

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 3rd day of June, 1998

Original Application No.574 of 1996

District : Allahabad

CORAM: -

Hon'ble Mr. S.K. AgRAWAL, J.M.

Zamiruddin Ahmad
S/o Late Alimuddin,
Ex-Parcel Supervisor,
R/o 46, C, Karbala, P.O. Leader Press,
District Allahabad.

(Sri Anand Kumar, Advocate)

. Applicant

Versus

1. Union of India
Through General Manager,
N. Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager (Settlement),
N. Railway, Allahabad.
3. Sr. Divisional Commercial Manager,
N. Railway, Allahabad.

(Sri A Tripathi, Advocate)

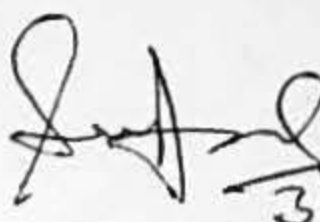
. Respondents

ORDER -

By Hon'ble Mr. S.K. AgRAWAL, J.M.

In this OA the applicant has prayed to direct the respondents to pay Rs.3000/- (balance amount of LCRG) with interest and to pay interest on delayed payment of LCRG.

2. In brief the facts of the case as stated by the applicant are that the applicant was retired as a Parcel Supervisor on 30-4-1993 and after retirement he was entitled for Rs.32,000/- as Gratuity. The applicant filed a representation. Thereafter, the applicant was paid only Rs.10,000/- as LCRG in the month of October, 1993. It is submitted that the applicant again submitted a representation on 12-8-1994, 1-9-1994, 18-10-1994,


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15-9-1995 for the payment of remaining amount of Rs.22,000/-. The applicant was paid Rs.9000/- of LCRG in the month of October, 1995 and Rs.13,000/- again was withheld without assigning any reason. The applicant again submitted representations on 6-11-1995 and 4-12-1996 but the respondents paid only Rs.10,000/- in the month of March, 1993 and again withheld Rs.3000/- which has not been paid so far. It is submitted that the Divisional Railway Manager, N. Railway Allahabad vide his letter No.769-E/Pension dated 28-5-1993 informed the applicant that in the absence of no claim certificate Rs.22,000/- is withheld and the rest amount will be paid only after declaration on an enclosed proforma. The applicant duly filed the enclosed proforma and thereafter he was paid only Rs.10,000/- in the month of October, 1993. It is submitted that even after the receipt of no claim certificate, respondent nos.2 and 3 withheld the remaining amount of LCRG and the respondents have not paid interest on the delayed payment of LCRG. It is, therefore, requested that the respondents be directed to pay the applicant Rs.3,000/- with interest and interest on delayed payment of LCRG @ 18% per annum.

3. A counter has been filed by the respondents. It was admitted that the applicant was retired from the post of Parcel Supervisor on 30-4-1993 and he was entitled to gratuity of Rs.33,000/-. It is submitted that after preliminary investigation, the amount of Rs.22,000/- was withheld for anticipated commercial debit pending against the applicant and Rs.1346/- was also recovered on account of rental plus electric charges from the applicant. Therefore, balance of Rs.9654/- was released for payment vide cheque No.3564 dated

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15.8.93. It is submitted that the advice for retaining of Rs.22,000/- towards anticipated commercial debit was given by the Senior Divisional Commercial Manager on 11.5.93 and the applicant was found responsible in this case as per letter no. CC/SR/BSB/15/94 dated 02.6.94 in which it was specifically mentioned that Rs.3000/- may be debited from the dues of the applicant and the same was recovered from retained Rs.22,000/-. It is submitted that after the retirement of the applicant the amount of Rs.22,000/- was retained because no claim certificate was issued by the Varanasi Office and the remaining amount was paid to the applicant. It is also submitted that Rs.9000/- was released and paid to the applicant in October, 1995 and further Rs.10,000/- was released in December, 1995. It is submitted that DRG of the applicant was retained to meet with anticipated commercial debit and was released as soon as the final "no claim certificate" was obtained from the concerning department. Withholding of an appropriate amount of retirement gratuity to meet with the Government dues is permissible under rules. As such no interest is payable. Thus, on the basis of averments made in the counter, it was submitted that the applicant is not entitled to seek any relief sought for and this O.A. is dismissed with cost.

4. I have heard the learned counsel for the applicant as well as learned counsel for the respondents.

5. It is submitted by the learned counsel for the applicant that the applicant is entitled to Rs.3000/- (not paid to him) with interest and he is also entitled to interest on the delayed payment. Learned counsel for thepg.4/-

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respondents on the other hand has stated that the applicant was found responsible for payment of Rs.3,000/- and Rs.30,000/- has already been paid to him. Therefore, nothing is payable by the respondents. Learned counsel for the respondents has ~~also~~ ^{also} stated that the applicant is also not entitled to any interest as the amount was withheld for anticipated commercial debit permissible under rules and as soon as the same was cleared, the amount was paid to him.

