

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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O.A. NO. 521/93

New Delhi this 11th day of February, 1994.

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

Shri H.M. Prabhakar,
Son of Shri P.N. Prabhakar,
D-1, Old Area, Safdarjang Airport,
New Delhi

.. Applicant

(By Advocate Shri B.B. Raval)

VERSUS

The Union of India through

1. The Secretary,
Ministry of Civil Aviation,
Sardar Patel Bhavan,
Parliament Street,
New Delhi-110 001.
2. The Director General of Civil
Aviation,
Technical Centre,
Opp. Safdarjang Airport,
New Delhi-110 003.
3. The Accounts Officer,
Central Pay & Accounts Officer,
Safdarjang Airport,
New Delhi.

.. Respondents

(By Advocate Shri Jog Singh)
with Shri S.N. Dwivedi, Sr. Admn. Officer)

ORDER (Oral)

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

The applicant was working as Airworthiness Officer in the office of the Director General of Civil Aviation, New Delhi. He retired from that post on 31.12.1991. He was on deputation to National Airport Authority as Technical Officer with effect from 1.6.1986. However, he did not opt for absorption in National Airport Authority (NAA) and he continued on deputation with the Corporation holding a lien against his regular post in the parent office. The

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grievance of the applicant is non-release of final pension, gratuity and other retirement benefits .

The applicant has claimed the following reliefs:

- i) That the Respondents may be directed to sanction final pension admissible to the applicant on the basis of entire service.
- ii) That the respondents may also be directed to release the amount of D.C.R. Gratuity, Leave Encashment, Commutation as due to the applicant from the date of his retirement i.e. 1.1.1992.
- iii) That the directions may also be issued to the respondents to release the amount of salary and allowances for January, February November and December 1991 due to him by virtue of his performing active duties under the respondents.
- iv) The respondents may also be directed to treat the period of his suspension from 22.2.1991 to 12.11.1991 as on duty for all intents and purposes and he may be paid full pay and allowances alongwith arrears and other consequential benefits, including increment.
- v) That the Hon'ble Tribunal may also direct the respondents to pay interest at the rate of 18% per annum from 1.1.1992 till the date of payment of all dues of Pension, Gratuity, Leave Encashment, Commutation etc.
- vi) That the respondents may further be directed to pay the above dues forthwith so that he may be able to make arrangement for hiring private accommodation.
- vii) Such other relief as this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case.
- viii) The cost of the proceedings may also be awarded in favour of the applicant and against the respondents.
- ix) The demand notice of the respondents to the tune of Rs. 35,008/- may be set aside.

2. A notice was issued to the respondents who contested the application. It is stated that during his deputation to National Airport Authority (NAA), he was placed under

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suspension with effect from 21.2.1991 by the Chairman, NAA, New Delhi and disciplinary proceedings were initiated against him vide Memo dated 1.5.1991. Subsequently, he was repatriated from NAA to DGCA with effect from 12.11.1991 and adjusted against the post of Air Worthiness Officer. The NAA has dropped the disciplinary proceedings against the applicant by the order dated 23.11.1992 and revoked his suspension vide order dated 19.5.1993. The delay in sanctioning pension and DCRG has been due to the pendency of the disciplinary proceedings against him. Since the disciplinary proceedings were dropped he became eligible for DCRG, Commuted pension, pay and allowance for the period of suspension. Payment on account of GPF, Leave Encashment and Group Insurance Scheme have already been paid to him. Consequent upon his retirement on 31.12.1991, the applicant was bound to vacate the Government accommodation allotted to him at D-I Old Area, Near Delhi Flying Club, Safdarjung Airport, New Delhi. Since he did not vacate the accommodation, the Estate Officer has issued Order dated 12.1.1993 under the Public Premises (Eviction of Unauthorised) Occupation) Act, 1971 directing him to vacate the said premises. His appeal against the eviction order of the Estate Officer has been dismissed and the order of the eviction has been upheld. The Estate Officer has also issued a notice for recovery of Rs. 35,008/- under PP Act 1971 as a damage on account of unauthorised use and occupation of the Government accommodation is not recovered against him. The provisional pension was sanctioned to him vide order dated 23.3.1992. After dropping the disciplinary proceedings on 23.11.1992, steps have been taken to process the payment of DCRG as well as commutation amount of pension. The pay and allowances for the month

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January and February and Upto 12th November, 1991 have to be paid by the National Airport Authority. The pay and allowances for the month of December 1991 have been withdrawn because the NAA has intimated that a sum of about Rs. 9,000/- is outstanding against the applicant.

