuity on the basis of the aforesaid Railway Circular. In such circumstances we are unable to hold that the petitioners are entitled to get

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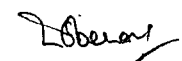
interest for the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse. Therefore we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same. The Special Leave Petitions are thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

In this case also there is no dispute that the applicant overstayed in the Railway accommodation after his retirement from service and vacated it only on 8.10.1987. The delay in payment of DCRG occurred on account of the non-vacation of the Railway accommodation and in accordance with the orders of the Railway Board. In these circumstances, we are unable to grant any relief to the applicant by way of interest from 1.2.1983 to 8.10.1987, as this is not a case of administrative lapse. The applicant shall, however, be entitled to post-retirement complimentary passes prospectively from the date he vacated the Railway accommodation viz. 8.10.1987. The O.A. is disposed of, as above, with no order as to costs.


(I.K. RASGOTRA) 14/8/1991

MEMBER(A)

14.8.91.


(T.S. OBEROI)

MEMBER (J)

14.8.91.