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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1519/91

DECIDED ON : November 12, 1992

K. L. Sharma

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM : THE HON'BLE SHRI P. C. JAIN, MEMBER (A)

THE HON'BLE SHRI J. P. SHARMA, MEMBER (J)

Shri B. S. Maine, Counsel for Applicant

Shri O. P. Kshatriya, Counsel for Respondents

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) -

The applicant in this O.A. under Section 19 of the Administrative Tribunals Act, 1985 was working as a Guard on the Northern Railway and retired from service on 31.7.1988 on reaching the age of superannuation. He has impugned order dated 1.8.1990 (Annexure A-1) by which, with reference to his representation dated 8.5.1990, the position in regard to his various claims for payment was informed to him. He has prayed for setting aside the aforesaid impugned order and for a direction to respondent No. 2, namely, The Divisional Railway Manager, Northern Railways, Allahabad (UP), to (1) for immediate payment of interest on the delayed payments of Death-cum-Retirement Gratuity and encashment of leave salary; (2) for payment of arrears of encashment of leave salary for 63 days amounting to Rs.7,220/-; and (3) for refunding the amount recovered towards rent and electric current charges.

2. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicant.

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As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this O.A. at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. It may be stated at the outset that though the impugned order pertains to a variety of claims, partly for the service period and partly for retirement dues, the learned counsel for the applicant urged us to consider his following three claims :-

- (1) payment of interest on the delayed payment of DCRG and encashment of leave salary;
- (2) sanction of leave encashment to the extent of 63 days amounting to Rs.7,220/-; and
- (3) refund of the amount of Rs.792.55 recovered from his DCRG towards rent and arrear rent and electric charges.

4. We take up the contention of the parties on the above three points in seriatim. It is not in dispute that the applicant retired on superannuation on 31.7.1988 and that the DCRG is required to be paid, under the instructions of the Railway Board, within a period of three months. Thus, it should have been paid by 31.10.1988. However, learned counsel for the applicant contended that it was paid only in April, 1989. The respondents in their reply on this point have stated that the delay took place because of time taken in obtaining a clearance of Commercial Debit as the applicant was holding the post of Guard which involved dealings with cash. It is further stated that after receipt of the aforesaid
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clearance, the DCRG due to the applicant was passed for payment ~~payment~~ under CO7 No. 6653 dated 15.2.1989. It is further stated that the DCRG can be withheld upto six months on account of clearance of Commercial Debit and as such no interest is payable under the rules. However, they have neither placed on record nor shown to us at the time of oral hearing any rule/instructions in support of the contention that the DCRG could be withheld for a period of six months for obtaining clearance of Commercial Debit. Further, the applicant in his rejoinder has stoutly rebutted the contention of the respondents that the applicant was handling cash while working as a Guard, and ^{has stated} that the duties of Guard do not involve handling of cash. The learned counsel for the respondents could not state before us as to why this contention of the applicant in his rejoinder should not be accepted. In view of these facts it is clear that the applicant is entitled to simple interest at the rate of 12 per cent per annum on the amount of gratuity from 1.11.1988 till 28.2.1989.

5. As regards the delay in the payment of amount of leave encashment, it was contended before us that this was also received by the applicant in April, 1989. The reply of the respondents states that encashment of unutilized leave on average pay for 177 days due to the applicant amounting to Rs.20,283/- was released and passed for payment vide CO7 No. 6258 dated 24.1.1989, and that no interest on this account is payable under the rules. Under the existing Government orders, amount on account of encashment of leave should be paid to the employee immediately on retirement. This having not been done, the applicant is entitled to simple interest on Rs.20,283/- at the rate of 12 per cent per annum from 1.9.1988 till 31.1.1989.

