

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.536 of 1997.

Allahabad this the 30th day of June 2003.

Hon'ble Mrs. Meera Chhibber, Member-J.

Raj Narain
S/o Late Jagdeo
aged about 59 years
resident of Wyandham Ganj,
District Sonbhadra (U.P.)

.....Applicant.

(By Advocate: Sri S. S. Sharma)

Versus.

1. Union of India
Notice to be served to the
The General Manager,
Eastern Railway
Headquarters Office,
Fairly Place,
Calcutta.
2. The Divisional Railway Manager,
Eastern Railway
DRM Office,
Dhanbad.
3. The Asstt. Engineer,
E. Railway, Renukoot
District Sonbhadra.


.....Respondents.

(By Advocate : Sri A.K. Gaur)

O R D E R

Grievance of applicant in this case is that when he retired on 30.06.1996 though all other payments were made to him but his total gratuity was withheld without giving him any reason or any justification. Moreover, the

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travelling allowance claimed by him from 1991 onwards were not paid to him ~~this~~ he has claimed the following relief(s):

"i) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to make payment of full amount of Gratuity to the applicant on the basis of his qualifying service more than 33 years in Railway Department.

ii) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to make payment of Pension on the basis of qualifying service more than 33 years in Railway Department.

iii) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to make payment of Travelling Allowance amounting to Rs.18,000/- to the applicant.

iv) That the Hon'ble Tribunal may graciously be pleased to quash/set aside the action of the respondents regarding recovery of damage rent from the applicant.

v) That the Hon'ble Tribunal may graciously be pleased to allow payment of interest @ 18% per annum compounded annually on the unpaid amount of Gratuity and Travelling Allowance.

vi) That the Hon'ble Tribunal may graciously be pleased to direct respondents to make payment of Rs.25,000/- as damage and other losses and injuries suffered by the applicant due to illegal action by the Respondent in this respect and may graciously be pleased to pass strict order against the Respondent for such illegal action and want on violation of Rules and laws applicable in the matter.

vii) That Hon'ble Tribunal may graciously be pleased to allow heavy cost in favour of the applicant.

viii) That the Hon'ble Tribunal may graciously be pleased to pass any such order or grant any such relief as deems fit and proper under the circumstances of the case".

2. It is submitted by applicant that he was allotted type I quarter on 15.10.1973 in Wyandham Ganj. Thereafter he was promoted as Mate but neither any transfer order was passed nor his lien was changed so he continued to occupy the said quarter. He was never asked to vacate this quarter. On the contrary upto June 1996 normal r was deducted from his salary without giving him H.

the same were on

also

He the quarter on 21.06.1996 thus he has submitted the respondents could not have withheld his gratuity. He has relied on following judgments:-

- i) 1976 (1) S.L.R 692 Calcutta High Court.
- 2) 2001(3) A.T.J S.C. 545,
- 3) 2002 (2) A.T.J SC 406,
- 4) 2003 A.T.J 53,
- 5) 1996 (1) A.T.J 171.

3. It would be relevant to mention here that applicant's counsel gave up the relief with regard to calculating his dues as per 33 years qualifying service so I need not decide that point.

4. Respondents have opposed the O.A. They have submitted that applicant has been paid full T.A. whenever he claimed and submitted the bills in accordance with law. Moreover before retirement he did not submit any representation regarding non payment of T.A.,
he has
therefore, cannot raise that issue now.

5. They have further submitted that applicant was ^{appointed/} promoted as Mate and posted from 16.11.1990 with Headquarter at Renukoot vide PW 1/Renukoot's letter dated 15.11.1990. They have stated specifically that applicant was posted as a Mate with Headquarter at Renukoot to supervise the work of D.C Gangman

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with law, the same were
under PW 1/Renukoot. It is ^{also} ~~wrong~~ to state that
applicant used to work under PW 1/Cbra, SGRL, BRWL
etc. He was permanent staff of Renukoot where his
pay etc was drawn regularly.

6. As far as quarter is concerned, they have
stated that his Headquarter was changed from
Wyandham Ganj in spite of oral as well as written
letters. On 30.12.1994 applicant was informed in
writing that if he does not vacate the quarter
penal rent/damage rent would be recovered for
unauthorised occupation. This letter was duly received
by applicant and since he occupied the quarter
at Wyandham Ganj unauthorisedly, he was not entitled
to H.R.A.

*at Wyandham
ganj he
kept
on retaining
the said
Qr*

7. They have further explained that since he
retained the quarter unauthorisedly, his gratuity
was not paid on same date for adjustment, which
was paid later after making adjustment of damage
rent for unauthorised retention of quarter.

