

Reserved.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: This the eighteenth day of November 1999.

Coram:- Hon'ble Mr. Rafiq Uddin, Member (J.)

Original Application No.306 of 1996.

Sri Jagdish Lal Srivastava,
s/o late Sri Avadh Narain Lal Verma,
Ex- Work Mistry,
N.E. Railway Samastipur Division,
Narkatiaganj,

Presently and permanently residing at
village Hatwa, Post Bhatani,
Distt. Deoria (U.P.)

... Applicant.

(Through Sri Sushil Kumar Srivastava, Adv.)

Versus

1. Union of India, through General Manager,
N.E. Railway, Gorakhpur.

2. The Chirman,
Railway Board,
New Delhi.

3. The Divisional Railway Manager,
N.E. Railway,
Samastipur.

4. The Divisional Engineer,
N.E. Railway,
Samastipur.

5. The Divisional Personal Officer,
N.E. Railway,
Samastipur.

... Respondents.

(Through Sri G.P. Agarwal, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiquudin, J.M.)

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The applicant ~~the~~ retired as Work Mistry from

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North Eastern Railway, Samastipur Division on 31st August 1993. His grievance is that the respondents have deducted a sum of Rs.23504-35 P. as penal rent from his D.C.R.G. and have not paid packing allowance and the amount of leave encashment salary. The applicant has also claimed refund of Rs.23504-35 Paise being excess amount of rent deducted from his salary.

2. The admitted facts of the case are that the applicant was allotted railway residential quarter bearing No. G 278, Imali Road at Muzaffarpur in the year 1976. The applicant was later on transferred from Muzaffarpur to Narkatiaganj but he could not vacate the said quarter as according to him no accommodation was allotted by the respondents at the new place of posting. The applicant vacated the aforesaid quarter within two months after the date of his retirement i.e. on 27th October 1993. The respondents have illegally and arbitrarily deducted a sum of Rs. 19517-68 P. excess rent from his salary from the months of August 1976 to 1993. The applicant has also alleged that respondents have also withheld the amount of his D.C.R.G., packing allowance, leave encashment salary amounting to Rs.33000/-, Rs.2000/- and Rs.32000/- respectively. He, has, however, admitted that a cheque of Rs. 6402/- has been received by him from the respondents in the month of May 1995.

3. The respondents have opposed the claim of the applicant on the ground that since the applicant did not vacate the residential quarter allotted to him after his transfer from Muzaffarpur to Narkatiaganj, he was in unauthorised and illegal occupation of the aforesaid quarter during the period from March 1991 to 27th October 1993. It is further claimed that as

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per rules the applicant is liable to pay the penal rent of the said quarter for the aforesaid period. The respondents have assessed a sum of Rs. 23504-35 P. as penal rent and the same has been deducted from the amount of his D.C.R.G. i.e. Rs. 33000/- and balance amount of Rs. 6400-02 P has been paid to him through cheque dated 27.4.95. The respondents have denied for having deducted a sum of Rs. 19517-68 Paise as excess rent from the salary of the applicant.

4. As regards the payment of packing allowance, it has been stated by the respondents that after his retirement the applicant settled down at Muzaffarpur and as such he did not cover 21 K.Ms. distance, he is not entitled to the packing allowance. The respondents have also stated that only five days L.A.P. was due at his credit at the time of his retirement hence Rs. 639-95 P. as leave encashment has been paid to him.

5. I have heard the arguments of the learned counsel for the parties and perused the record.

6. It is an admitted case of the respondents that after making assessment of the alleged penal rent in terms of certain Railway Board's Circular, a sum of Rs. 23504-35 Paise was recovered from the D.C.R.G. of the applicant. A further sum of Rs. 3093-00 was also deducted being ~~excess~~ payment of electricity/ in respect of quarter in question. Thus a total sum of Rs. 26597-98 Paise has been deducted from the applicant's D.C.R.G. which is undisputedly Rs. 33000/- and only a sum of Rs. 6402-02 has been paid to the applicant. Now the only question for consideration is whether the respondents are justified in deducting

