

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
A L L A H A B A D

O.A./T.N.No. 1127 of 1989

DATE OF DECISION 18-5-96

----- Madan Mohan Prasad ----- PETITIONER(S)

----- Sri Bashisth Tiwari ----- ADVOCATE FOR  
THE PETITIONER

VERSUS

----- U.O.I. & Oths. ----- RESPONDENTS

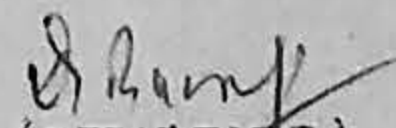
----- Sri ----- ADVOCATE FOR THE  
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. T.L. Verma Member ( J )

The Hon'ble Mr. D. S. Baweja Member ( A )

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy ✓  
of the Judgement ?
4. Whether to be circulated to all other Bench ? \

  
(SIGNATURE)

VKF/-

CENTRAL ADMINISTRATIVE TRIBUNALALLAHABAD BENCHALLAHABAD.Allahabad this the 18<sup>th</sup> day of March 1996.

Original Application No. 1127 of 1989.

Hon'ble Mr. T.L. Verma, JM

Hon'ble Mr. D.S. Baweja, AM

Madan Mohan Prasad aged about  
65 years, S/o late Sri Baldeo  
Prasad, Ex-Head Time Clerk,  
Workshop N.E.R. Gorakhpur, 149 C,  
Jatapur, Railway Colony, Gorakhpur.

C/A Sri Bashisth Tiwari ..... Applicant.

Versus

1. Union of India through General  
Manager, N.E. Railway, Gorakhpur.
2. C.P.O. N.E. Railway Gorakhpur.
3. C.W.M. (P) N.E.R. Gorakhpur.

..... Respondents.

C/R Sri

O R D E RHon'ble Mr. D.S. Baweja, AM

This O.A. has been filed by the applicant claiming several reliefs concerning selection to the post of Office Superintendent grade II, boxing allowance, house rent allowance, payment of overtime and non payment of death cum retirement gratuity and leave encashment subsequent to retirement, referring to the impugned letter dated 2.1.89 Chief Personal Officer N.E. Railway, Gorakhpur. The various reliefs are unrelated to each other and therefore plural reliefs are covered by single application which is not permissible in terms of Rule 10 of Central Administrative Tribunal Procedure Rules 1985, and the application <sup>could</sup> be dismissed on this account alone. As per the order dated 8.4.93 the learned counsel for the applicant however made a statement at the bar that he does

not press for the o

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not press for the other reliefs except the payment of death cum retirement gratuity (DCRG) and the leave encashment i.e. relief 8 (d) only. This was also reiterated during the hearing on 7.12.95.

2. The applicant was working as Head Time Clerk in the workshop N.E. Railway Gorakhpur. He retired on 31.7.82. His payment of the death cum retire gratuity as well as leave encashment has not been done, inspite of repeated representations. He finally got a reply only on 2.1.89. The applicant has prayed for issuing direction to the respondent, to make payment of the gratuity and leave encashment with interest at the market rate. It is alleged that the payment has not been arranged on account of non vacation of the Railway Quarter, which is continued to be occupied by the applicant after retirement. From the averments it appears that he is contesting this for regularisation in the name of his son who was sharing before retirement. He has taken the plea that DCRG and leave encashment cannot be held linking the issue with vacation of the quarter. The applicant has relied on the following judgements, in support of his prayer:

- (i) JT 1994 (6) SC 354 R. Kappor Vs. Director of Inspection.
- (ii) ATC 1987 Vol. 2 939 U.O.I. Vs. Wing Commander Hinzorani.
- (iii) Judgement dated 23.11.92 in O.A. 155 of 1992 of Allahabad Bench.

3. The respondents have filed the counter reply. However no rejoinder has been filed by the applicant for the same.

4. In the counter, the respondents have pleaded that the applicant is in unauthorised occupation of the quarter after retirement and the DCRG and the leave encashment and the DCRG amount to only 20,559.60, While the penal/



damage rent due to unauthorised occupation at the time of filing the counter reply is Rs. 40,036.10 besides, the electricity charges. It has been strongly emphasized that the applicant even after the superannuation in 1982 is continuing <sup>on</sup> unauthorised occupation of the quarter, and he is misusing the court process to get protection against the same. Action ~~in~~ the part of the Railway Administration cannot be held illegal and violative of instructions and against the Constitutional guarantee under Articles 14 and 16 of the Constitution.

4. We have heard the learned counsel for the applicant and the respondent, and also gone through the material placed on the record.

5. The main issue which requires to be determined is whether death cum retirement gratuity (DCRG) could be held back for recovery of the dues of rent for authorised/unauthorised occupation of the quarter. This matter has been dealt with in a large number of judgements of the Tribunal as well as of the Apex Court. Apex Court has held that pension payable to an employee after his retirement is his property. Gratuity payable to an employee is also a post retired benefit akin to pension and this amount is payable to an employee on date of his retirement. Respondents have averred that the DCRG has been held back for recovery of the damage rent charges for the quarter continued to be unauthorisedly occupied by the applicant after the retirement. Having held DCRG akin to pension, the same cannot be held back after retirement just for the recovery of the dues of rent. In this connection, views expressed by the Hon'ble Supreme Court in para 10 of the judgement R. Kapur Vs. Director of Inspection (Painting & Publication) Income Tax (Supra) is reproduced below:

"The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages

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for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18 % since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

6. In view of the above position, the application is partly allowed with the directions to make full payment of the gratuity with interest of 10% for delayed payment for the period leaving three months from the date of retirement till the date of payment without any recovery. We are however not going into the issue of the unauthorised occupation of the quarter by the applicant as there is no prayer on this aspect. Respondents are at liberty to take action for vacation of the quarter and recovery of the penal rent etc. under the provision of the Public Property Eviction Act or other wise as per rules.

*Arvind*  
Member - A

*J. K. Sharma*  
Member - J

Arvind.