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6. As regards the entitlement of the applicant in the matter of encashment of leave on average pay, the applicant has contended that there was a balance of 240 days at his credit on the date of his retirement and in support of this contention he has placed a copy of his leave account, which is stated to have been maintained by him, at Annexure A-4. At the bottom of this annexure, it is also stated that this leave account has also been verified by the Chief Controller, Northern Railway, Tundla. The stand of the respondents is that as per leave record of the applicant maintained by the department, only 177 days of unutilized leave on average pay was to his credit which has been encashed. It is further stated that they are concerned with the leave account maintained by them which is authentic and has no concern with the leave account kept by the applicant. However, learned counsel for the respondents did not produce for our perusal the leave account maintained by the respondents. From the material placed on record, it appears to us that the dispute in this regard at least partly arises due to the contention of the applicant that his requests for sanctioning commuted leave on medical grounds instead of leave on full average pay, were not attended to by the officers of the respondents. This impression of ours is substantiated by Annexure A-5 placed on record by the applicant in which four requests pertaining to some periods in 1976, 1977 and 1988 for commuting leave on half average pay into leave on full average pay on account of sickness, have been referred to. Suffice it so say that so far as these requests are concerned, if the applicant was not satisfied by the action taken by the respondents on his requests, he should have agitated the matter at the appropriate time and on the basis of such statement now it (L.e.)

is not possible to give any direction to the respondents that his leave account should be re-worked. However, these requests at Annexure A-5 do not explain the difference of 63 days as per the claim of the applicant and the leave shown to his credit by the respondents. We, therefore, consider it necessary that the applicant should be permitted to make a self-speaking representation in the matter of leave on full average pay to his credit on the date of retirement giving all documentary evidence in his possession in support of his case within a period of one month from the date of this order and the respondents should then examine his claim with reference to official records after giving an opportunity to the applicant of being personally heard, and if leave more than 177 days which has been encashed is found to be due to the applicant, encashment for the extra number of days should be sanctioned expeditiously.

7. The amount of Rs.792.55 admitted to have been adjusted from the amount of DCRG otherwise due to the applicant is as below :-

Quarter No. 610-D

(1) Rent and arrear rent (Railway quarter vacated on 21.4.88)	Rs. 578.92
(2) Final electric bill	Rs. 190.42

Quarter No. I-L

(1) Rent from 22.4.88 to 30.4.88	Rs. 5.58
(2) Final electric bill	Rs. 15.00

The respondents in their reply have explained these amounts further. It is stated that the recovery of rent for quarter No. 610-D was made through salary bill at the rate of Rs.26.40 per month upto 30.6.1987 instead of revised rent at the rate of

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Rs.28.50 per month w.e.f. 1.4.1983 and this accounted for adjustment of Rs.107.10 from 1.4.1983 to 30.6.1987 from his DCRG. Further, the rent of Railway quarter No. 610-D from 1.7.1987 to 21.4.1988 was recovered at the rate of Rs.26.40 per month through salary bill instead of revised flat rate of rent at the rate of Rs.75/- per month and this accounted for a sum of Rs.471.42 for the period 1.7.1987 to 21.4.1988. It is also stated that recovery towards electric charges is made from salary bill on average metre reading basis and on vacation of the aforesaid quarter on 21.4.1988, the metre was broken and final electric bill for Rs.190.50 as advised by Electric Foreman was adjusted from DCRG. Moreover, in respect of quarter No. I-L, it is stated that the flat rate of rent of Rs.55/- per month and as such difference of rent from 22.4.1988 to 30.4.1988 amounting to Rs.8.50 and final electric bill amounting to Rs.15/- was adjusted. Though the applicant has stated in his O.A. that he had vacated the quarter on 21.4.1988, as admitted by him before us at the time of oral hearing, this statement is correct with respect to quarter No. 610-D, and that he occupied quarter No. I-L from 22.4.1988 to 30.4.1988. Learned counsel for the applicant strongly urged before us that none of these amounts could have been recovered from his DCRG without giving him opportunity to show cause. We are not persuaded by this contention for the simple reason that recovery of rent/licence fee and electricity and water charges, if any, for the period during which the applicant was in service will be recovered from his gratuity at the time of his retirement. Moreover, the applicant has not placed any material on record to show that the rate at which the rent has been worked out was not authorised rate. The amount involved is small and the basis of calculation has been C.L.

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sufficiently explained and these dues related to the period when the applicant was in service. As such, we do not consider it proper to find any fault with the action of the respondents in this regard.

8. In the light of the foregoing discussion, this O.A. is partly allowed in terms of the directions as in paras 4, 5 and 6 above. These directions should be complied with expeditiously, and the direction in regard to the payment of interest on the amount of gratuity and leave encashment as in the relevant paras should be complied with within a period of two months from the date of receipt of a copy of this order by the respondents. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

Signature.

(J. P. Sharma)
Member (J)

(Dec 12/11/92)
(P. C. Jain)
Member (A)