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the aforesaid amount from the D.C.R.G. of the applicant or not. Learned counsel for the applicant has on the basis of " R. Kapoor Vs. Director of Inspecting (Painting and Publication) Income Tax and others (1995)1 U.P.L.B.E.C. page 89 has contended that legally no such amount can be deducted from the D.C.R.G. of the applicant. In the aforesaid case the Supreme Court on the basis of earlier case of M. Padmanabhan Nair (1985)1 S.C.C. page 429 held that-

" Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. "

Similar view has been expressed by a Division Bench of this Tribunal in Kamla Prasad Srivastava Versus Union of India and others (1994)1 U.P.L.B.E.C.(Tribunal) page 1 that a retired employee can not be penalised by charging penal rent or withholding of his gratuity post retirement or compensatory benefits. I find force in the arguments of the learned counsel for the applicant and hold that respondents are not justified in deducting the amount of penal rent in respect of the quarter in occupation of the applicant. It is, however, open to the respondents to take any legal recourse to recover the amount of alleged penal rent from the applicant. The claim of the applicant on this account is justified.

7. The claim of the applicant for payment of packing allowance has been rejected by the respondents merely on the ground that the applicant had

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retained the railway quarter at Muzaffarpur after his retirement and has also settled down in the same town, therefore, as per rule he is not entitled for any such allowance. I do not find any justification for this refusal merely because the applicant has retained the railway quarter even after his retirement, it can not be presumed that he has settled at the station (Muzaffarpur). The respondents have also not produced any evidence or material to prove that the applicant has shown his willingness to settle at Muzaffarpur. There is no dispute that the declared home town of the applicant is Distt. Deoria (U.P.). It has been provided vide S.R. 147 that the employee and his family may travel from the last head quarters in the declared home town or to any other selected place of residence where he wishes to settle. The applicant has categorically denied having settled at Muzaffarpur. Therefore the packing allowance after retirement has been denied by the respondents is against rules and consequently the applicant is entitled to receive the same.

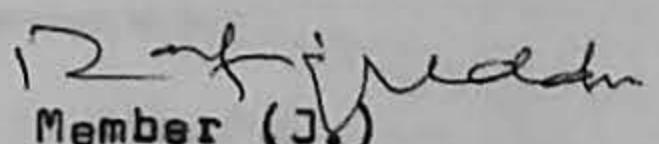
8. According to the applicant, he is entitled for the payment of Rs.32000/- of leave encashment salary. However, he has not disclosed the details of entitlement of such amount. The applicant has not clearly disclosed number of earned leave which stood to his credit at the time of his retirement. On the other hand the respondents have clearly mentioned that only five days leave was due at his credit and a sum of Rs. 639-95 P. has been paid to the applicant. It is also worth mentioning that in his rejoinder affidavit the applicant has reiterated that the

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Railway Department has not paid leave encashment amount of Rs.32000/- to him. The claim of the applicant for payment of leave encashment to the tune of Rs.32000/- is not clear and proved. Hence the claim has no merit and is liable to be rejected.

9. The applicant has also claimed refund of Rs. 19517-60 Paise being the excess amount of house rent deducted by the respondents from his salary. It is worth noting that the aforesaid amount has been admittedly deducted from the salary of the applicant from the year 1976 to 1993. The respondents denied this fact. The applicant has also filed detailed statement along with his rejoinder affidavit (Annexure No.1) showing the excess amount having been deducted from his pay against rules. I do not find any merit ⁱⁿ this claim.. It is obviously an after thought and time barred. It has not been clarified as to why the applicant did not protest against the deduction of alleged excess rent from his salary from the year 1976 till 1993. The claim, therefore, on this account is liable to be rejected.

10. In the result the O.A. is partly allowed. The respondents are directed to refund to the applicant the disputed amount of Rs.26597-98 Paise with interest at the rate of Rs.12%. Similarly respondents are also directed to pay the ^{packing} allowance to the applicant to which he is entitled. This amount will also carry interest at the rate of Rs.12%. The payment will be made within three months from the date of communication of this order. The rest of the claims of the applicant are rejected. There shall be no order as to costs


Member (J)