5. I have given my thoughtful consideration to the rival contentions of both the parties and perused the whole record carefully.

6. There is no dispute that the applicant was working as Parcel Supervisor before his retirement dealing with delivery of packages and he retired on 30-4-1993. It is also evident that the applicant was entitled to Rs.33,000/- as gratuity on retirement. It is also evident that vide letter dated 11-5-1993, D.R.M. Allahabad gave directions to withhold Rs.22,000/- for anticipated commercial debit while making payment of gratuity to the applicant vide letter at CA-1 and vide letter dated 7-6-1994 at CA-2 direction was also given to deduct Rs.3000/- from the amount payable to the applicant as gratuity as the applicant was held responsible for payment of Rs.3000/-.

7. On perusal of the whole record, it is also evident that the applicant was paid Rs.30,000/- as follows:-

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- (i) Rs. 11,000/- after deducting Rs. 1346/- for rent and electric charges in October, 1993.
- (ii) Rs. 9,000/- in October, 1995.
- (iii) Rs. 10,000/- in March, 1996.

7. The Railway Servants Pension Rules came into force from 2-12-1993. The applicant in this case retired on 30-4-1993. Therefore, these rules do not apply in this case and old Pension Manual shall be applicable.

8. As per Para 323(iv)(b) of the Pension Manual "Efforts should be made to assess and adjust the recoverable dues within a period of three months from the date of retirement of the Railway Servant concerned. In any case, it should be presumed that there is no claim against a railway Servant if none is made after his retirement within the period indicated below :-

15 months, if commercial debits are involved;
& 6 months, if commercial debits are not involved".

9. In *Srist Dhar Patna Vs. Union of India*, OA No. 603/92 decided on 8-12-1994 (Patna Bench of CAT), it was held that case reliance was placed on Rule 323 Clause (iv) sub-clause (b) and it was noted that the debit was raised after about 17 months and 18 days of his retirement and no enquiry was proceeding against the applicant while in service as regards the debit raised and no show cause was ever issued to the applicant prior to his retirement, the question of deducting ~~xxx~~ from his pension in equal instalments appears to be quite illegal and unjustified in as much as the claim is also barred by limitation.

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10. In another case decided by the Calcutta Bench of the Tribunal in OA No.940/94, decided on 6-5-1996 and reported in 1996(2) A.I.J.-8- Gunbachan Singh Vs. Union of India, the Tribunal observed in Para 20 of the judgement as below:-

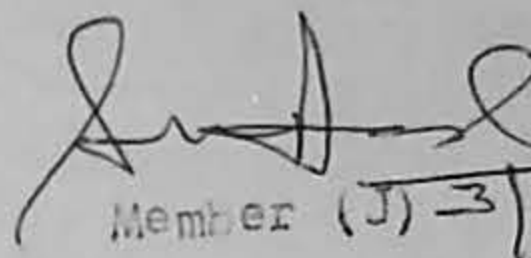
"From the afore-quoted provisions of Rule 323(iv) (b) it is clear that the official respondents should not take undue time to assess recoverable dues from a retired employee and that all efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement. However, when commercial debits are involved, maximum time admissible to prefer such claim is 15 months from the date of retirement. In the instant case, only through communication dated 14-7-1994 certain vague claim has been communicated to the petitioner which I have no other alternative than to hold that the respondents have failed to assess any recoverable dues from the petitioner within 15 months from the date of his retirement.

11. In S.M. Joshi Vs. UOI Ors 1998(1) CAT 393, it was held that if commercial debit is not finalised within 15 months of retirement as per Para 323(iv)(b) of the old Manual, the amount cannot be recovered and it should be refunded with 12% interest.

12. In the instant case, the applicant retired on 30-4-1993. On the date of retirement he was entitled to gratuity amount of Rs.33,000/- out of which Rs.11,000/- including Rs.1346/- for rent and electric charges was paid to the applicant in October, 1993. Thereafter, Rs.9000/- in October, 1995 and Rs.10,000/- in March, 1996 was paid to the applicant. No sufficient and plausible explanation has been given by the respondents to withheld the amount of Rs.19,000/- which was paid to the applicant in October, 1995 and March 1996. Therefore, the applicant is entitled to interest on this delayed payment. As regards Rs.3,000/- is concerned, the applicant was found responsible for the said amount. Therefore, it was rightly deducted. In view of the above, I am of the opinion that the respondents have

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withheld Rs. 19,000 beyond the period of 15 months as provided in Para 323(iv) (b) of the Pension Manual from the date of retirement. Therefore, the applicant is entitled to interest @ 12% per annum on this delayed payment. I, therefore, allow this OA and direct the respondents to pay interest @ 12% on delayed payment of gratuity beyond 31-7-1994 within three months from the date of receipt of the copy of this order. There will be no order as to costs.


Member (J) 3/6/98

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