

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.Allahabad This The 19th Day Of May 2000

Original Application No. 241 Of 1997

CORAM:

Hon'ble Mr. S. Biswas, A.M.

Bangali Prasad, c/o Sri Ram Prasad,

Resident Of Village Kashanda,

Post Office Chail, District-

Allahabad.

.....Applicant

(by adv: Sri Ram Shish)

Versus

1- Union Of India, through its
Secretary, department of Railway,

New Delhi.

2- The D.R.M./ADRA/ DPO/1-ADRA.,
Settlement Office ADRA., Post-
ADRA, District Purulia,(West Bengal).

(by adv: Sri A.K. Gaur)

.....Respondents

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(By Hon'ble Mr. S. Biswas, A.M.)

The applicant has sought directions for payment of gratuity and issue Railway Pass with 18% interest on the amount for gratuity not paid as damage.

2- The applicant went on voluntary retirement on 13-7-91, on retirement he was eligible to retain the Govt. accommodation for three months without any penal rent. He was also eligible to continue on medical grounds. The applicant made representation to D.M.E. south-Eastern Railway Adrat that he may be permitted to continue for another three months on medical ground.

3- The applicant was paid retirement dues except gratuity on 20-11-92 almost after one year of retirement although there was no dues from the applicant. The respondents withheld gratuity amount of Rs. 24,750/- (Annexure No. A-3). The applicant, thereafter vacated the said accommodation on 27-12-93. The applicant filed several representation dated 6-1-94, 22-2-94 and 20-5-94 for the payment of his gratuity amount. Thereafter a reminder was sent on 23-6-96.

4- The gratuity which is part of pensionary benefit cannot be withheld and payment of gratuity is not contingent on the vacation of Govt. accommodation as per the Hon'ble Supreme Court's decision in 1994 (6) S.S.C. 589, in Kapur vs. Director of Inspection (Painting and Publication) Income Tax And Another : the same was illegally withheld and damage is liable to be paid.

5- In reply, I have considered the counter affidavit filed by the respondents. The undisputed fact in this case is that the applicant was compulsorily retired from service but he continued to retain the Railway Quarter No. DS-I/25 K., from 13-10-91 unauthorisedly and the same was vacated only on 27-12-93. Therefore a damage rent for this period amounting to Rs. *S. R.*

period amounting to Rs. 16,298/- has been worked out and recovered from his DCRG in terms of establishment order No. 29/90. In other words by virtue of this by law, the Railway Deptt. is authorised to make such deduction. In this connection, the learned counsel for the respondents has cited Sushil Chander Bhatnagar vs. Union Of India And Another. The case was decided by Administrative Tribunal in O.A. 332/95.

"Nowhere in the above referred it is stated that payment of DCRG can not be linked with non vacation of the quarter as contended by the counsel. The Hon'ble Supreme Court in its judgment dated 23-4-90 reproduced in (1992) 19 ATC 129 granted the SLP and allowed the appeal. It has been also observed that the Hon'ble Supreme Court did not hold the retention of the DCRG of railway servant for unauthorised occupation of the railway quarter or adjustment of penal rent from the DCRG in accordance with rules to be legally impermissible. Even cognizance was also taken in this order that rules themselves act as a notice and separated notice of cancelling the allotment order would not be necessary under the rules. In this case ~~is~~ self contained. ^{is} An exhaustive order on all the related issues has been passed by the full Bench of CAT in Ram Poojan vs. Union Of India and another Tribunals cases 434 (FB) 96, central Administrative Tribunal, Allahabad. The whole gamut of issues, regarding unauthorised occupation and adjustment was discussed and settled there.

6- The learned counsel for the respondents also pointed out that the Kapur vs. Director of Inspection (Painting and Publication) Income Tax and another cases 1994, which seeks the ratio of Hon'ble Supreme Court case has been actually superceded because several Supreme Court's observations have been invoked in the decision cited by the respondents (In Ram Poojan's case).

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7- It is also averred in this case that the gratuity amount Rs. 24,750/- was sanctioned to the applicant but an amount of Rs. 22,682/- was deducted from DCRG and Rs. 2,068/- was sent to the accounts deptt. ~~for~~ arranging payment vide pay order dated 1-9-94. The particulars of over payment has been clarified on the difference of houserent payable from 13-10-92 to 27-2-97 as damage rent for unauthorisedly retention of Railway quarter, water charges and electric charges not paid. The applicant has not disputed the fact of penal rent as such ~~but~~ the same penal rent can not deducted from DCRG as per rules cited by him.

8- In view of the foregoing discussion of facts and points law, ~~if~~ ^{to} find no reason interfere with the order. As the issue is not "withholding of payment of DCRG", but adjustment of undisputed amount of penal rent and other dues from the applicant which have already been adjusted, the application fails on merits. Hence dismissed.

9- No order as to costs.

S. Bawali
A.M.

A.A./