

Reserved 

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 16th Day of July 1999

Present:- Hon'ble Mr. S. Dayal, A.M.

ORIGINAL APPLICATION NO. 1667 of 1994.

Bhagwan Swaroop Kulshreshtha
Son of Late Maharaj Singh,
R/O B 510, IFFCO Township, Aonla,
District Bareilly, Retired from
Service while working as Senior
Travelling Inspector of Accounts,
Northern Railway, Aligarh.

. . . Applicant.

Counsel for the Applicant:- Sri Sudhir Kumar Adv and
Sri Vinod Sinha, Adv.

Versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Financial Advisor & C.A.O.,
Northern Railway, Baroda House,
New Delhi.
3. Additional F.A. and Chief Accounts Officer
Traffic Accounts, Kishanganj, New Delhi.

Opp. Parties/Respondents

Counsel for the Respondents:- Sri P.N. Roy, Adv.

Order

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

In this application under section 19 of
Administrative Tribunals Act, 1985, the applicant
has sought payment of Gratuity, Settling/Package
Allowance of Rs. 3500/-, Tuition fee reimbursement for

the period from 1.9.1989 to 30.6.1990, Difference of due to higher pay pay/to his junior Sri D.P. Nagia and release of family pass and to pay compensation for the period when family pass was not issued to the applicant after his retirement.

2. Facts stated are that the applicant was retired as Senior Travelling Inspector of Accounts on 31.10.1989 from Northern Railway Aligarh. He claims to have vacated his official residence on 31.3.1991 and given intimation of the same on 15.4.91. He claims that Sri Diwakar Singh was in occupation of this accommodation since 1.4.91. This is disputed by the respondents who claim that Sri Diwakar Singh was in occupation from 1.5.91. He represented for payment of gratuity on 10.11.1990 and was informed on 29.11.90 that Gratuity would be released on vacation of quarter. He has mentioned that gratuity, settlement allowance, Tuition fee, difference of pay over his junior and complementary passes were not given to him. The respondents have mentioned in their counter reply that the applicant was paid Rs.6849/- on 1.5.91 after deducting Rs.34871-60P as gratuity. The respondents have also mentioned that he did not apply for settlement allowance and was entitled to Tuition fee only for September and October 1989. As regards the claim of the applicant to his junior the respondents have mentioned in the counter reply that the said junior was granted three advance increments due to his qualifications. It has also been mentioned that ten passes were withheld for delay in vacation of quarter by ten months and four passes were given.

3. The arguments of Sri S.K. Mishra assisted by

Sri Vinod Sinha for the applicant and Sri P.N. Roy for the respondents were heard. The pleadings have been taken into account.

4. The first claim of the applicant is for gratuity. He has claimed in the rejoinder that the amount of gratuity was Rs.52290/- which was a product of basic pay of Rs.2600/- plus D.A. Rs.860/- multiplied by $16\frac{1}{2}$. The respondents have mentioned that the total amount of gratuity came to Rs.6849/- plus Rs.34871-60 Paise i.e. a total of Rs.41720-60 Paise. Thus there is a difference of nearly Rs.11000/-. Since the facts consisting of last pay drawn as well as number of years of service put in by the applicant could be available with the respondents and the respondents should be able to calculate the amount of gratuity on the basis of the extant rules applicable to the applicant, they require a direction to do this. The respondents have further contended that a cheque of Rs.6849/- was sent to the applicant at the address given by him to the office but the cheque was returned by the Postal authorities as the applicant was not available at that address.

5. The applicant has contested that he could not be required to pay more than 10% of his emoluments for occupation of the quarter after his retirement because his allotment had not been cancelled. He has placed reliance on Kamla Prasad Srivastava Vs. Union of India (1994) 1 U.P.L.B.E.C. (Tribunal). Besides this he has claimed that no deduction could have been made for the room in which office steel almirah was kept and the room was being used for official purposes. The current law on the issue of charging penal rent for unauthorised occupation of quarter is contained in

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full bench judgment in the case of Ram Poojan Versus Union of India. It has been laid down therein that cancellation of allotment is not required and authority for retaining possession of residential accommodation in case of Railway employees automatically gets cancelled after expiry of the period permitted for retention after retirement. Therefore the contention of the applicant that penal rent could not have been charged from him because his allotment was not cancelled, can not be accepted. As regards the question of use of one room for purposes of office, the applicant has not produced any authority to show that he was allowed to have office accommodation in one part of his residence. It is a matter which he has to take up with his employers and it would lie within the competency of the employers to decide this issue.

