

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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DA NO.1817/89

DATE OF DECISION: 23.10.1990

SHRI SWARANDIP SINGH RATRA

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

SHRI P.P.S. AHLUWALIA

COUNSEL FOR THE APPLICANT

SHRI D.N. MOOLRI

COUNSEL FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

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

Shri Swarandip Singh Ratra who retired on 13.12.1972 as Assistant Personnel Officer, Headquarter Office, Baroda House, Northern Railway, New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985, claiming payment of death-cum-retirement gratuity (DCRG) which, according to him, has not so far been released to him.

2. From the documents filed by him, the earliest representation made by him is dated 31.5.1977 and is addressed to the then Prime Minister of India. This was acknowledged by the Prime Minister's office (PMO) vide letter No.1(5)/77-PMP dated 13.6.1977 and the applicant advised that his re-

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presentation has been forwarded for appropriate action to the Ministry of Railways. The applicant followed up the matter by another letter dated 16.8.1978 addressed to the then Prime Minister of India and finally sent a registered notice dated 18.2.1989 to the General Manager, Baroda House, Northern Railway, through his advocate. The applicant has further submitted that although he pursued the matter vigorously soon after his retirement, unfortunately the file and papers containing various representations, correspondence, made with different authorities, has been lost.

2. The respondents in their counter have taken a preliminary objection to the effect that the petition is hopelessly time-barred and that, on the face of it, the claim was bogus and misconceived, particularly when the petitioner himself worked as Assistant Personnel Officer in the office of respondents before his retirement. It was unbelievable that the petitioner would have kept quiet for 18 years after his retirement for seeking payment of his DCRG. The respondents also claimed that there was no representation from the applicant as to the non-payment of DCRG on record, while on the other hand, it is contended that record relating to applicant is not available/destroyed.

3. On hearing the case on 26.2.1990, we had directed the respondents to trace out the relevant record of the payment/non-payment of DCRG to the applicant, further to facilitate search of the old record in the office of the respondents, the applicant furnished a copy of the Pension Payment Authority Form No.73/PEN/8/7/1554 dated 10.7.1973. Despite that, the respondents have failed to produce any record to show if the payment of the DCRG was actually made to the applicant. On

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6.4.1990 we again directed that this matter may be brought to the notice of the Chief Personnel Officer, Northern Railway, so that the case can be finalised. Again on 11.5.1990, when the case came up for hearing, no records were produced. Shri O.N. Meelri, learned counsel for the respondents, however, submitted that the applicant himself was Assistant Personnel Officer dealing with the final settlement of retiring officials at the time of his retirement. The respondents, therefore, found it difficult to believe that he would not have received his DCRG on his superannuation in 1972. He further submitted that since it was an extremely belated claim and accounts department was not responding by furnishing evidence regarding the payment/non-payment of DCRG to the applicant, the matter may not be pursued further. In the interest of justice, however, we felt one more opportunity be given to the respondents for producing documentary evidence if the payment had been made to the applicant. Accordingly, we directed that a notice be issued to the Financial Adviser and Chief Accounts Officer in the office of the respondents to make available the documentary evidence relating to the case through the General Manager on 19.7.1990. On 25.7.1990, Shri O.N. Meelri, learned counsel for the respondents sought for more time for making further efforts and for filing whatever documents could be traced out from the office of the respondents. On 3.9.1990 the learned counsel for the respondents submitted that no record regarding DCRG etc. could be made available. Further opportunity was given to the respondents on 10.9.1990 for producing documentary evidence prescribing life span of record relating to DCRG etc. by 13.9.1990 when the case was listed for final hearing.

The respondents have contested the claim of the applicant primarily on the ground of delay and limitation. This was countered by Shri P.P.S. Ahluwalia, learned counsel for the applicant submitting that even if the suit is barred by time, yet this plea of limitation is not for the State which is expected to be a model employer and meet all just and honest claim of a

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citizen.*

* AIR-1987 - Madhya Pradesh - State of Madhya Pradesh Vs. Sardarmal - 156.

*1979 (1) SLR - SC - 757 - Madras Port Trust V. Hymanshu International.

To further fortify his case, the learned counsel for the applicant drew our attention to the case of 1981 (1) SLR (SC) Vol.26-184 - Sam Prakash V. Union of India wherein their Lordships of the Supreme Court observed that:-

"Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be dammed or body to be burnt. The stance that, by deductions and discretionary withholding of payment, a public sector company may reduce an old man's pension to Rs.40 from Rs.250 is unjust, even if it be assumed to be legal. Law and justice must be on talking terms and what matters under our constitutional scheme is not merciless law but humane legality. The true strength and stability of our polity is society's credibility in social justice, not perfect legalese; and this case does disclose indifference to this fundamental value.....".

