

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 528 of 1996

Allahabad this the 24th day of March 1998

Hon'ble Mr. D.S. Bawlia, Member (A)

Radhey Shyam Misra, S/o Late Raja Ram Misra, C/o
Shri S.N. Misra, Quarter No. 804/D, Diesel Locomotive
Works Colony, Varanasi.

Applicant

By Advocate Sri R.C. Jauhari

Versus

1. The Union of India, through its General Manager,
Diesel Locomotive Works, Varanasi.

Respondent

By Advocate Sri Amit Sthalekar

ORDER

By Hon'ble Mr. D.S. Bawlia, Member (A)

This application has been filed seeking a relief of payment of interest for delay in payment of the settlement dues of death-cum-retirement gratuity, leave encashment, post retirement settlement travelling allowances and packing allowances and also the amount withheld from the provident fund.

2. The applicant while working as Storekeeper Grade III in Diesel Locomotive Works, Varanasi superannuated on 31.5.1988. The applicant at the time of retirement, was not paid the settlement dues of death-cum-retirement gratuity leave encashment, travelling allowances and packing allow

A sum of Rs.1000/- was also retained from the provident fund. The applicant submits that before retirement he was issued a charge-sheet dated 18.1.1988 for major penalty. The inquiry was conducted and finally the applicant was exonerated of all the charges as per order dated 10.9.92 of the disciplinary authority. The applicant was also occupying a railway quarter at the time of retirement which was being shared with his younger brother also working in Diesel Locomotive Works, Varanasi. He made a request for allotment of the quarter in the name of his brother which was done only on 23.4.92. Eviction proceedings were initiated started against the applicant under the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 and as per the order of the competent authority under the Act, the applicant was directed to pay the rent of Rs.29,480.71 for unauthorised retention of the quarter. The applicant filed an appeal against the same before the Additional District Judge, Varanasi which was allowed as per the order dated 22.5.93. The pending settlement dues of the applicant, were paid to him on 13.7.93 and 21.7.93. The applicant made a representation for payment of interest on account of delay in payment of settlement dues. However, this request was rejected as per order dated 25.3.95. Being aggrieved by the same, the present application has been filed on 12.3.96. The applicant has sought the reliefs advancing the following grounds;

- a) As per the judgment of the Additional District Judge in the appeal, it has been directed to recover only the double of the pool rent for occupation of the quarter from the period 31.1.89 to 23.4.92 implying that the applicant was not an unauthorised occupation of the quarter. In view of this, there

was no justification for withholding the post retirement settlement dues.

b) The applicant was entitled for payment of the commuted portion of the pension as per the extant rules and the payment was accordingly made to him without any conditions attached.

c) There was no delay attributable to the applicant and therefore, the applicant is entitled for payment of interest for delay in payment of the settlement dues.

3. The respondents have filed the counter-affidavit, stating that the applicant was issued a major penalty charge-sheet before retirement in January, 1988, and in terms of sub rule 1(c) of Rule 10 of Railway Services(Pension) Rules, 1993, the applicant was not entitled for payment of the gratuity until the conclusion of the disciplinary proceedings. Accordingly the payment of death-cum-retirement gratuity was withheld. The respondents also submit that in terms of Rule 5 of Railway Services(Commutation of Pension) Rules, 1993, the applicant was also not eligible for payment of commutation value of fraction of his provisional pension authorised under Rule 10. However, due to administrative error, the applicant was paid an amount of Rs.40,794/- as commutation value of his pension. When this error was detected, the payment of leave encashment of Rs.16,184/- and other dues were withheld and these amounts have been paid to the applicant after finalisation of the disciplinary proceedings. The respondents have ^{further} pleaded that the payment of death-cum-retirement gratuity (for short D.C.R.G.) was withheld also due to non-vacation of

the quarter occupied by the applicant at the time of retirement in terms of the Railway Board's letter dated 31.12.1990. The applicant was entitled for payment of D.C.R.G. on vacation of the quarter on 27.4.92 but because of the disciplinary proceedings pending, the payment could be arranged only after 10.9.92 when the disciplinary proceedings concluded. The payments have been arranged to the applicant as under;

sl no.	Head	Amount Paid	Date
1.	Leave Encashment transfer & packing allowance	Rs.18,209-00	13/07/93
2.	G.I.S. - 80	Rs.01,544-00	13/07/91
3.	Gratuity	Rs.32,175-00	03/02/94

In view of these facts, the respondents contend that the applicant is not entitled for any payment of the interest, as claimed. The respondents plead that the present application deserves to be dismissed.