6. The applicant has claimed Rs.3500/- as Settlement/Package Allowance. The respondents have mentioned that this is possible only when the applicant vacates railway accommodation and gets a settlement pass/kit pass for his family. The applicant neither applied nor received any kit pass or package allowance/settlement allowance. This is contested by the applicant in his rejoinder and he has mentioned that he has shifted his luggage of household goods from Allahabad to Aonla, Distt. Bareilly on 28.3.91 along with his family and, therefore, there was no necessity to get a kit pass issued and that issuance of kit pass was not a condition of payment for settling/package allowance. The respondents are not justified in denying settlement/package allowance to the applicant in this case and the applicant is entitled to get settlement/package allowance as per rules.

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7. The respondents have stated that the applicant was entitled to get tuition fee for his son for September and October 1989 while the applicant has claimed that the same for the academic year. It has also been mentioned by the respondents that the applicant never claimed for reimbursement of tuition fee. Since the rules of payment of education allowance have not been produced by the parties, the respondents can only be asked to examine the claim of the applicant for education allowance in case the applicant makes a representation giving justification and basis for claiming education allowance for the entire academic session.

8. The applicant's claim for difference of pay on account of higher pay given to Sri D.P. Nagia has not been admitted by the respondents because Sri Nagia was selected as Stock Verifier before he was promoted as Travelling Inspector of Accounts and had passed Appendix IV A. The applicant seems to be claiming the pay on the basis of the pay to his junior Sri D.P. Nagia and has not been able to explain satisfactorily as to how he could be given benefit of advance increments given to Sri D.P. Nagia for having passed certain prescribed examinations. Therefore, the applicant is not entitled to the difference of pay as claimed.

9. The applicant has claimed that he was deprived of eleven passes upto December 1995 and that he was entitled to receive an amount of Rs.3000/- per pass as he had to travel in second class along with his other three adult dependents. He has sought compensation of Rs.3000/- for each pass. Denial of Railway passes for non vacation of official accommodation has been justified by the respondents on account of the instructions contained in Railway

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Board's Circular No. E(G)81 QRI 51 dated 4.6.83.

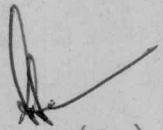
The denial of passes is an extra punishment imposed by the Railways on the officials who do not vacate the accommodation allotted to him by the Railways. A retired employee gets half of pay and some of the emoluments which he used to get before he retired. The Apex Court has held that denial of gratuity and other retiral benefits to be bad in law due to this fact and said that gratuity is not a bountee but a right. Applying the same rationale, the respondents can not deprive the applicant of complementary passes after retirement just because the accommodation allotted by the respondents, has not been vacated.

The applicant has mentioned that he undertook journeys during the period the passes were denied to him. He may furnish accounts of expenses made by him in purchasing the tickets and respondents shall reimburse the same on the basis of vouchers for such expenditure of a number of journeys which equal the number of passes denied to the applicant.

10. In the light of above findings, the respondents are directed to calculate the amount payable to the applicant as gratuity as per extant rules applicable to the applicant and thereafter add 12% interest from a period of two months after his retirement till the date of payment and deduct from that the amount of penal rent to be paid by the applicant for retention of quarter beyond the period for which he was authorised to retain. The respondents are further directed to entertain any claim which might have been made or which may be made by the applicant for settlement/package allowance without insisting on the applicang being issued a kit pass. The respondents are further directed to consider the claim of the applicant for tution fee for his son for the Period permitted under ^{the} extant rules. Lastly

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the respondents are directed to consider the claim of the applicant for expenses on tickets for undertaking journeys during the period in which the facility for complementary passes was withheld and restore complementary passes to the applicant forthwith. These directions shall be carried out and payment which may thus be found to be due to the applicant be made within a period of three months from the date of service of this order by the applicant on the receipt. There shall be no order as to costs.


Member (A.)

Nafees.