

Central Administrative Tribunal
Allahabad Bench
Allahabad

Original Application No. 483 of 1996

Allahabad this the 16th day of Feb., 1999

Hon'ble Mr. S.L. Jain. Member (J)

Smt. Usha Mehra, aged about 50 years wife of Late
Shri K.N. Mehra, resident of Railway Quarter No.D-322,
near Railway Over Bridge, Jhansi (U.P.)

Applicant

By Advocate Shri R.G. Soni

Versus

1. Union of India through General Manager, Central Railway, Mumbai V.T.
2. Divisional Railway Manager, Central Railway, Jhansi.
3. Senior Divisional Accounts Officer, Central Railway, Jhansi.

Respondents

Advocate Shri A.K. Gaur

ORDER

By Hon'ble Mr.S.L. Jain. Member (J)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to issue a writ/ order/direction in the nature of certiorari quashing the impugned order dated 18.9.95(annexure A-1) issued by Sr. Divisional Accounts Officer, Central Railway, Jhansi (Respondent no.3) and issue of a mandamus commanding the respondents no.2 and 3 to release the D.C.R.G.

illegally withheld, as well as payment of leave encashment of 240 days, incremental arrears 18% interest on the delayed payment, to produce the SR and leave account of the deceased Shri K.N. Mehra alongwith cost of the petition.

2. There is no dispute between the parties in respect of the facts that Shri K.N. Mehra was appointed in the Railway on 27.11.1963 and promoted as Chief Permanent Way Inspector in the pay scale of Rs.2000-3200 and after putting 29 years, 8 months and 15 days service died on 10.12.1992 when his basic pay was Rs.3050/-. The family pension was provisionally fixed and after a lapse of two and half years, an amount of Rs.36,813/- was paid to her. Respondent no.3 vide letter No.-PF/Sett/444, dated 18.5.93 made payment amounting to Rs.1,02,895/-. The applicant is entitled to DCRG amounting to Rs.88450/- out of which only Rs.26,714/- is paid on 18.9.95.

3. The applicant's case in brief is that there was no ^{one in} ~~doubt~~ and shortage of any Railway material against him and no disciplinary/judicial proceedings were pending against him, the provident fund contribution was not paid immediately inspite of repeated requests by the applicant, family pension was passed after a lapse of two and half years. The pay of Shri K.N. Mehra was Rs.2600/- w.e.f. 01.1.1988 which was passed in December, 1988, but the arrears were not paid, Rs.51,850/- is withheld from the DCRG without any valid reason, leave salary for 240 days was not paid inspite of the application dated 20.11.1995 and legal notice dated 11.1.96. Hence, this O.A. for the above said reliefs.

4. The respondents defence is that the husband of the applicant was in occupation of Railway Quarter No.D-322 which was not vacated till the death of the applicant's husband 10.12.1992 and the same quarter was regularised to the applicant on her request on 17.8.1994. Provisional pension of Rs.1200/- plus D.A. admissible under Rules has been paid on 25.4.1995. After the death of the applicant's husband, settlement case was sent to the Divisional Accounts Officer for arranging payment, but due to non-vacation of the Railway Quarter No.D-322 by the applicant amount of DCRG amounting to Rs.88450/- was retained out of DCRG deduction on account of House Rent amounting to Rs.8210/-, electric bill amounting to Rs.1676/- and amount withheld for verification of ~~SR~~ Rs.51,850/- was withheld and rest of the amount is paid. Hence prayed for dismissal of O.A. alongwith cost.

5. The learned counsel for the applicant relied on 1995 Supreme Court(L & S) 13 R.Kapoor Vs. Director of Inspection(Painting & Publication) Income Tax and another', and argued that gratuity cannot be withheld for not vacating Govt. accommodation and not paying ~~damages~~/damages levied under relevant rules for over stay. He submitted that right of retired employee to gratuity is not dependent on vacating the Govt. accommodation. He also relied for the same proposition on (1994) 31 Administrative Tribunal cases 78 M.N. Darveshi Vs. Commanding Officer, Air Force and Others, decided by the Central Administrative Tribunal, Bombay,

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6. He relied on (1996) 34 Administrative Tribunal cases 434 Rampujan Vs. Union of India and Others, decided by Central Administrative Tribunal, Allahabad. In my opinion, the said authority is not relevant to decide the present petition because the point decided is after expiry of permissible period of retention the occupation would be unauthorised and no specific order cancelling allotment necessary.

7. The learned counsel for the respondent relied on 1993 Supreme Court Cases (I&S) 119 Jarnail Singh Vs. Secretary, Ministry of Home Affairs and Others. In my opinion the proposition of law laid down is the word 'Pension' includes 'Gratuity' and hence the said authority is of no assistance to the respondents.

8. Looking to the defence of the respondents the amount withheld is on account of House Rent, Electric Bill and for verification of SR from Jabalpur Division. The said ground is not justified in view of the law stated above (1995) Supreme Court Cases (I&S) 13 and (1995) 31 Administrative Tribunal Cases 78.

9. In the result, O.A. deserves to be allowed and is allowed. The respondents are ordered;

- (i) to pay the amount of DCRG withheld by them amounting to Rs. 61,736/- 51850/- *51850/-* *5/12/2003*
- (ii) to pay interest @ 12% per annum on the said amount since 10-3-1993 (after ninety days from the death of Shri K.N. Mehra)
- (iii) to pay interest on family pension from 10-3-93 to June, 1993 at the rate of 12% per annum on every amount due at the end of each month,

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(iv) to pay interest at the rate of 12% per annum from 10.3.93 to 18.5.95 ⁹³ on Rs.1,02,895/-.

(v) to pay interest on incremental arrears at the rate of 12% per annum on every amount due at the end of each month till the date of payment - December, 1998,

(vi) to decide the case of leave salary and pay the amount due to the applicant along with interest @ 12% per annum thereon from 10.3.93 to the date of payment and,

(vii) to pay cost of the petition amounting to Rs.650/- (legal practitioner's fee Rs.500/- plus Rs.150/- other expenses) within a period of three months. It is made clear that no further extension ^{and compliance} of time shall be allowed in respect of payment of the said dues.

SEDM
Member (J)

/M.M./