

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

Date of Decision: 31.07.1.992

DA 1904/91

NASIRUDDIN AHMED ... APPLICANT.

Vs.

UNION OF INDIA & ANR. ... RESPONDENTS.

CORAM:

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

For the Applicant ... SHRI B.S. MAINEE.

For the Respondents ... SHRI R.L. DHAWAN.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

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

The applicant is an Ex. Senior Clerk under Permanent Way Inspector, Amroha, and is aggrieved by the failure of the respondents to pay DCRG as well as other dues to the applicant although he had retired from the Railway service u.s.f. 31.1.1989. The applicant has claimed the relief for a direction to the respondents to pay the amount of DCRG with interest @ 18% p.a. from the date of retirement to the date of payment, and a further direction to pay

leave encashment for 177 days with interest @ 10% per annum; another direction to the respondents to pay an amount of Rs.5469/- against TA for the month of December, 1987 and also for the period from March, 1988 to January, 1989 with interest @ 10% per annum, and lastly a direction to the respondents to recover normal rent for the railway quarter occupied by the applicant from his pay.

2. The facts of the case are that he joined the Northern Railway as Tool Checker on 22.1.49 and he retired on 31.1.1989 as Senior Clerk under PWI, Amroha. The applicant was allotted a railway Quarter No.E/458. He applied for retention of this railway quarter which was allotted to the applicant by letter dated 4.10.89 upto 31.5.89. The applicant further stated that he applied for further extention for another four months which was also granted. While applicant was posted as Senior Clerk he had to go on official duties at out stations and as such an amount of Rs.5469/- as T.A. bill was not paid to the applicant. The applicant has only been paid leave encashment for 63 days though the leave was due for 240 days. However, the leave account was not maintained properly by the respondents. The sick period of the applicant which was to be treated and regularised as commuted leave has been debited against LAP due to the applicant. The applicant was informed by the letter 1.3.90 that the DCRG could not be released

until the vacation of the railway quarter. He intimated the respondents that he will vacate the railway quarter when the DCRG amount will be paid. Further, it is said that the retention of the quarter has nothing to do with the payment of DCRG as well as the post retirement passes.

3. The respondents contested the application, the respondents have taken preliminary objections that the applicant has prayed for plural remedies which are not consequential to the one and other and so the application is bad. Regarding the T.A. claims of Rs.5469/- for the month of December, 1987 and also for the period from May, 1988 to January, 1989, the claim is barred by time as the application for this relief has been filed on 16.8.91. It is further stated in terms of para 323 of Manual of Pension Rules, 1950, the government dues are recoverable from DCRG and it is permissible to withhold payment of DCRG till the details government dues are received from various offices. As regards the leave encashment the payment of cash equivalent of leave to the extent of the leave which remains un-utilised on the date of retirement has been paid. Further, it is stated that only retention of the railway quarter was allowed till 31.5.89. As regards the payment of T.A. bill the applicant should have claim the amount within one year. Further, the applicant has stated that he has

remained sick for 118 days from 30.5.88 to 21.7.88 and again from 22.7.88 to 24.9.88 and the applicant claims an amount of TA for the period as shown in para 4.8 in the counter. The leave account of the applicant has been correctly maintained and regularisation of sick period of 118 days as commuted leave cannot be done after such a long time. The post retirement complimentary pass is admissible to a retired railway servant subject to his fulfilment of conditions precedent laid down by the Railway Board and as per instructions the applicant is not eligible for grant of post retirement passes at present.

4. The applicant has filed a rejoinder where he stated that the DCRG is to be paid within three months from the date of retirement. Further, in para 323 of the Pension Manual permits withholding of 10% of the gratuity subject to a maximum of Rs.1000/- is permissible. The applicant has submit T.A. bills regularly at the proper time. However, the T.A. bills which are recorded in the application are of June, July, August & September, 1988 pertain to the year 1987. The respondents have to adjust the sick period against the commuted leave.

5. The applicant has also filed an additional rejoinder dated 21.5.92. That PWI, Amroha had reminded the Asstt. Engineer, Mapur vide letter 12.2.89 for the T.A. bills

of December, 1987, March, 1988, May, 1988, September, 1988, November, 1988 and January, 1989. In the same letter PWI informs the Asstt. Engineer that the period from 30.5.88 to 249.88 has been regularised as commuted half average pay leave.

6. I have heard the learned counsel for both the parties at length. As regards the payment of DCRG under para 323 of the Manual of Railway Pension Rules, 1950, the respondents can only retain Rs.1000/- or 1% of the amount of DCRG. However, the Railway Board by the order dated 31.12.90 have issued a circular, which is reproduced below:

"Taking into account all the aspects, the extent to which gratuity can be withheld in cases of non-vacation of railway quarters has been reviewed and it has been decided that retirement/death gratuity or special contribution to P.F., as the case may be, should be withheld in full for non-vacation of railway quarters not only after superannuation but in all cases cessation of service, namely voluntary retirement, death etc. Further, the amount withheld should remain with the Administration only in the form of cash without conversion into any type of security lest the very purpose of withholding full DCRG should get defeated. It may also please be kept in view that the gratuity should be released as soon as the quarter is vacated so that there is neither any hardship to the retired employee or the family nor there is any claim for payment of interest on withheld gratuity for reasons of any administrative lapse."

