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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 261/86

Date of decision 10.11.88

Shri P.S. AlluwallaPetitioner

Vs.

Secretary, Government of IndiaRespondents

Shri R.P. OberoiAdvocate for the
Petitioner

Shri Jagjit SinghAdvocate for the
Respondents.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(JUDL.)

THE HON'BLE MR. AJAY JOHRI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be
allowed to see the Judgment? *Yes*

2. To be referred to the Reporter or not? *Yes*

(The judgment of the Bench delivered by
Hon'ble Shri Ajay Johri, Administrative Member)

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By this application received under Section 19
of the Administrative Tribunals Act, 1985, the applicant
has prayed for directions to be issued to the respondents
for the release of the withheld amount of his Death-cum-
Retirement Gratuity and for awarding him interest at the
rate of 12% on the same w.e.f. 11.11.84 till the date of
actual payment.

2. During the pendency of this application except for an amount of Rs. 5743.70 which has been deducted on account of -

(i)	Enhanced Rent	Rs. 740.00
(ii)	Rent for period 1.11.84 to 19.3.85	Rs. 2953.70
(iii)	Telephone charges	Rs. 1198.00
(iv)	Electricity Bill	Rs. 772.00
(v)	Engineering debits	Rs. 80.00

and the interest claimed by the applicant, the balance amount has been paid to him by cheque on 2.11.1987.

3. The facts of the case which are not under dispute are that the applicant retired as a Divisional Engineer from the Ferozpur Division of the Northern Railway on 30.11.84. His pension and other retirement benefit were sanctioned for payment on 22.11.84. The DCRG was to be paid subject to vacation of the bungalow and finalization of debits in consultation with Divisional Accounts Officer, Ferozpur. While his pension etc. were paid to him his entire gratuity was held up by the respondents.

4. It is the applicant's case that as the right to gratuity is a fundamental right, it could not be withheld. He has also relied on the Payment of Gratuity Act, 1972 and the Payment of Gratuity (Central) Rules, 1972. The respondents have justified their action in their reply on the ground that the DCRG was ordered to be released subject to the vacation of the railway bungalow and finalization of other outstandings. Since the applicant did not vacate the accommodation till 18.3.85 and a vigilance case was reported against him, he could not be paid the DCRG till the vigilance case was closed. On

this account, they have also opposed the claim of payment of interest to the applicant. They have further said that all Government outstanding dues are recoverable from the gratuity and that is how after making the recoveries the balance has been paid to the applicant.

5. We have heard the learned counsel for both parties. The contentions raised by Shri Oberoi, the learned counsel for the applicant were that no interest was paid on the payments made by the respondent. According to the learned counsel the applicant is entitled to payment of interest at market rates which he assessed at 18% per annum. He further challenged the recovery of the house rent from the DCRG. According to him the applicant could retain the accommodation for six months at double the assessed rent or 10% of pay whichever was more hence charging of market rent was illegal. In regard to telephone bills it was his contention that the respondents themselves did not disconnect the telephone and the applicant has not been confronted with the details of the bills but he has been made to pay the same through the unilateral deductions. The learned counsel did not dispute the recovery against the Electricity Consumption and the Engineering Debits. His main emphasis was also that the recoveries could not be made for non statutory dues and that at the time of retirement there was no pending case against the applicant. These were opposed by Shri Jagjit Singh, the learned counsel for respondents on the ground that the Pension Rules permitted deductions from the gratuity. For the telephone bills the learned counsel offered to have the details reexamined by respondents if the applicant made any representations and further submitted that the applicant had a vigilance enquiry pending and hence the DCRG could not be released. We have perused the paper-book and the replies and counter replies carefully.

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6. On the subject of recovery of Government dues from pensionary benefits the claim against a railway servant can be due to losses incurred as result of negligence while in service and other Government dues e.g., house rent, advances, postal insurance premium etc., or non Government dues. Section 13 of the Pension Rules, as reproduced in the Railway Establishment Manual by Jand, permits recovery of Government dues from the DCRG even without obtaining the consent of the employee. If at the time of sanction of pension any dues remain unassessed, in respect of house rent etc, either the Government servant furnishes a surety of a suitable permanent Railway employee or a suitable cash deposit can be taken from him or in the alternative such amount of DCRG as may cover the dues may be held back. The precaution to be observed is that the amount withheld is not excessive or disproportionally large. Normally, the amount should not exceed the estimated amount of the outstanding dues plus 25% thereof. If the assessment cannot be made it should be limited to 10% of the DCRG or Rs.10,00/- whichever is less. There are also instructions that where commercial debits are involved after 15 months and where they are not involved after six months of retirement, it should be presumed that there is no claim against a railway servant. In respect of dues on account of rent etc. of Government accommodation, the period of 15 months/6 months has to be reckoned from the date of retirement or the date of vacation of accommodation whichever is later after which the withheld amount has to be released. The dues, however, do not lapse and Govt. can recover them after due litigation. The rules further lay down that assessment of dues should be made in time.