4. The applicant has contested the submissions of the respondents through ^{the} rejoinder-reply. The applicant has submitted that he had retired on 31.5.1988 and therefore, the Railway Service Pension Rules of 1993 are not applicable in his case. The applicant submits that he was governed by the Rules 2801 to 2821 of Chapter XXVII of Indian Railway Establishment Code, Volume II. As per these rules, the applicant was entitled for payment of commutation of pension as per Appendix 'L' of Indian Railway Establishment Code, Volume II. The other grounds raised in the O.A., have been re-affirmed.

5. I have heard Shri R.C. Jauhari, learned counsel for the applicant and Sri Amit Sthalekar, learned counsel for the respondents. The records are carefully perused.

6. From the rival contentions it is noted that the non-payment of the settlement dues was on account of two causes - (a) disciplinary proceedings pending against the applicant, before retirement, (b) non-vacation of the quarter occupied by the applicant at the time of retirement. Taking first issue of withholding of settlement dues, it is admitted fact that the applicant was issued a charge-sheet for major penalty before retirement on 18.1.1988. The inquiry was conducted and the final order has been passed by the disciplinary authority on 10.9.92. The respondents have submitted that in terms of sub rule 1(c) of Rule 10 of Railway Service(Pension Rules) 1993, the applicant was not entitled for payment of gratuity until the conclusion of the disciplinary proceedings. The applicant has contested this submissions of the respondents, stating that since he had retired on 31.5.88, 1993 Pension Rules will not apply in his case. The applicant has submitted that his case of settlement dues was governed by the provisions in Chapter XXVII of Indian Railway Establishment Code, Volume II. On going through the respective rules brought on record by ^{the} either parties, I am inclined to accept the contention of the applicant. Taking that the applicant is not governed by the 1993 Pension Rules, the issue will be examined with respect to the rules cited by the applicant with regard to withholding of the payment of the D.C.R.G. on account of disciplinary proceedings in process at the time of retirement. The

applicant has brought on record with the rejoinder At R.A.-1, the extract of the rules. It is noted that these rules do not cover the procedure to be followed for payment of D.C.R.G. incase disciplinary proceedings were pending against the employee at the time of retirement. However, on going through the Chapter XXIII of Indian Railway Establishment Code Volume II, it is noted that Rule 2308 A provides that no D.C.R.G. shall be paid to an employee against whom the departmental or judicial proceedings have been instituted before retirement until conclusion of such proceedings and issue of final orders thereon. This provision is same as provided in the 1993 Rules cited by the respondents. In view of the clear provision of the Rules, the contention of the applicant is not tenable and respondents were fully justified in withholding the payment of D.C.R.G. As indicated earlier the final order by the disciplinary authority was passed on 10.9.92 and, therefore, as per the extant rules, the applicant was entitled for payment of D.C.R.G. thereafter only.

7. The applicant has been not paid other settlement dues of leave encashment, transfer and packing allowances and group insurance scheme. The respondents have taken a plea that due to administrative error, the applicant was paid the commutation of pension which was not due as per the extant rules on account of disciplinary proceedings pending against the applicant at the time of retirement. The respondents have brought out that an amount of Rs.40,794.00 of commutation of pension was — paid to the applicant in excess and therefore,

when the error was detected, the other payments of leave encashment etc. were withheld. The applicant has contested the claim of the respondents, stating that the applicant was entitled for payment of the commutation of pension and respondents have made the payment without attaching any conditions. The applicant has cited the rules contained in the Chapter XXIX in Indian Railway Establishment Code Volume II stating that in terms of Appendix 'XL', the applicant was entitled for commutation of pension. I have carefully gone through the rules and find that in Rule-2903, it is clearly provided that railway servant against whom the judicial or departmental proceedings have been instituted, shall not be permitted to commute any part of his pension during the pendency of such proceedings. Appendix 'XL' is not relevant to this issue as it only details the procedure to be followed for commutation of pension with reference to the Rule-2910. In view of the specific provision in the rules, the applicant was not entitled for payment of commutation of any pension and, therefore, the respondents' submission that the payment of Rs.40,794-00 was paid in excess due to an administrative error, is acceptable. Since the applicant has received the excess amount which was not due to him, the action of the respondents to withhold the leave encashment and settlement dues, was fair and justified. As per the rules, the payment of commutation of pension became due only after conclusion of the disciplinary proceedings.

