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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1093 of 1997

Allahabad this the 13th day of March 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)

Tej Bahadur Singh, Son of Late B.N. Singh,
ex Office Superintendent, Asstt. Engineer
(Bridge), Eastern Railway, Mughalsarai.
Chandauli U.P., Resident of Buxi Mohalla,
Patna City, Distt. Patna, Bihar. C/o
Shri B.K. Singh, Qr.No. 506, Central Colony,
Mughalsarai, Distt. Chandauli, U.P.

Applicant

By Advocates Shri S.K. Dey
Shri S.K. Mishra

Versus

1. Union of India, through General Manager,
Eastern Railway, Fairlee Place, 17, Netajee
Subhas Road, Calcutta-1.
2. Divisional Railway Manager, Eastern Railway,
Mughalsarai, District Chandauli, U.P.

Respondents

By Advocate Shri A.K. Gaur.

O R D E R

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

Shri Tej Bahadur Singh has come up
for redressal against non-payment of amounts
due at the time of his retirement.

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2. As per applicant's case, he entered in railway service on 16.12.1957 and rose to the post of Office Superintendent Grade II under Assistant Engineer, Bridge, Eastern Railway, Mughalsarai and was compulsory retired w.e.f. 04.7.1987.

3. For better appreciation of the facts of the matter, some relevant dates may chronologically be mentioned as under;

(i) Entered into service on 16.2.1957,

(ii) Subjected to department inquiry and removed from service vide order dated 16.6.1987/04.7.1987,

(iii) In revision, the punishment modified to the compulsory retirement w.e.f.

04.7.87 vide order dated 10.8.88,

(iv) Filed O.A.No. 1085/89 in which order of compulsory retirement ^{was} not sustained vide order dated 31.5.1996 and the matter remanded for reconsideration.

(v) The matter reconsidered and order passed for compulsory retirement on 15.10.1996 to be effective from 04.7.1987.

(vi) Another O.A. numbered as 159/97 filed against the order dated 15-10-96 which is pending.

(vii) Eviction order to vacate the railway accommodation passed by the Estate Officer on 21.7.1992 but the same

See

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stayed by District Judge, Varanasi
on 09.7.92.

(viii) The accommodation in question i.e. quarter no. 506 A B allotted to Shri B.K. Singh, the son of the applicant vide order dated 23.5.1994.

4. The applicant has pleaded that the respondents have wrongfully withheld the amounts payable to him on his retirement and have unauthorisedly imposed damage rent for occupation of railway quarter in question and has sought for direction to make payment the amount of P.F. D.C.R.G, Commutation value of pension, leave encashment and other retiral benefits with interest thereon.

5. The respondents have contested the case and filed the pleadings. According to which the petitioner was compulsorily retired w.e.f. 04.7.1987 but inspite of his being no more in service, he continued to retain the railway quarter which was allotted to him during the service period. In para-8 of the counter-reply, the respondents have detailed the amounts due and paid to the applicant. According to which the applicant is liable to pay damage rent for 83 months from 04.7.87 to 23.5.94 which goes to Rs.81,008/- and also is liable to pay electrical charges for a sum of Rs.768/- making total liability of Rs.81,776/-. The applicant was

entitled for D.C.R.G. for a sum of Rs.27,000/- and leave encashment for a sum of Rs.1,153/- making a total of Rs.28,153/- . This amount has been adjusted towards the damage rent liability leaving a balance of Rs.53,623/- which has been advised to be realised from relief to pension. Regarding commutation payment, the respondents have mentioned that the applicant has not filled the requisite form and, therefore, the payment under this head could not be processed. Regarding G.P.F., the respondents have mentioned that the correct amount has been calculated and paid as per balance in the G.P.F account of the applicant at the time of his retirement.

6. Considered the arguments placed from either side and perused the record. Learned counsel for the respondents has mentioned that the order Learned counsel for the applicant has mentioned that the order to compulsory retire the applicant has not been sustained in the order dated 31.5.1996 passed in O.A.No. 1085 of 1989 and, therefore, the applicant shall be deemed to have remained in service till the date of superannuation and for this period, he is not liable for any damage rent. I find force in the reply from the respondents to the effect that as per present position, the services of the applicant have been terminated w.e.f. 04.7.87 as per order passed on 15.10.1996 through which he has been compulsory retired and this order has been passed when the matter was

remanded back from the Court and, therefore, this argument on behalf of the applicant is not tenable because at present the order in effect is dated 15.10.1996 through which he has been compulsorily retired and the O.A. filed against this order is subjudiced without any interim relief.