3. After the arguments were heard the applicant also filed MA on 3.2.1994. In this MA the applicant has never reiterated the points already taken in the case. It is further stated that he has received only 12,103/- as the gratuity while his actual entitlement to gratuity comes to Rs. 57,750/-. The respondents have illegally deducted an amount of Rs. 34,000 rent at market rate and Rs. 1008/- as normal rent) total Rs. 35,008/-. In addition to an amount of Rs. 9,198/- has been deducted on account of alleged over-payment of salary made by the National Airport Authority. In addition Rs. 1,000/- has been deducted as security. This over-payment of excess salary is said to be for the period from 25.5.1991 to 30.9.1991 during which period the applicant was under suspension. So the question of recovery of any over-payment on account of salary does not arise because the entire period of suspension has already been treated as on duty by the order dated 13.8.1993. In MA a request has also been made for payment of interest.

4. I have heard the learned counsel for the applicant at length and perused the record of the case. The respondents have given the statement that the following payments have been made to the applicants:

- a. GPF amounting to Rs. 24,827/- has been paid on 19.2.1992.
- b. CGEGIS AMOUNT TO Rs. 11,348/- has been paid on 9.9.1992.
- c. Encashment of Leave Salary amounting to Rs. 28,160/- has been paid on 14.9.1992.

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- d. The applicant has been granted regular pension at the rate of Rs. 1740/- per month with effect from 1.11.1993
- e. DCRG amounting to Rs. 57,750/- has been sanctioned.
- f. Commuted value of pension amounting to Rs. 68,278/- has been sanctioned.

5. The respondents have also given the dues outstanding against the applicant which are as follows:

- i) Rs. 35,008/- on account of Licence Fee/damages in respect of Government accommodation which has been occupied unauthorised since 1.1.1992 till date.
- ii) Rs. 9,198/- as over-payment by NAA as intimated by NAA, New Delhi.
- iii) Rs. 441/- as over-payment on account of pay and allowance.
- iv) Rs. 1,000/- as withheld amount of DCRG

6. The respondents have also given the following details of the additional amount which is due to be paid to the applicant:

- a) Difference of pay on account of encashment of leave Rs. 16,640/- for which a cheque has been drawn dated 20.1.1994.
- b) Difference of pay and allowance due to revocation of suspension for the period from 13.11.1991 to 31.12.1991, the period served with Civil Aviation Department for Rs. 6,448/- and paid by cheque dated 20.1.1994.

7. The departmental representative has also furnished a statement on 8.2.94 in presence of the applicant wherein another cheque of Rs. 18,978 dated 31-1-94 and another cheque of Rs. 9,198 dated 7-2-94, the former regarding same arrears from the National Airport Authority and the latter on account of deduction of the salary of the period under suspension which was shown in the last pay certificate of the applicant when he joined in the parent department, have been furnished.

8. The reliefs claimed by the applicant has already been referred to above. Relief no.1 is for the sanction of the

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final pension which has already been granted to the applicant. Relief no.2 is for release of leave encashment, commutation of pension and the amount of DERG. All these amounts have since been paid excepting an amount of Rs.35,008 which has been ~~xxx~~ detained in addition to Rs.1,000 as security by the respondents because the applicant has not vacated the Govt. accommodation allotted to him while in service D-1, Old Area, Safdarjung Hospital, New Delhi. This matter has to be considered. The third relief claimed by the applicant is for releasing of certain amount of salary and allowances for January, February, November and December, 1991 and this amount has already been paid after his retirement and revocation of suspension. So, this relief also stands allowed. The relief no.4 is for treating the period of suspension from 27th February to 12th of November, 1991 as on duty for all purposes and the applicant has been paid for that period also and the due increment has also been given by the increment to the applicant. This relief also stands allowed. Regarding relief no.5, it is regarding payment of certain interest and that will be considered. Relief No.6 is only another averment that the amount be paid immediately forthwith and will follow the order being going to ^{be} passed. Relief no.7 is for passing of such an order which deemed fit in the circumstances of the case, shall be considered finally. Relief no.8 is for the cost of the proceedings, and this shall also be considered. Regarding relief no.9 to set aside the demand notice for Rs.35,008, it is also covered by relief no.2 and shall be considered.