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Railway gratuity rules being separate we do not agree that the applicant is covered by the gratuity Act.

7. While deductions from gratuity are thus possible, the rationale of withholding the entire amount of DCRG are not ~~be~~ based on these rules. If any departmental proceeding is instituted and continued, then, only provisional pension is paid. In the applicants case, the dues and proper pension was paid. This is evident from the order dated 22.11.84 (Annexure A of paper-book). Para 2308 R.II (Rly. Est. Code Vol. II) lays down that no gratuity is payable until conclusion of the departmental proceedings and final orders thereon and if only minor punishment is imposed the gratuity shall be authorized. We find that the stand taken by the respondents that the DCRG was not paid because of the applicants involvement in a vigilance case cannot under the rules sustain itself. The facts do not support this plea. The letter reg. vigilance case relied on pertains to 1986 (Annexure R.II). The applicant had already retired on 30.11.84. Any disciplinary action after retirement can only be taken after the Presidents approval is obtained. On 30.11.84 the applicant had not been issued any charge-sheet and none has been shown as pending. So discovery in 1986 of involvement of the applicant in a vigilance case could have had no effect on his DCRG. We reject the submission of the learned counsel in this regard.

8. The only fault of the applicant was the non provision of a surety and non vacation of the Government accommodation and this was the reason why in terms of the pension rules, reasonable amount of DCRG could ^{or with-} be held.

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But surely not the whole amount. The rules already lay down the necessity of assessment of debits to arrive at the amount and in absence of the assessment they limit amount to be withheld to Rs.1000/-. The obvious conclusion then has to be that the amount withheld was without jurisdiction and beyond rules and for this the applicant cannot be penalized and should have been compensated by the respondents.

9. Railway Rules regarding the retention of Rly. Quarters after retirement as enumerated in Bds. letter E(G)81 Qrt.1-51 of 1982 lay down:-

- (i) Normal rent for retention for two months.
- (ii) Next two months on double the assessed rent or 10% of emoluments whichever is higher.
- (iii) Further two months on grounds of sickness etc. Double the assessed rent or 10% emoluments whichever is higher.

This is not automatic. The occupant has to apply and obtain permission otherwise the occupation is treated as unauthorized in which case appropriate hold back as admissible under the rules has to be made from DCRG and there are other additional instructions in regard to the same too. The respondents had allowed first 2 months on normal rent. Since no permission was given for continued occupation ^{it was treated} as unauthorized. For unauthorized occupation, rent at outsiders rate is charged as per Rly. Bds. letter F(X)1-72/RN/3/1 of 27.4.72 and 27.9.76. This rate is three times the assessed rent. The respondents have recovered this amount as Annexure R-I shows. We find nothing wrong in this recovery. The applicant has not been able to prove that he had obtained any permission to retain the quarter beyond 2 months of his retirement. Mere putting in an application will not be adequate for this purpose.

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10. On the above facts we do not find any illegality in the respondents action to recover the rent as per outsiders rate as also the arrears of enhanced rent from the gratuity of the applicant. The learned counsel for the applicant has submitted before us that he accepts the deductions for electricity consumption and engineering debits. In regard to telephone bills the learned counsel for the respondents has indicated that the same can be reexamined if the applicant represents. Thus the only question that now remains is the unnecessary withholding of the entire DCRG. The entire amount could not have been withheld as there were no circumstances to do this.

11. The respondents' own instructions being clear regarding appropriate hold back only, in our opinion the applicant's request for grant of interest on the delayed payment of the DCRG's balance amount cannot be rejected. The Hon'ble Supreme Court in AIR 1985 SC 356 State of Kerala/Padmanabhan have categorically laid down that if there is delay in making payments of the pension, gratuity or other benefits the same must be visited with penalty of interest at the current market rate till actual payment. Except for appropriate hold back which should have been assessed, the balance gratuity should have been released on the date of retirement.

12. On the above consideration, while leaving the question of refund of any sum that may become due in respect of telephone bills after the matter has been reexamined by the respondents in consultation with the applicant on his representation, ^{made from DCRG.} We reject the other claims of the applicant in regard to recovery. In the circumstances of the case,

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the claim of the applicant for interest at the rate of 18% per annum is also not justified. We allow the application in respect of the claim of interest only at 12% per annum and direct the respondents to pay interest on the amount of gratuity paid by them on 2.11.87 to the applicant at this rate for the period 1.12.84 to 2.11.87. We leave the parties to bear their own costs. The respondents should comply with the above directions within a period of one month from the date of receipt of this order.

शजय जी
(AJAY JOHRI) 40.11.88
MEMBER (AM)


10/11/88
(P.K. KARTHA)
VICE CHAIRMAN(J)