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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No.2134/92.

Date of Decision: 30.10.92

R.K.Gaur

...Applicant

Versus

Union of India and Another

...Respondents

CORAM:

THE HON'BLE MR. J.P.SHARMA, JUDICIAL MEMBER.

For the applicant

Shri O.N.Moolri, Counsel.

For the respondents

None.

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

JUDGMENT

The applicant is a retired Head Clerk, Northern Railway, New Delhi and has filed this application under Section 19 of the Administrative Tribunals Act, 1985, having the grievance that he has not been paid the pension, gratuity and commutation of pension as also the salary for the period from 1-11-88 to 7-11-88, leave encashment and bonus etc. and has prayed for the following reliefs :

'That the applicant prays to the Hon'ble Court be pleased to direct the respondents to pay:-

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| (i) Commutation of pension | Rs.28,800/- |
| (ii) Pension and arrears of Pension | Rs.32,368/- |
| (iii) Gratuity | Rs.23,760/- |
| (iv) Leave encashment for 150 days | Rs.8,855/- |
| (v) Bonus | Rs.2,041/- |
| (vi) Arrears of salary from 1-11-88 to 7-11-88 | Rs.422/- |

- (vii) Interest on the above outstanding dues from 8-11-88 to the date of actual payment by the respondents to the applicant.
(viii) Cost of Rs.5,000/- towards cost of the proceedings. "

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2. The applicant has also filed an application earlier OA 2050/88 regarding correction of his date of birth and another OA 1878/92. The OA 1878/92 was withdrawn by the applicant on 14-8-92.

3. The notice was issued to the respondents on 19-8-92 on this application filed on 17-8-92 and an interim relief was also granted that the applicant be not evicted from the quarter no.15/8, Kishan Ganj, Railway Colony, Delhi. The matter was listed on 2-9-92 when the matter was **admitted** and Shri R.L.Dhawan, Advocate appeared for the respondents. Four weeks' time was allowed to the respondents to file the reply and the interim relief was allowed to be continued till 27-10-92. The matter came up on 27-10-92 when the learned counsel, Shri O.N.Moolri, appeared for the applicant and none appeared for the respondents in spite of service nor the counsel Shri R.L.Dhawan, who represented the respondents on 2-9-92, appeared, so, the arguments have been heard on interim relief as well as on disposal of the Original Application as it related to retirement benefits.

4. The learned counsel for the applicant, on the basis of the pleadings stated in the Original Application, argued that the applicant filed OA 2050/88 for correction of date of birth but that was disposed of on 20-1-89 directing the respondents to consider the representation of the applicant and give a final decision on the same. According to the applicant, his recorded date of birth is 5-10-30 but he retired from the service on 7-11-88. On his retirement, he was getting the pay Rs.1440/- in the grade of Rs.1400-2600. The applicant, while in service, was allotted a railway quarter no.15/8, Kishan Ganj, Railway Colony, Delhi and he has also not vacated the same in spite of his retirement, as admitted by him, on 7-11-88.

5. The learned counsel for the applicant further argued that the applicant has been paid the amount of G.I.S., G.P.F. and leave encashment. He has still the outstanding amount against the

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respondents all the D.C.R.G., leave encashment of 150 days as well as bonus for the year 1988-89 and salary for the period 1-11-88 to 7-11-88. The learned counsel also prayed for interest on this amount. Alongwith this application, a copy of the representation dated 4-3-89 has been filed followed by other representations from time to time.

6. I have gone through the various representations filed and representation dated 4-3-89 where the applicant has only claimed retirement benefits as he retired w.e.f.1-11-88, subject to final adjustment. The representation dated 12-12-89 is only a reminder. So was the representation dated 4-4-90, 6-12-90, 20-1-91, 18-3-91 and 5-1-92. In none of these representations, the applicant has ever claimed the bonus or the leave salary for the period from 1-11-88 to 7-11-88. The applicant, therefore, has not exhausted the departmental remedy in that regard firstly on the point of limitation as the present application has been filed on 17-8-92 while the claim of bonus relates to the period of the year 1988-89 on pro rata basis. Thus, both these reliefs claimed by the applicant cannot be considered by the Tribunal for the first time when the applicant has not raised these grievances with the respondents at the relevant time and has not come to the Tribunal within the period of limitation though he has filed an earlier application for correction of date of birth, OA 2050/88, and which, according to him, has also been disposed of in January, 1989.