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9. The learned counsel for the respondents also placed before the Bench certain facts regarding non-vacation of the quarter by the applicant. In fact, there was an interim direction issued on 20-5-93 and also to effect recovery from the applicant. This interim direction has been continued by the order dated 27-8-93 till the next date of hearing, i.e., 2-11-93. Afterwards, on 11.11.93, another order was passed that the applicant be not dispossessed till 30-11-93. The interim order was not continued thereafter. We have also heard Shri B.B. Raval, counsel for the applicant even at the cost of prolonging the hours of the sitting of the Bench. Mr. Raval has contended that the respondents should give the details. In any case, the applicant was asked repeatedly as to when he is prepared to vacate the premises in question inspite of the order of eviction having been passed against him under P.P.(E.O.U.O.) Act, 1971. The applicant who appears so simple only reiterates that his dues have not been paid in full but that is not a correct statement of fact. Most of the cheques which were drawn have been paid to the applicant before the Bench itself. From this, it appears that the contention of the department and the counsel for the respondents ~~is~~ to be not without force that in order to retain the premises which were allotted to the applicant, the applicant is adopting certain practices so that his stay in the said premises may be continued though he has no right to retain the premises from December, 91.

10. We are not going on that aspect since there is no stay operating for evicting the applicant any more. The departmental representative Shri S.N.Dwivedi, Sr. Admn. Officer has informed that the pay for the month of January

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and February, 1991 has already been drawn and added to the total of other arrears which amounted to Rs.18,978 and paid to the applicant by way of cheque no.776178 dated 31-1-94. However, the departmental representative shall give the details of this amount immediately to the applicant within three days.

11. As regards the payment of interest on delayed amount of payment, since the applicant has been in unauthorised retention of the quarter after his retirement and permissible period of four months, in equity, justice and fairplay, he is not entitled to interest on any amount which has been paid to the applicant.

12. As regards the payment of DCRG, we are supported by the case of Raj Pal Wahi ^{/Vs. U.O.I.} decided by the ^{/Hon'ble Supreme Court} - ^{/1988} - in SLP No.7688-91 of ^{/1988} in October, 1990. Now, most crucial question remains is of DCRG. As per the applicant, the amount comes to Rs.57,750. This amount has also been mentioned by the applicant in the M.A. moved for re-hearing. Out of this amount, only Rs.35,008 has been retained by the respondents. Rs.35,008 is because of the damages levelled on the applicant for unauthorised detention of the Government quarter beyond the prescribed period upto the date of 22-2-1993. One year more has passed since then. However, in view of the authority of the Hon'ble Supreme Court in the case of Union of India vs. Shiv Charan Singh reported in 1992 ATC Vol. 19 p.129, the respondents will pay the amount of DCRG less rent with liberty to the respondents to realise damages/penal rate of rent from the applicant under the relevant law. Regarding the other reliefs, we don't find that requires further consideration, as above discussion covers whole of the matter.

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13. In view of the above facts and circumstances, the application is disposed of in the following manner. The applicant has already been paid the final pension, the leave encashment, the commutation of pension and an amount of DCRG amounting to Rs.12,103 and Rs.9,198 by the cheques dated 10-12-93 and dated 7-2-94, respectively. These cheques have been accepted by the applicant. The balance amount of DCRG, i.e., out of a total of Rs.57,750, the respondents shall deduct the rent due from the applicant upto the date of this order and pay the balance amount to the applicant within a week. However, the respondents will be at liberty in view of the authority of the Hon'ble Supreme Court, referred to above, to claim damages/penal rent from the applicant, according to law or service conditions to which the applicant subscribe while in active service, if so advised.

14. The applicant shall vacate the premises in question immediately failing which he shall be further liable according to law to pay the damages and the respondents shall be free to carry out the eviction order for the premises in question. The stay order has already been vacated by its non-continuance. The applicant shall ^{not} be entitled to the grant of any interest on any of the amounts in view of the fact that the applicant has been in unauthorised occupation of the quarter from four months after the date of retirement w.e.f.31-12-91. However, the applicant shall be free to raise this issue when any claim by the respondents is filed for recovery of market rent/damages from the applicant for unauthorised retention of the quarter.

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15. The applicant in presence of his counsel Shri B.B. Raval has given undertaking that the applicant shall vacate the premises within two weeks. The respondents shall also send the details to the applicant by registered post showing that the unpaid salary has been included in the amount of Rs.18,978-00 paid by cheque dated 31-1-94. If the applicant does not vacate the Govt. premises in pursuance of his undertaking, the eviction order shall be enforced for vacation of the premises in question.

16. The application is disposed of, accordingly. Cost on parties.

J. P. Sharma

(J.P.SHARMA)
MEMBER (J)

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