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Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 21st day of December 1995

Original No.1402 of 1994

District : Allahabad

QUORUM:-

Hon'ble Mr. S. Das Gupta, A.M.

Alopi son of Shri Chunni Lal
Resident of 7 Karippa Officers' Colony,
Allahabad Cantt.

(By Sri K.S. Saxena, Advocate)

. Applicant

Versus

1. The Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad.
3. The Divisional Personnel Officer,
Northern Railway, D.R.M. Office,
Allahabad.
4. The

(By Sri R.K. Ojha Advocate
& Sri P.V. Srivastava, Advocate)

. Respondents

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ORDER

Hon'ble Mr. S. Das Gupta, A.M.

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the prayer is that the amount of gratuity and leave encashment withheld by the responde Nos. 2 and 3 be immediately released to the applicant together with interest @ 16% per annum. It has further been prayed that the warning in letter dated (Annexure-A-1) that one set of retirement pass for one month's unauthorised occupation of quarter would be debited, be rendered ineffective.

2. The applicant had retired from service on the post of Master Craftsman on 31-10-1993. While settling his retirement dues, Respondent Nos. 2 and 3 withheld his DCRG and the encashment of leave salary on the ground of not vacating railway quarter allotted to the applicant. Such was the reason for withholding of the above amounts indicated in letter dated 31-3-1993 an Annexure-A-1. It was also indicated therein that one set of complementary pass for one month's unauthorised retention of quarter would be debited. The applicant's case is that he was not in occupation of any railway quarter at the time of his retirement at Allahabad. However, when he was earlier posted at Kanpur he was allotted quarter in that station which he vacated on the eve of his transfer from Kanpur to Allahabad on 20-10-1982. It is alleged that the said quarter was unauthorisedly occupied by one Sri Kishan Lal

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on its vacation by the applicant but the railway administration did not take any action against the said Kishan Lal but started deducting penal rent in respect of that quarter from the salary of the applicant right from the year 1982 till October, 1993 without any notice being given to the applicant. It has been alleged that the railway administration had taken cognizance of the occupation of the said quarter by Kishan Lal by withholding payment of house rent allowance to him. The quarter in question was finally allotted to Kishan Lal by a letter dated 30-9-1993, a copy of which is Annexure-A-5. The applicant is stated to have made representation for payment of the withheld settlement dues but nothing came out of it. Hence, this application.

3. The respondents have contested the applicant's claim by filing a written reply in which it has been stated that the applicant was transferred from Kanpur to Allahabad by order dated 26-10-1992. Although he complied with the order of transfer he did not vacate the quarter which was allotted to him at Kanpur. He was permitted to retain the same for two months but he did not vacate the quarter after the said period expired and continued to be in unauthorised occupation of the same till 30-10-1993 i.e. a month prior to his date of superannuation. As a result, a very large amount of penal rent and other charges in respect of the aforesaid quarter became due and prior to his retirement only three instalments could be recovered from his salary leaving a balance of

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Rs.23785.72 towards penal rent and Rs.3101.00 towards electricity charges. Because of this, the DCRG and leave encashment dues were withheld. Subsequently, after adjusting a total dues of Rs.26886.72, the balance of the DCRG has been released and a bill for Rs.6619/- for leave encashment has been released for payment. The contention of the applicant that the quarter in question was occupied by one Sri Kishan Lal on its vacation by the applicant immediately after his transfer to Allahabad, has been denied. They have annexed a copy of the letter dated 30-9-1993 from the applicant by which he communicated that he had handed over the ^{possession} ~~position~~ of the quarter at ^{to} Kanpur _{to} Sri Kishan Lal.

4. The applicant has filed a rejoinder affidavit in which it has been reiterated that on the date of superannuation on 31-10-1993, the applicant was not in occupation of any railway accommodation and, therefore, the respondents could not have withheld DCRG and leave encashment amounts. It has been further stated that the issue relating to unauthorised occupation of quarter and recovery of penal rent is not within the scope of the present OA and that no efforts were made by the competent authority to ^{realise} ~~release~~ the penal rent, if any, from the salary of the applicant from the year 1982 nor was any notice for ^{realising} ~~releasing~~ the same ever issued to the applicant during the intervening period.

5. I have heard the learned counsel for both the parties and carefully perused records.

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6. The short question in this case is whether the respondents were justified ⁱⁿ ~~for~~ withholding the payment of DCRG and leave encashment. The learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of D.V. Kapoor Vs. Union of India and Others reported in 1990 SCC (L&S) 696, in support of his contention that withholding of the DCRG by the respondents was illegal and beyond their jurisdiction. The respondents, however, tried to justify their action by stating that a large amount was due to be realised from the applicant on account of penal rent and electricity charges for the period of unauthorised occupation of the quarter allotted to the applicant at Kanpur.

7. The question of unauthorised occupation of the quarter at Kanpur and the validity or otherwise of realising the penal rent for such alleged unauthorised retention of quarter are not the subject matters of controversy before me. Despite whatever the applicant has stated in the OA, it is clear that he continued to retain quarter in question till 30-9-1993. In fact, he himself has written a letter dated 30-9-1993 indicating the handing over of the possession of the quarter to Sri Kishan Lal. Therefore, there is the factum of retention of quarter at Kanpur by the applicant till 30-9-1993 though he was transferred from Kanpur to Allahabad as far back as in 1982. If such a long retention of the quarter warrants levying of penal rent from the applicant and if

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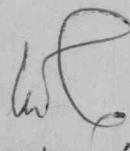
the amount of penal rent to be recovered would work out to a very large amount of money, the respondents would be well within their rights to adjust such dues from the terminal benefits like DCRG and leave encashment. The applicant may well contest the illegality or otherwise of levying penal rent from him but as long as it is not set aside by a competent authority or it is held illegal by a competent court of law, such dues pending against the applicant ~~are well justified by~~ ^{will} be withheld of the terminal benefits to the extent of the accumulated dues. The decision in the D.V. Kapoor case cannot help the applicant in this regard as in that case the DCRG and pension were withheld as a penal action for certain misconduct committed by the applicant. The Hon'ble Supreme Court held that the deprivation of such benefits must be in accordance with law and the measure of deprivation must be commensurate with the gravity of the misconduct. In the case before me, there is no allegation of misconduct of the applicant. The case of the respondents is that there are certain dues pending to be realised from the applicant on account of his unauthorised retention of the quarter. Therefore, this case is not on all fours with the case of D.V. Kapoor.

8. It is, however, the case of the applicant that the total amount due against the applicant was only Rs. 26886.72 which was actually less than the total amount of DCRG. The right course for the respondents would have been to adjust this amount from the DCRG and release the balance to the applicant shortly after the date of superannuation. There is no justification whatsoever

for having withheld the payment of leave encashment as the total amount to be realised from the applicant would have been adjusted from the DCRG itself.

9. In view of the foregoing the application is partly allowed. I direct the respondents to pay interest @ 12% per annum on the entire amount of leave encashment and the balance amount of DCRG after adjustment of the penal rent and electricity charges. Such interest shall be calculated from 1-11-1993 till the date of actual payment of the said amount to the applicant. Let all the settlement dues together with the interest as aforesaid be paid to the applicant within a period of four weeks from the date of communication of this order.

10. There shall, however, be no order as to costs.


Member (A)

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