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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 964 of 1989

This 24th day of March, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Behari Lal Sharma,
S/o Shri Pitambar Dutt Sharma,
C/o Shri Tara Shankar Sharma,
Shish Mahal Street,
Sita Ram Bazar, Chawri Bazar,
Delhi.

..... Applicant

By Advocate: Applicant in person.

VERSUS

1. Union of India, through
The Secretary,
Ministry of Communications,
Sanchar Bhavan,
New Delhi.
2. The Director General,
Posts & Telegraphs,
Dak Tar Bhavan,
Parliament Street,
New Delhi.
3. The Post Master General,
U.P. Circle,
Lucknow.
4. The Sr. Supdt. of Post Offices,
Mathura Division,
Mathura.
5. The Sr. Supdt. of Post Offices,
Ghaziabad Division,
Ghaziabad.
6. The Sr. Post Master,
Ghaziabad.
7. The Sr. Post Master,
Mathura.

..... Respondents

Through: Shri M.L. Verma

O R D E R

(By. Hon'ble Mr. B.K. Singh, M(A))

The matter has been on board for almost two months. We find written submissions of the applicant and we have decided to dispose of the case on the basis of submissions and pleadings on record. This

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O.A. NO.964/89 relates to payment of terminal benefits and could have normally been decided by a Single Member Bench but in view of the request of the applicant and the rules quoted by him of the Supreme Court in the case of Sampat Kumar Vs. Union of India (1987) 1 SCC 124 para 5 and (1987) 2 ATC-82 and Amulya Chandar Kalita Vs. Union of India (1991) 15 ATC 718, where the ^{Hon'ble} Supreme Court made an observation against constitution of single-member benches for hearing of the ~~of the~~ original application. The applicant has therefore prayed that in the interest of justice, fair play and good conscience, this OA and MP 2430/90 and MP 3140/92 be listed before the Division Bench.

2. The applicant is an ex-Savings Development Officer and was posted in the office of Senior Superintendent of Post Offices, Mathura when he retired on 30.6.83 on superannuation. This retirement was on the basis of orders dated 30.4.84 followed by reminder dated 17.6.83 (annexure A-1 and annexure A-2 of the paper-book). The applicant filed writ petition dated 5.5.83 in the High Court of Allahabad challenging the entry of date of birth and also obtained a stay order from the District Judge, Ghaziabad against the orders of the Estate Officer for eviction of the government accommodation. This writ petition regarding entry of date of birth is annexure A-3 and stay order against eviction is Annexure A-4 of the paper-book. In view of this litigation though the applicant was made to retire on 30.6.83 but he did not submit his pension papers which were required to be submitted ^{within} ten months in advance. He submitted necessary papers for terminal benefits on 1.12.83 (annexure A-5) to respondents No.4. His grievance is that not even provisional pension or DCRG was sanctioned to him in spite of repeated requests made to the authorities. A sanction memo dated 14.1.86 was issued by the Director, Postal Accounts, Lucknow for pension and DCRG but it is alleged that the applicant did not receive the same and consequently he filed an application under Section 151, CPC in the Hon'ble High Court, Allahabad on 16.1.86 for payment of retiral benefits (annexure A-16). The applicant has asserted that he

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pursued the matter personally and also sent representations to the Sr. Post Master, Ghaziabad on 15.10.87 and to the Sr. Supdt. Post Offices, Ghaziabad on 17.12.87 and to the P.M.G., Lucknow on 2.2.88. These are annexure A-7, A-8, and A-8 of the paper-book. His grievance is that in spite of these representations there was no favourable response from the respondents. He also put up the matter to the Hon'ble Minister for Communications on 4.11.88. He also represented the case of eviction to the Estate Officer, Lucknow but none of these representations evoked any response and therefore he filed the present application under Section 19 of the AT Act, 1985.

3. The Estate Officer, Lucknow on 5.9.83 fixed the license fee for the quarter occupied by the applicant at Rs.42.41 per month w.e.f. 9.4.75 and refunded the excess license fee of Rs.1548.53 and Rs.6143.74 to the applicant on 30.83 and 3.10.83 respectively under the authority of respondents 4 and 7 (annexure A-13). The respondents No.4 had declared the occupation of the quarter as unauthorised and issued instructions for recovery of penal rent to the respondent No.5 and 6. This amount was Rs.33,947.82 and to recover it he also passed an order for with-holding the terminal ^{minus pension.} benefits of the applicant. The Hon'ble High Court, Allahabad, stayed the eviction proceedings vide its order dated 3.2.86 (annexure A-17). The respondents also filed an affidavit before the High Court, Allahabad stating that the applicant himself did not accept the pension and DCRG.

4. It is also alleged that no notice for recovery of penal rent was ever issued by the Estate Officer under Section Section 70 of the PPE Act 1971 and as such recovery from the retiral benefits was illegal. The ADJ-II, Ghaziabad considered the refixation of rent by Estate Officer, Lucknow and declared the rate of rent as reasonable since the applicant also had no objection to it.

