

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 354 of 1994

Allahabad this the 23rd day of May, 1996

Hon'ble Dr. R.K. Saxena, Member (J.)

S.D. Dubey, S/o Sri Shambhu Dhar Dubey, R/o Village and Post Bargo, District - Gorakhpur.

Applicant.

By Advocate Sri Bashist Tiwari.

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. D.R.M., N.E. Rly., Lucknow.

Respondents.

By Advocate Sri P. Mathur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Judicial Member

This O.A. has been filed seeking declaration that the circular dated 24.4.1982 is unconstitutional; and further seeking command to the respondents to make payment of gratuity and other settlement dues to the applicant with 18% of interest.

2. The facts of the case are that the applicant was posted as divisional T.T.I. at Gorakhpur. He was allotted Rly. Quarter no. T/2/E Station Colony at Gorakhpur. He retired from service on 31.3.1988 and he continued in possession of the quarter because the allotment was not cancelled. The respondents did not release the amounts of death-cum-retirement gratuity, leave encashment and complimentary passes.

3. The Estate Officer, N.E.R., Lucknow had issued show cause notice on 21.9.89 to the applicant. The reply was submitted. The Estate Officer, however, passed the order on 19.6.90 whereby the applicant was directed to pay Rs.9365-75 as damages of the quarter. He was further directed to vacate the quarter. On appeal before the District Judge, the order of the Estate Officer was stayed.

4. The applicant gave applications to the General Manager for release of the pensionary benefits but with no results. An amount of Rs.35,000-00 was released by the administration on 24.2.94 but the said amount had been adjusted against the recovery shown in the name of the applicant. Hence, this O.A. with the reliefs already mentioned.

5. The respondents have come with the case that on retirement of the applicant on 31.3.88, he was permitted to retain the quarter for a period of four months vide order dated 12.4.88 passed by D.R.M.. On the expiry of the period, the applicant was treated unauthorised occupant and a notice was given. The competent authority cancelled the allotment of the applicant and allotted the said quarter to one Sri Janardan Singh T.C. but the applicant was continuing in the possession of the quarter. Consequently, the proceedings were instituted under the provisions of Public Premises Eviction Act, 1971. The order of the Prescribed Authority was challenged in appeal and ex-parte stay was obtained by the applicant.

6. The O.A. is contended to be barred by limitation. It is averred that an amount of Rs.33,000-00 was due to the applicant as rent of the quarter and thus the entire amount of Rs.33,000-00 of death-cum-retirement gratuity was adjusted. The G.I.S. amount of Rs. 1486-00 had been sent for payment to the applicant. It is, therefore, urged that there is no merit in the O.A.

7. I have heard Sri Bashist Tiwari, learned counsel for the applicant and Sri P. Mathur for the respondents. The record is also perused.

8. The main question for consideration and determination in this case is if the amount of gratuity and other retiral benefits can be adjusted in recovery of the rent. In this connection, the learned counsel for the applicant has relied on the judgment given by the Division Bench of this Bench in O.A. No.1127 of 1989 Madan Mohan Vs. Union of India and Others decided on 18.3.96 holding that the gratuity is equivalent to pension, and since the amount of pension cannot be deducted without due process of law, the amount of gratuity too can neither be deducted nor adjusted towards any recovery of rent. The Bench had arrived on this conclusion on the basis of law which was laid down by their Lordships of Supreme Court in the case of 'R. Kapoor Vs. Director of Inspection J.T. 1994(6) S.C. 354'.

9. In the instant case, the respondents admitted that D.C.R.G. amount of Rs.33,000-00

was due for payment to the applicant but equal amount of penal rent was to be recovered from the applicant, hence the same was adjusted. This kind of adjustment is not permissible in law and thus it was illegal. The said amount of Rs.33,000-00 be paid to the applicant alongwith interest at the rate of 10% from the date of expiry of three months time after the date of superannuation. No doubt, the applicant has demanded the interest at the rate of 18% but the decision of the Division Bench which has been relied upon, allows interest at the rate of 10% only and therefore, the same rate is made applicable.

10. So far as other retiral benefits are concerned, they have not been specified by the applicant. The respondents on the other hand contended that the applicant was entitled for G.I. S. amount which was calculated at Rs.1486-00 and was sent for payment to the applicant. This position has not been disputed by the applicant. Thus it can be concluded that no other retiral benefits remains unpaid.

11. The applicant claimed issuance of complementary passes. The learned counsel for the applicant could not show any law if the complementary passes can be equated with pension. The very name "Complementary Passes" does suggest that it is a concession which has been given by the employer to its employees. Thus the pension-a legal right and the complementary passes- a concession, are

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not equal and cannot be claimed as of right. Thus, I do not see any justification in giving direction to the respondents for issuance of complementary passes.

12. The learned counsel for the applicant has neither pressed nor argued on the point of declaring the circular dated 24.4.1982 as unconstitutional. Hence this relief stands rejected.

13. The plea of limitation is raised on behalf of the respondents. Non-payment of pensionary benefits is a continuing cause of action. Hence, the plea of limitation does not hold good.

14. On the consideration of the facts and circumstances of the case, I hold the view that the applicant is entitled to get the amount of D.C.R.G. with 10% of interest from the date which is mentioned earlier. The O.A. is, therefore, partly allowed. No order as to costs.

(Dr. R.K. Saxena)
Judicial Member

/M.M./

Typed and compared
on 04/6/96.

Brakte
04/6/96.