8. The Applicant has also pressed that the railway quarter in question has been allotted to his son B.K. Singh vide order dated 23.5.1994 which shall have effect in retrospect in view of provision under Master circular dated 19.1.1993 which provides, "that the date of regularisation should be from the date of cancellation in case the eligible dependant is already in railway service and he is entitled for regularisation and not from the date of issue of the orders which was the practice being followed till date." I do not find this provision helps the applicant in view of the fact that he has failed to mention as to from which date his son(dependant) became eligible for entitlement of regularisation.

9. The learned counsel for the applicant has also pressed that in the eviction proceedings against the applicant, the Estate Officer, Eastern Railway, Mughalsarai passed the judgment on 21st July, 1992 but the operation of this judgment has been stayed by District Judge, Varanasi vide order dated 29.7.92 and therefore, the applicant is not liable for damage rent from the date when District Judge, Varanasi stayed the eviction order passed

by the Estate Officer. In support of his contention, the learned counsel for the applicant has relied on Central Administrative Tribunal, Bombay Bench order dated 06.1.1995 in O.A.No.361 of 1994 M.N. Darveshi Vs. Commanding Officer in which it has been observed;

"So far as the period from 01.5.1993 to 30.4.1994 is concerned, it is covered by the orders of the Court and the department is precluded from recovering the same in view of ratione ^{James} of dominic ~~gemes~~."

I find this finding helps the applicant in the present case.

10. Learned counsel for the applicant has also mentioned that the applicant has been paid only a sum of Rs.2981/- as G.P.F. which at the face of it appears to be very insufficient ^{as} and against the fact that the applicant retired after putting 30 years service and continuously made subscription towards his provident fund ^{Account} balance. This argument is based only on hypothetication without mention of specific amount of subscription and the balance which ought to have been in his P.F. account and, therefore, no direction in this regard is possible.

11. Learned counsel for the applicant has lastly pressed that the respondents could not withhold the commutation value of pension and other retiral benefits and adjust the same against the damage rent. In support of his contention,

attention has been drawn towards the ratio in 'R.Kapoor Vs. Director of Inspection's case, published in 1995 S.C.C.(L&S) page 13 and also the decision of this Bench of Tribunal in O.A.No.532 of 1994 dated 28.8.1997, in which it has been held and followed that the payment of retirement benefits shall not be withheld for non-eviction of allotted quarter and the payment shall be determined on the date of entitlement and the retired employees shall be entitled to interest thereon for the delayed period. Learned counsel for the respondents has drawn attention towards the ratio in Ram Poojan Vs.U.O.I. and Others 1996(1) A.T.J.540 C.A.T., case in which Full Bench of the Tribunal held that the rent, penal rent and damage rent can be realised by deducting the same from the salary of the railway servant without taking resort to proceeding under Public Premises Act and the allotment of the quarters stands automatically cancelled at the lapse of entitlement. With this legal position in view I find that the payments to which the applicant was entitled at the time of retirement should not have been withheld but the respondents are entitled to deduction of the amounts due against the applicant as damage rent and electricity charges at the time of payment of retirement benefits.

12. From the position as narrated above, it is found that the applicant is liable to pay the damage rent for the period of unauthorised occupation of railway quarter in question but he is entitled to discount for the period to assess

the penal/^{damage} rent for the period allowed to retired person for vacating the railway quarter after his retirement and for the period during which the eviction of the applicant from the railway residence was stayed by the District Judge, Varanasi vide order dated 29.7.1992 and the respondents are entitled to adjust this amount under Fundamental Rule 48(A) against the payments to which the applicant is entitled to get from the respondents. It is also to be mentioned that the respondents could not have withheld the retiral benefits of the applicant to which he was entitled after his retirement and this amount shall be calculated ~~en~~ from the date when the payment of the same was due and shall be paid to the applicant with 12% interest thereon, after deduction of damage rent and the electricity charges which may be determined in the light of the above observation.

13. With the above observation, the O.A. is partly allowed. No order as to costs.

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Member (J)

/M. M. /