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5. The question of the date of birth was transferred to CAT Allahabad Bench by the Allahabad High Court together with the counter affidavit and the rejoinder along with W.P. No.5519/83 under Section 29(1) and (2) of the AT Act 1985 and the Allahabad Bench disposed of the writ petition which was renumbered as 1367(T) of 1987 so far as dispute of date of birth is concerned. Thus the retirement date of the applicant as 30.6.83 was upheld. Now the question relates only to retiral benefits and vacation of govt. quarter by the applicant. The two issues have become interlinked. It has been stated by the applicant that the members of his family are still residing in Quarter No.3/4, P&T Colony, Ghaziabad as he could not make alternate arrangements in Delhi ~~both~~ on account of non-payment of retiral benefits. The averments in the counter affidavit are that the applicant evaded ^{acceptance of} payment of retiral benefits in order to continue in illegal occupation of the quarter. The applicant asserts that he is residing in the govt. quarter under the orders of Allahabad High Court dated 3.2.86 and which, according to him, are still operative since no final orders on that have yet been passed. With the coming into existence of the CAT w.e.f. November 1985, the question of retention of quarter also got automatically transferred to the CAT since the High Court has no jurisdiction in these matters now.

6. The written statement was filed in response to OA No.964/89 by the respondents on 30.8.89 and the amounts due to the applicant have been shown along with the amount due to be recovered from him. Since penal rent was due to be recovered from the applicant he was requested by Sr. Post Master, Ghaziabad to take payment of pension and other claims after adjustment of recovery from DA, DCRG and leave encashment. The applicant, according to the respondents, insisted on payment of the entire amount without any recovery being adjusted. It is admitted that he filed a writ petition under Section 151 CPC for release of held-up payment of pension benefits before the High Court, Allahabad on 16.1.86. In the writ petition No.5519/83 renumbered as 1367(T) on transfer, the same was dismissed by CAT, Allahabad Bench.



7. After filing of the present O.A. 964/89, the Tribunal passed an interim order on 26.2.90 for payment of pension admissible to the applicant under the rules. Having regard to the orders of the CAT the applicant was asked by Sr. Post Master, Ghaziabad to get the payment of pension in person from the Head Post Office on any working day but the applicant failed to do so. He instead, submitted an amended bill for Rs.89,279.00 in which full payment of pension w.e.f. 1.7.83 to 31.3.90 with DAR admissible from time to time was shown. He was requested to submit the claim of his original pension only as the outstanding amount of government dues was to be adjusted from the DAR. But applicant did not pay any head towards the government dues and submitted an application dated 19.4.90 and 11.4.90 wherein he expressed his resentment against recovery of government dues on one pretext or the other.

8. The applicant appeared before the Bench on 22.3.94 and started advancing oral arguments. He also sought time to make oral submissions and substantiate his arguments by rulings of the Hon'ble CAT and also by the Hon'ble Supreme Court. The request of the applicant was granted and he appeared in person before the Bench on 23.3.94 also and argued the matter for more than one hour. It was admitted by the applicant that he has been paid the pension and DA in pursuance of the order of the CAT and he has accepted the same in 1991. Thus the relief in this regard becomes infructuous as he has been drawing his pension and DAR regularly from the respondents. The Hon'ble CAT while passing orders on 26.2.90 for pension and DAR had not passed any order regarding payment of interest and this matter should have been taken up when the matter on interim relief was being heard by the Tribunal. Since this matter was not agitated then it cannot be raised now and as such there is no question of payment of interest on the amounts because the applicant himself



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submitted the pension papers in December 1983, 6 months after the date of his retirement and it was offered to him on several times but he declined to accept the same. Cheques were also produced before the Tribunal but the applicant on one pretext or the other wanted all his payment to be made in one lump sum.

The following amounts are due to be paid to the applicant:

1.	D.C.R.G.	17,613.75
2.	Leave encashment	3,217.30
3.	LTC sanctioned	2,332.00
4.	TA sanctioned	3,736.45
5.	CGEGIS	252.00
6.	Balance in GPF	4,580.00

TOTAL: 31,731.50

As against this, till 31.7.89 the amount due to be recovered from the applicant is 44,831.84. It was admitted by the applicant that he is still in occupation of the government quarter. He referred to the judgment of ADJ-II in MA No.131/83, BL Sharma Vs. Union of India. The learned ADJ-II has observed that recovery of rent should be regularised on the basis of standard rent of Rs.42.00 per month upto 8.4.75 and Rs.64.41 per month from 9.4.75 per month from 9.4.75 and onwards till the date of his retirement. In the operative portion of the judgment the learned ADJ-II observed as follows:-

"....He has been delaying this appeal since long in order to continue his unauthorised possession over the disputed premises because of low rent. It is also clear that the Administrative Tribunal Allahabad has also upheld that the retirement of the appellant from the government service on 30.6.83 was justified. The appellant also knocked the doors of the Hon'ble Supreme Court but did not get anything from there. As such it is abundantly proved that the appellant is no more in the Government service for the last more than 5 years and therefore he has no right or authority to occupy the government

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premises which was allotted to him because of his being in government service. The appeal has thus no force and is liable to be dismissed.