7. Now, the relief that subsists for decision is regarding commutation of pension and arrears of pension and gratuity as well as leave encashment for 150 days. The applicant has already been paid leave encashment as alleged by him in para 4.2 of the OA, but he has been paid only for 90 days. There is nothing on record to show that the applicant has accumulated to his credit leave to the extent of 240 days on the date of his retirement, i.e., 1-11-88. Since the respondents have not filed any reply in that regard and the applicant has also not made any effective representation regarding this effect

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earlier, so it is not evident that in actual that leave stands to the credit of the applicant on the date of his retirement on 1-11-88 for 240 days and not only 90 days. In fact, when in January 1992, the applicant was paid the amount equivalent to leave of 90 days, then in the representation, he has preferred on 5-1-92, he should have taken this issue but it is missing from the representation (Annexure A-7). A direction in this regard, therefore, can be issued to the respondents to check the leave account of the applicant afresh and do the needful if there is any leave beyond 90 days to the credit of the applicant and for that amount equivalent to that leave period be paid to the applicant.

8. The applicant, as alleged, has not been paid pension nor any commutation of pension. The applicant, no doubt, is entitled to pension under Manual of Pension Rules, 1950 and the applicant as averred in the application has put in more than 33 years of service as he joined in February 1953 and retired in November, 1988. So, the applicant is entitled to the pension as well as commutation of pension as per rules and the respondents have no right to ignore the same. The respondents, therefore, have to fix the pension of the applicant and allow commutation of pension as per rules. Since it is not evident from record that the delay in grant of pension being due to the act of the applicant, so the applicant is also entitled to interest on that arrears of pension as well as on the amount of commutation of pension two months after the date of his retirement.

9. The applicant is also entitled to gratuity on the basis of the service he has put in with the respondents and under para 3.23 of the Manual of Railway Pension Rules, 1950, the respondents can only retain an amount not exceeding Rs.1,000/- towards recoverable dues. In no circumstance, the respondents can withhold the entire amount of D.C.R.G. The judgment in the case of WAZIR CHAND Vs. UOI & ORS. decided on 25-10-1990 (FULL BENCH JUDGMENTS OF CAT 1989(1) VOL.2, page 287), the Tribunal came to the following conclusions :

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"(i) Withholding of entire amount of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible.

(ii) Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted.

Issue No.2:

(i) A direction to pay normal rent for the railway quarter retained by a railway servant in a case where DCRG has not been paid to him would not be legally in order.

(ii) The quantum of rent/licence fee including a penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.

(iii) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it."

10. The matter was also considered by the Hon'ble Supreme Court in the case of UNION OF INDIA VS. SHIV CHARAN, reported in 1992 ATC Vol. 19, p.129 and it has been held that the respondents can deduct the rent due from the incumbent from the outstanding DCRG and pay the balance irrespective of the fact that the incumbent has over-stayed in the railway quarter in an unauthorised manner after the date of retirement. It has been further held that the respondents shall be free to claim market rate of rent and damages under the provisions of P.P.(E.O.U.) Act, 1971.

11. As regards the claim of interest on the unpaid amount of DCRG, the Hon'ble Supreme Court in SLP No.7688-91/88, RAJ PAL WAHI & ORS. VS. UOI & ORS., decided on 27-11-89, has observed as follows:

"....In such circumstances we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse. Therefore, we are unable to accept this submission advanced on

behalf of the petitioners and so we reject the same. The Special Leave Petition thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

12. In view of the law declared by the Hon'ble Supreme Court as above and in view of the discussions aforesaid, the present application is disposed of as follows:

(a) the respondents are directed to fix the pension and grant the arrears of pension, if not already granted, alongwith commutation of pension with interest at the rate of 12% p.a. from the date two months after the date of retirement of the applicant till the date of payment;

(b) the respondents are also directed to pay gratuity due to the applicant after recovering the penal rent, as distinct from damages, from the amount of DCRG and pay the amount of DCRG less the amount of penal rent for the period of unauthorised occupation of the accommodation. Since the delay in payment of DCRG is not on account of administrative lapse, no interest will be payable on the amount of DCRG as held by the Hon'ble Supreme Court in Raj Pal Wahi's case (Supra). The respondents shall be free to proceed against the applicant for the market rate of rent/damages from the applicant for unauthorised retention of the railway quarter after retirement allowing the grace period of four months less the amount deducted from DCRG as said above;

(c) the applicant shall vacate the railway quarter no.15/8, Kishan Ganj, Railway Colony, Delhi as early as possible but not later than three months from the date of this order and the respondents shall make payment of DCRG during the same period as ordered above. In fact, the payment of DCRG and the vacation of the quarter may be resorted to simultaneously;

(d) the respondents shall also consider the claim of the applicant for further leave encashment of 150 days if that leave is at the credit of the applicant on the date of his retirement, i.e., 1-11-88 over and above 90 days for which leave encashment has already been paid to the applicant in January, 1992.

13. The relief claimed by the applicant for bonus for the year 1988-89 and for the salary for the period from 1-11-88 to 7-11-88 is rejected.

In the circumstances, the parties to bear their own costs.

J. P. Sharma

(J.P.SHARMA)
JUDICIAL MEMBER

30.10.92

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