

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 474 of 1986
TAXXNo.

DATE OF DECISION 11.12.1987

Shri Nanak Chand Jain Petitioner

Shri B.S. Mainee Advocate for the Petitioner(s)

Versus

General Manager, Northern Railway Respondent

Shri D.N. Moolri Advocate for the Respondent(s)

CORAM :

● The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr.

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

S.P.M.
(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

D.A. NO.474/86

DATE OF DECISION : 11.12.87

Shri Nanak Chand Jain . . . Applicant

Vs.

General Manager, N.R. . . Respondents

Shri B.S. Maines . . . Counsel for applicant

Shri O.N. Moolri . . . Counsel for respondent

CORAM

THE HON'BLE MR. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The applicant who is a retired Assistant Superintendent in the Northern Railways has moved the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents should be directed to pay the amount of gratuity with 12% interest after deducting the normal rent of the railway quarters and electricity charges. He has also prayed his pension should be revised and the complimentary passes which were disallowed may be restored to him.

2. The brief facts of the case are as follows.

The applicant retired on 28.2.1983 after 38 $\frac{1}{2}$ years of service. He was granted pension in April, 1983 but his gratuity of about Rs.18,000 was withheld 'in toto' as he had not vacated the railway quarters. He has averred that he being a disabled person and not financially indigent he could not arrange alternative accommodation without the payment of

gratuity and he could not vacate the railway quarters. According to the respondents, they were fully authorised to withhold the entire amount of gratuity till the railway quarter is finally vacated. In their counter affidavit dated 8.7.1987 they have indicated that the amount of gratuity after deducting the amount recoverable from him would come to Rs. 17,634.37.

3. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for respondents could not show us any rules by which gratuity could be withheld ^{in toto} till the railway quarters are vacated. On the other hand, according to the extant instructions and the policy of the Government, gratuity becomes payable immediately on retirement while the railway quarters could be retained up to a period of three months from the date of retirement. Thus, the question of ~~now~~ payment of gratuity only after vacation of the railway quarters does not arise. Para 323 of the Manual of the Railway Pension Rules, 1950 clearly indicates that where certain dues like house rent etc are recoverable even then the pension and gratuity should be paid on the petitioner's furnishing of a surety. If such a surety is not produced some amount ^{could} ~~should~~ be withheld from the gratuity ⁱⁿ which in no case should exceed Rs. 1,000/- It has further been laid down that where some

commercial debts are involved efforts should be made to assess and adjust the recoverable dues within a period of three months and if it is not ^{done} possible within six months it would be presumed that there is no such claim.

4. The whole conspectus of the rules and orders clearly establishes the fact that the respondents could not have withheld the entire amount of gratuity merely on the ground that the applicant has not vacated the railway quarters. ^{had} The applicant since vacated it on 6.10.1987. The High Court of Delhi in Shri Baljit Singh Verma Vs Union of India and others ⁱⁿ CCP No.9/82 in CWP 145/69 in their judgment dated 3.2.1983 referred to the aforesaid provision of Rule 323 of the Manual of Railway Pension Rules cited above and observed that the respondents had no right to detain the gratuity amount ^{as} he had furnished the necessary surety. On the facts of that case the petitioner's overstay in the railway quarters was held to be justified without any penal rent or water and electricity charges. In the present case the applicant was not called upon to furnish the surety and the respondents have straightaway gone ahead to withhold the entire amount of gratuity.

5. In the ^{aforesaid} ~~conspectus~~ of facts and circumstances, I allow the application to the extent of directing the respondents that they should pay the amount of gratuity to the applicant after deducting the amount

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recoverable from him in respect of rent, electricity and water charges due from him at the normal rates during the period it was in occupation of the applicant. Since the applicant had no authority to over-stay in the railway quarters and is being allowed to enjoy the occupation of railway quarters at normal rent which is palpably much lower than the market rent, we do not find it a fit case for allowing him any penal rate of interest as claimed by him. There is nothing in the application to support his claim of revision of pension and no relief is granted in that respect. As regards disallowing one set of post-retirement passes for every one month of unauthorised occupation of the railway quarters it is revealed from the Railway Boards Circular No.E(G)80QR 1-51 dated 24.4.1982, a copy of which has been annexed by the respondents at R-I, ^{that} a show cause notice ^{was} ~~is~~ necessary to be given before disallowing the pass. Since this was not obviously done in the instant case, the impugned order at Annexure A-5 disallowing the pass ^{is} bad in law and is hereby set aside. The application is disposed of on the above lines. There will be no order ^{as} to costs. The payment should be made good and passes ^{should} ~~may~~ be issued within a period of one month from the ^{as} date of communication of this order.

S. P. Mukerji
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER
11.XII.87