ORDER

The appeal is dismissed with costs".

9. The ADJ-II, who is an appellate authority in this case, has already declared the applicant to be in illegal occupation of the govt. premises since he had already retired on 30.6.83. The judgment of the ADJ-II was delivered on 21.10.88 by which cost was also imposed on the appellant, the applicant in the present case.

10. As regards the entry of date of birth, the case was listed before the CAT, Allahabad on transfer from Hon'ble High Court, Allahabad under Registration No. 1367(T)/87. The Hon'ble CAT, Allahabad, after considering all the facts and circumstances dismissed the petition of the applicant as devoid of any merit or substance. The judgment of the ADJ-II has already been quoted above. In support of his contention, the applicant has also quoted some rulings.

(i) He has quoted the case of Smt. Violet Issaac and Ors. Vs. Union of India & Ors, Civil Appeal No. 653/91 decided on 8.2.91. It related to family pension and in this ruling it was held that family pension cannot be bequeathed by will as it does not form part of estate of the employee. Hence the claim of the brother of the deceased employee for family pension on the basis of will made by the deceased in his favour was held void and Smt. Issaac, the widow of the deceased was allowed family pension instead of the brother of the deceased. Operative portion of the judgment goes against the applicant. It reads as under:-

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"Railway administration is free to evict the family members in accordance with the rules after payment of arrears of family pension to Mrs. Violet Issaac, the widow of the deceased employee."

But the ratio here is different. The ratio is regarding bequeathing family pension in favour of the brother ^{in favour} and not of wife and it was held that family pension cannot be bequeathed in favour of anyone and is admissible only to the widow of the deceased employee.

(ii) As regards, All India Reserve Bank Retired Officers Association Vs. Union of India & Anr., Writ Petition (Civil) No. 10 of 1991 decided on 10.12.91, it was held that pension is a deferred portion of compensation for past service. Para 5 of the judgment by Hon'ble Mr. AM Ahmadi and M.M. Punchhi, JJ refers. This ruling has no application to the present case. The pension was sanctioned to the ^{applicant} and he has been drawing the same along with DA ^{sanctioned from time} to time every month. This ruling has absolutely no application to the present case.

(iii) As regards the case of R.D.Sharma Vs. Union of India decided by CAT, Principal Bench by Hon'ble Mr. P.K. Kartha, VC(J) and Hon'ble Birbal Nath, M(A), it was held that under CCS(Pension) Rules which are statutory innature allow pension as a matter of right. It was further laid down in this ruling that pension rules specifically provide for with-holding or recovery of pension in specified situations and circumstances, leaving no gap to be filled by administrative instructions and as such the administrative instructions contained in U.O. note dated 7.2.78, Ministry of Finance, will havae no legal force.. The Tribunal also held that the question of pension has to be regulated by the CCS(Pension) Rules, 1972 and these rules do not leave any discretion in the matter to the executive and that administrative


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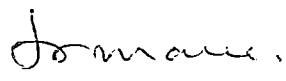
instructions can
only be issued when the rules are silent. CCS (Pension) Rules, 1972 are comprehensive and they regulate the recoveries also. This ruling practically goes against the applicant. The government dues according to CCS (Pension) Rules are recoverable from the applicant out of the DAR, DCRG and other payments under the provision of para 7 of Govt. of India's Decision below Rule 73 of CCS (Pension) Rules and as such there is no bar against the respondents from recovering their outstanding dues from the applicant. Only the pension cannot be held up on this count. It would be going against the ^{rules and the} decision of Govt. of India if the outstanding dues are not recovered from the employee who is retiring or who has already retired.

11. Taking ^asynoptic view of all the facts and circumstances of the case we find that the applicant has already been granted relief No.1 regarding grant of pension and DAR. As regards other reliefs, the outstanding dues to be recovered w.e.f. 1.7.83 to 31.3.90 have been shown as Rs.64,693.34. This amount must have gone ^{up} further because of the penal rent due from the applicant which is recoverable under the CCS (Pension) Rules. The respondents are bound by the provisions of para 7 of Govt. of India's Decision below Rule 73 of CCS (Pension) Rules, 1972 and as such they have no alternative but to recover the amounts due from the applicant. They have already shown magnanimity and grace in accepting the verdict of the Tribunal of 26.2.90 and allowed the entire arrear of pension and DARadmissible on it and also allowed him to draw this every month. If there are any amounts due to the applicant after adjustment of Government dues, the same may be paid to him after adjustment of all government dues as per rules.

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With these observations the OA is finally disposed of
with no order as to costs.


(B.R. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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