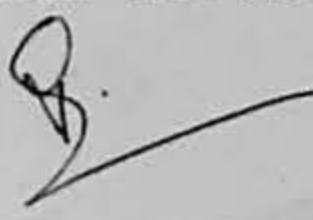
8. Respondents were directed to produce the
original records as they had not annexed any
annexures and I wanted to satisfy myself before
passing the ^{final} orders. I have seen the original records.
Even though respondents' counsel had submitted that
the claim with regard to T.A. is barred by time
but yet he produced the documents to show that
whenever applicant had presented his T.A. bills

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in accordance with law, the same were enukoot^{ed} by the authorities. Records also show that T.A. bills submitted by applicant were duly verified by P.W. 1 for the number of days applicant was entitled to get the T.A. and in these T.A. bills itself his Headquarter is shown as Renukoot. They are even verified by P.W. 1 Renukoot and applicant has also addressed all his letters to P.W. 1 Renukoot thus it is clear that applicant's Headquarter was Renukoot. Records also show that ^{number} of persons residing next to applicants house in Whydhamanj, had given a complaint on 22.09.1994 against Shri Raj Narain as the people were visiting his house at odd hours with bad activities and the family members of other employees were disturbed over it, therefore, A.E. RNQ was requested to take action against Sri Raj Narain through P.W. 1 Wydhamanj. It is seen PW 1 Wydhamanj wrote a letter dated 23.09.1994 to P.W. 1 Renukoot requesting him to ask Shri Raj Narain to vacate the quarter at Whydhamanj as he is working at Renukoot and there is no justification to retain the quarter at Whydhamanj. Similarly when applicant handed over house in June 1996 retained by him at Whydhamanj he himself addressed the letter to P.W. 1 Renukoot informing him that he is handing over the vac possession of quarter at Wydhamanj, the ^{may} be issued certificate that he has vacated quarter. Copy of this letter was addressed to concerned officers at Renukoot, therefore, ^{is} clear from his own letters on record that ^{show} e

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working under the control of P.W. 1 Renukoot^t
is also seen from the records that a notice dated
30.12.1994 was issued by the P.W. 1 Renukoot
informing the applicant that since his promotion as
Mate at Renukoot, he had been working continuously
at Renukoot and inspite of oral instructions to
vacate the quarter No.18/C at W.D.M he has not
vacated the same, therefore, he was once again
advised to vacate the house otherwise penal/damage
rent would be recovered due to unauthorised occupation.
This letter was duly acknowledged by applicant by
affixing his signatures thereon, therefore, he
knew that he is unauthorisedly occupying the quarter
at W.D.M and would be liable to pay damage rent.
From perusal of above documents two things are
clear that on promotion applicant's Headquarter was
at Renukoot and he was informed as back as in
1994 itself that if he does not vacate the quarter
at W.D.M, damage rent would be recovered from him
therefore, two contentions of the applicant are
rejected viz that there was no fixed Headquarter
for applicant and that he was never asked to vacate
the house. Both these contentions are contrary to
the records available on record. Now the question
arises whether the respondents could have deducted
the damage rent from applicant's gratuity with
informing him even the break-up as to what is
amount due against him and how much has been



recovered. "The grievance of applicant is that was not even given the details nor any opportunity was given to him and his entire gratuity has been withheld. He has relied on judgments as referred to above but in view of the facts as explained above, none of the judgments referred to by the applicant would apply. On the contrary this particular point has already been decided conclusively by the Hon'ble Supreme Court in the case of Wazirchand which is reported in 2001(6) S.C.C.596 wherein it was held that penal rent can be adjusted against the D.C.R.G. Similarly in full bench judgment given by this Tribunal in the case of Ram Poojan Vs. Union of India & Ors, it has been held that if an employee retains the quarter after permissible limit of period, he would be deemed to be unauthorised occupant. No specific orders cancelling allotment is necessary and in such circumstances penal rent can be recovered from salary without resorting to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act 1971- Railway Board's letter dated 17.12.1983 and 15.01.1990 will prevail over para 1711 (b) of I.R.B.M (1996) 34 A.T.C.434 F.B. Even in 1995 (30) A.T.C. 332 Sushil Chandra Bhatnagar Vs Union of India and another this Tribunal has held that mark can be recovered from D.C.R.G. No notice is required - Employee is supposed to know consequences of staying in Government accommodation- It was further



it is not necessary to resort to P.P. (Eviction of Unauthorised Occupation) Act 1971 as recovery can be made by following department rules paras 1728, 1730, 1713 (b) (v) and 2308 of I.R.E.M.

9. In the instant case it is relevant to point out that applicant had retained ^{quarter} at Wydhanganj even though he was transferred to Renukoot and he had even been informed that if does not vacate the quarter, penal rent will be charged yet he did not vacate the quarter so he has to face the consequences, therefore, I do not find any illegality as far as the recovery of penal rent from his D.C.R.G. is concerned, however, I do agree with the applicant's counsel that his entire D.C.R.G could not have been withheld. He is definitely entitled to know the breakup as to what amount is due from him on account of penal rent and at what rate. Respondents' counsel had submitted that subsequently a-ppllicant was the balance gratuity but there is nothing on record to show what amount has been paid to applicant what was the breakup of total amount recovered from applicant's D.C.R.G, therefore, respondents are directed to give calculation breakup of total recovered from his D.C.R.G ^{to the applicant} within 3 months from date of receipt of a copy of the order. He be informed what and when has the balance paid to him.

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10. With the above directions this O.A.
is disposed off.



Member-J.

Manish/-