5. We have given careful thought to the submissions made by the learned counsel of both the parties and considered the material before us. It is not disputed that the applicant retired on 13.12.1972. It is also certain that he was not released the DCRG immediately on retirement. The Pension

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Payment Authority, a copy of which was filed by the applicant and furnished to the respondents bears the following endorsement regarding DCRG:-

"The payment of DCRG/Death Gratuity amounting to Rs.12,250 in lumpsum has been passed for payment vide AB No.....dated.....C07 No.....dated...../will be passed for payment on receipt of No Demand Certificate duly verified by the Accounts & clarification of demand of regularisation of extension or retention of service beyond the date of superannuation."

It is apparent from the above that the DCRG was not released for payment simultaneously with the issue of Pension Payment Authority. This fact is further corroborated by the statement made by the applicant in his representation dated January 24, 1977 to General Manager, Northern Railway which is reproduced below:-

"....While working as A.P.O. in the Headquarter office, I was retired from service on attaining the age of 58 years, in December, 1972, and all retirement benefits, viz. Pension, Provident Fund and DCRG, as due, were sanctioned.

However, I filed a writ petition in the High Court at Delhi claiming that Class II service on the Railways, as in the Ministry of Railway was Ministerial Service and I was eligible to continue in service upto the age of 60 years. The Hon'ble Judges pleased to admit my position for hearing. They further very kindly granted permission for quarter, viz. 9-8, Railway Colony, Tilak Bridge.

In compliance with the aforesaid directions of the Hon'ble Judges the Railway Administration, very kindly, permitted me to reside in the aforesaid Railway House and charged rent from me for a period of six months on the same rate as was recovered from me during service, and deducted this amount from the leave salary due to me on account of Post Retirement Leave.

In view of my continued retention of the Railway quarter, while my Pension and Provident Fund were paid to me, the DCRG was withheld.

Near about the date I was attained the age of 60 years, the Railway Administration approached the High Court for issue of directions to me to vacate the Railway quarter, on the plea that even if the petition was decided in my favour I could not have retained the house for more than one month after the date of retirement, viz. 31.1.1975. Accordingly, the Hon'ble Judges directed me to vacate the Railway quarter by 31.1.1975.

In compliance with the aforesaid orders I vacated the Railway quarter on 25.1.1975 and handed over its clear position to the Railway Administration.

That ever since vacation of the quarter, I have made three applications requesting for the release of the DCRG. I have neither received payment of my dues nor have I been favoured with a reply so far." It is reasonable to assume that the respondents would not have released the payment of DCRG to the applicant as long as he was continuing to be in occupation of the railway quarter allotted to him. Thus the applicant could not have received payment of DCRG upto 31.1.75, nor January, 1977 when he wrote to General Manager, Northern Railway. It is, therefore, obvious that the delay in payment of DCRG was linked to the vacation of the Railway quarter. Further the Writ Petition said to have been filed by the applicant was dismissed by the High Court sometime in 1978. The respondents could not have destroyed the relevant record in any case till the court case was finally decided by the High

Court in 1978.

According to the srl. No.133, Provident Fund Ledger is required to be preserved for 35 years while the life of register of Pension & DCRG is prescribed as 10 years. Further Rule 1024 (a) makes the following provisions:-

Check of SRPF Ledgers:-The SRPF card of the employee should be consulted to ensure that Government contribution is not being allowed it should be written back to the Pension Fund. The fact of issue of payment authority for pension, DCRG etc. should be noted on the PF ledger card."

It is, therefore, that even though the life of some other record relevant to Pension, DCRG is 10 years, the Provident Fund ledger which is to be maintained for 35 years contained the position regarding payment of Pension, DCRG etc., we are, therefore, not persuaded to accept the contention of the respondents that all records are destroyed or are not available. In fact, the respondents were not even forthcoming with the position regarding the life span for which the relevant records are to be preserved as prescribed in the Rules. The non-cooperative attitude and their reluctance to part with information prescribed in the Rules contained in the Code relating to various facts of operations of the Indian Railways leave with us no alternative but to draw adverse inference. We are also not persuaded to accept the plea of the respondents regarding limitation in a case where the fruit of a life time service in the form of DCRG is proposed to be denied to the applicant to provide him sustenance in his old age. We find there are specific provisions in regard to the life span of the various records which are to be retained in Appendix-IX of the Railways Code for the Accounts Department Part-1 (Revised Edition 1984). Paragraph 6 of the preface to the code indicates that:

"This Code supersedes all existing rules and orders issued by the Railway Board on the subject dealt

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within it. Unless the contrary intention is expressed or implied in the wording of the existing rules, the provisions of this Code are mandatory and binding on all Indian Railways. For deviation from the mandatory rules, the sanction of the Railway Ministry should be obtained."

In the face of the above facts and circumstances, we order and direct that respondents shall release the payment of DCRG amounting to Rs.12,350, as indicated in the Pension Payment Authority, to the applicant within four weeks from the date of communication of this order. However, as the applicant himself being also equally responsible for the major part of the delay, resulting in loss/non-availability of the relevant records with the Respondents, we are not inclined to grant any interest on this amount.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 27/7/90

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)