Further, in the case of Shiv Charan Vs. UOI, SLP 881/90, the Hon'ble Supreme Court has observed as follows:-

"Having considered the facts and circumstances of this case and having heard counsel for both the parties, we are of the opinion that the appropriate order would be to allow this appeal and to direct that the possession of the railway quarter, now in

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possession and occupation of the respondent, should be handed over by the respondent and taken possession of by the appellants or their representatives on or about 23rd May, 1990 and the entire amount due and owing to the respondent, less the amount mentioned hereinafter will be handed over by the officer taking possession then and there.

Rent for the period overstayed may be deducted from the payment to be made as aforesaid. The appellants will be entitled to make claim in accordance with law to which they are entitled to, for any excess or penal rent, and the respondent will be at liberty to make any claim for compensation in the appropriate forum which he claims to be entitled to."

The learned counsel for the applicant has filed a copy of the judgement in OA 2719/90, decided on 26.8.91, Mahadev Singh Kapoor Vs. UOI, decided by the Principal Bench. In this case, the Full Bench decision of Wazir Chand Vs. UOI (ATJ 1991(1)60) has also been referred. In that case it has been decided that the respondents cannot ~~be~~ withhold the DCRG amount in spite of the various circulars of the Railway Board. It has also been decided that the railway administration cannot withhold or dis-allow one set of post retirement pass for every month on the ground of non-vacation of railway quarter after the retirement of the railway employee. However, the judgement of the Wazir Chand's case, Full Bench has been stayed by the Hon'ble Supreme Court in SLP 10266/91 by the order dated 6.6.91 directing that the operation of the impugned judgement is stayed on railways paying all retiral benefits due to the petitioners.

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7. However, in view of the decision of Shiv Charan Vs. UOI referred to above, the respondents have to pay the DCRG amount and for the penal rent they can enforce their right in proper forum. In the case of Mahadev Singh Kapoor supra, the Division Bench of the CAT directed the payment of the amount of the gratuity due to the applicant but rejected the prayer for the payment of interest. in view of the Supreme Court judgement in the case of Raj Pal Jahi & ors. Vs. UOI & ors., decided on 27.11.89 SLP 7688-91/88. It was further directed that after receiving the said amount the applicant shall vacate the premises and hand-over the possession of the quarter to the respondents. It is also not observed that the rent for the period overstayed may be deducted from the payment to be made to the applicant and the respondents will be entitled to make claim in accordance with the law to which they are entitled to for any excess or penal rent and the applicant shall be at liberty to make any claim for compensation in the appropriate forum to which he claims to be entitled to. I am in full agreement with the aforesaid judgement of the Division Bench.

8. As regards the payment of amount of TA bills for certain periods, the claim of the applicant is barred by time. The applicant should have claimed the same out of

in the limitation and he had not come to the court in the proper time. The present application has been filed by the applicant on 20.8.91. While he claims T.A. amount of 1987 and some period of 1988 and of January, 1989. Though, the applicant has filed an additional rejoinder but that will not add any weight unless and until the applicant should have got the amended application stating the same as a fact. The endorsement of the PWI does not carry any weight nor it is authenticated. Thus, the applicant cannot be allowed that relief.

9. As regards the leave encashment for the unutilised leave by the applicant due to him at the time of retirement, the applicant has stated that he was on sick leave and that should have been commuted on half leave on average pay. The applicant, however, in the application in para 4.10 mentioned the fact that the commuted leave has been debited against LAP due to the applicant for sickness period for 118 days and that should have been regularised as commuted leave. The respondents, in reply to para 4.10 stated that the leave account has been correctly maintained and stated that action in this regard cannot be taken at a late stage. However, in the additional rejoinder, the applicant has annexed a letter addressed by PWI, Amroha

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to Assistant Engineer, Northern Railway, Hapur and in that he has clearly written that for the period from 30.5.88 to 4.9.88 the period was regularised as commuted half LAP but LAP encashment has not yet been paid for this period. It does not appear what action the respondents have taken on this letter of PWI, written to Assistant Engineer, Hapur. The respondents in their reply have not stated clear facts and merely stated that the applicant has not come at proper time for commutation of the sick leave. It is not disputed that the applicant was on leave from 30.5.88 to 4.9.88. However, it appears that in the photo-stat copy of the letter of PWI attached as a annexure to the supplementary rejoinder the period is 30.5.88 to 4.9.88 but before 4 some word appears to be missing and it can easily go to digit 2 of 24 because in para 4.7. and 4.8 of the counter the respondents have referred to the fact that the applicant remained sick for 118 days from 30.5.88 to 21.7.88 and again from 22.7.88 to 24.9.88. In view of this fact, this period of 118 days when stood regularised as commuted half LAP then the applicant is entitled to encashment thereof.

9. In view of the above discussion, the application is disposed of with the following directions :-

- a) The respondents shall release the DCRG in favour of the applicant after recovering the penal rent,

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as distinct from the damages from the amount of DCRG, less amount of penal rent for the period of unauthorised occupation of the accommodation.

b) Claim for interest on DCRG amount is disallowed in view of the Raj Pal Wahi case supra.

c) The respondents shall be free to make claim for compensation or damages in the appropriate forum to which they may claim to be entitled to.

d) Respondents shall vacate the quarter then and thereafter receiving the aforesaid amount of DCRG.

e) Respondents are also directed to pay to the applicant cash equivalent of the leave salary of 118 days as they have only paid to the applicant encashment of 63 days' leave only.

Respondents to comply with the above directions within a period of 8 weeks from the date of receipt of a copy of this order. In the circumstances, parties are left to bear their own costs.

Done on 31.7.92
(J.P. SHARMA)
MEMBER (J)