8. Keeping in view the deliberations in para-6 and 7 above, it is concluded that the action of the respondents in withholding the payment of the D.C.R.G. as well as commutation of pension was valid as per the extant rules laid down. The question now arises whether as per the order passed by the disciplinary

authority dated 10.9.92, the applicant is entitled for claim of payment of interest for delay in payment of settlement dues. The applicant has claimed that he is entitled for the payment of the interest for delay in payment of D.C.R.G. in terms of Railway Board letter dated 03.9.79 brought on record with the rejoinder at R.A.-6. On going through this letter, it is noted that in para-3 it is provided that no payment of gratuity is to be paid till the conclusion of the disciplinary proceedings and issue of the final orders thereon. If the gratuity is allowed to be paid by the competent authority on the conclusion of the proceedings, the same will be deemed to have fallen due on the date of issue of the orders by the competent authority. Keeping these provisions in view, the applicant's claim does not sustain. However, it is noted that the applicant has brought on record the copy of the railway board's letter dated 15.4.91 at annexure XXIV which has been issued in continuation of earlier circular dated 03.9.79 referred to above. This circular lays down the conditions under which the ^{interest} ~~cost~~ is payable for delay in payment of D.C.R.G. This letter provides in para 2(i)(c) that in case the railway servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority. This circular, however, provides that in case the railway servant is exonerated of all the charges and D.C.R.G. is paid on the conclusion of the proceedings then the payment of D.C.R.G. becomes due for payment following the date of retirement. In the present case,

on going through the order of the disciplinary authority, it is noted that the applicant has not been fully exonerated of the charges and the disciplinary authority has taken a lenient view and no penalty has been imposed and only a displeasure has been conveyed. Keeping in view the provisions in the Railway Board's circular cited by the applicant and the fact that the applicant ^{has} been fully exonerated of the charges, I am inclined to hold the view that the applicant is not entitled for payment of the interest for delay in payment of D.C.R.G. from the date of retirement. In view of the findings recorded with regard to the payment of commutation of pension, the claim of the applicant for payment of interest on the delayed payment of leave encashment, group insurance, ~~and~~ transfer and packing allowances also does not survive as the applicant had been allowed the payment much more than what was due to be paid due to error by way of commutation of pension. It is, however, noted that the payment of settlement dues ^{which} had become due after the conclusion of the disciplinary proceedings, have been paid after considerable delay. For this delay, certainly the applicant is entitled for the payment of the interest as the respondents have not come out with any cogent reasons to explain further delay in release of the various payments. Keeping in view the provisions in the Railway Board's circular dated 15.4.91, it is provided that the applicant ^{of 12% per annum} is entitled for payment of interest ^{and} on the delay in payment of D.C.R.G., leave encashment, group insurance, transfer and packing allowances for the period beyond 3 months from 11.9.92 till ^{the} the actual date of payment of the various amounts on different dates. The compliance shall be done within 3 months from the date of receipt of this order.

.....pg.10/ -

9. It is noted that the payment of D.C.R.G. was also withheld on account of non-vacation of the quarter occupied by the applicant at the time of retirement. The applicant has made elaborate averments to establish that the applicant was not unauthorisedly occupying the quarter. From the facts, it is noted that the competent authority had passed the order under the Public Premises (Eviction of Unauthorised Occupation) Act, 1971, for payment of penal rent treating the occupation of the quarter as unauthorised. This was challenged by the applicant in appeal before the Additional District Judge and the Additional District Judge in his judgement dated 22.5.93 allowed recovery of rent only at the double rate of Rs.130/- for the period from 03.2.90 to 23.4.92. The applicant based on this judgment, has contended that since only the double rate was ordered to be recovered, this would imply that the applicant was allowed to retain the quarter and was not unauthorised occupant of the same. The respondents have controverted the averments of the applicant. The respondents have also made the averments that though the applicant vacated the quarter on 27.4.92 but his D.C.R.G. and other settlement dues could not be released as the disciplinary proceedings were pending which were concluded on 10.9.92. It is thus evident that the D.C.R.G. and other settlement dues were withheld mainly on account of the disciplinary proceedings pending against the applicant. The merits of the claim of the applicant with regard to the interest with reference to the disciplinary proceedings, has been already gone into above and findings have been

recorded. In view of this, it is felt that the issue with regard to occupation of the quarter whether authorisedly or unauthorisedly is not very material and, therefore, the merits of this aspect are not being gone into.

10. In the light of the above deliberations, the O.A. is partly allowed with the directions for payment of interest as detailed in para -8 above. No order as to costs.

A. R. Ravi
Member (A)

/M.M./