

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of September 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

O.A. No. 887 of 1994.

Nand Kishore Mishra S/O Sri B.P. Mishra R/O Village and PO
Siswan, Distt. Allahabad..... Applicant.

Counsel for applicant : Sri A.K. Sinha.

Versus

1. Union of India through General Manager, Northern Railway,
Allahabad.

2. Divisional Railway Manager, Northern Railway, Allahabad.

3. The Divisional Commercial Manager, N.Rly., Allahabad.

..... Respondents.

Counsel for respondents : Sri A.K. Gaur.

ORDER

BY HON. MR. S. DAYAL, A.M.

This case was earlier heard and an order passed on 26.2.97. However, thereafter by an order dated 16.7.99, the order was recalled in review in so far as the issue of gratuity, which was unconnected with the recovery of penal rent, was not decided.

2. I have heard Sri A.K. Sinha for applicant and Sri A.K. Gaur for respondents.

3. Relief No.8-A had already been dealt with in the earlier order based on Full Bench judgment of C.A.T. at Allahabad cited in (1996) 34 ATC 434 holding the retention of accommodation after expiry of permissible period of retention would be deemed to be unauthorised and that penal rent can be recovered from salary was the law and hence Relief No.8-A was dealt with and there is no reason to touch that relief now.

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4. As regards the payment of amount of gratuity, the counsel for applicant has claimed that the amount of penal rent had been recovered from the pay of the applicant while counsel for the respondents disputes the same. Counsel for the respondents has relied upon the case of Ranjeet Kumar Banerjee Vs. Union of India & others (1996) 32 ATC 761. The Tribunal had relied on the case of Sushil Chand Bhatnagar Vs. Union of India & others (1994) 3 SLJ CAT 367 which permitted the whole back of amount of DCRG for rent recoveries. Counsel for the respondents has also placed before me the judgment of the Apex Court in R. Veerbhadram Vs. Govt. of A.P. It has been held in this case that when gratuity is withheld in accordance with rules, no interest shall be payable on the amount so withheld.

5. Since the case of the applicant is that the entire penal rent had been paid from his salary by the time of his retirement on 31.3.94, there was no reason to withhold the gratuity. The respondents are directed to examine this contention of the applicant and in case, the entire amount of penal rent have been recovered from the applicant's salary, the amount of gratuity shall be paid to the applicant along with interest @ 12% per annum within a period of three months from the date of receipt of a copy of this order along with a copy of the letter of the applicant.

There shall be no order as to costs.


A.M.

Asthana/

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.
Transfer Application No.

887/94

Date of decision 26-2-97

N.K. Mishra

Applicant(s)

Sri R. Pandey, R.A. Pandey
K.N. Katiyar

Counsel for the
applicant(s)

V E R S U S

Union of India & Other

Respondent(s)

Sri B. Bhushan

Counsel for the
respondent(s)

C O R A M :-

Hon'ble Mr. S. Dayal. AM

Hon'ble Mr. —

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 Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Benches ?

(SIGNATURE)

(Pandey)

Reserved

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 26th day of February 1997

Original Application no. 887 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Nand Kishore Mishra, S/o Sri B.P. Mishra, R/o village
and PO Siswan, District, Allahabad.

... Applicant.

C/A Sri Satish Dwivedi.

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. The Divisional Commercial Manager, Northern Railways, Allahabad.

... Respondents.

C/R Sri E. Bhushan

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

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2. The applicants seeks the following reliefs in this applications-

- i. The setting aside of order of deduction of penal rent from the salary of the applicant from 19.02.88 to 13.03.84 and a direction to refund the amount so deducted with 18 % interest
- ii. a direction to the respondent to pay the amount of gratuity with 18 % interest to the applicant
- iii. award cost of application to the applicant.

3. The case of the applicant is that he was appointed as a cable man on 27.4.56 and superannuated as Head Goods Clerk on 31.3.94. He was allotted quarter no. 655-Bin the Loco Colony Allahabad where he was posted as Senior Goods Clerks in Allahabad. He was transferred on 17.2.88 to Kanpur and was retransferred to Allahabad on 22.2.90. During his period of service in Kanpur he continued to be in occupation of the quarter and his family continued to reside in Allahabad due to sickness of his wife and one of his daughters and education of children. He was not allotted any quarter during his posting at Kanpur. He states in his OA that he was commuting daily to Kanpur from Allahabad. He states that the respondents started deducting penal rent from the salary of the applicant after the order of his transfer from Allahabad to Kanpur. He made representation dated 17.4.90, 14.5.90, 17.7.90 and 12.6.90. The Division Railway Manager Allahabad rejected his representation by order ^{dated} 12/13-10-1993. He made representation to the competent authorities against this order on 2.11.93.

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His grouse is that the respondents ~~recovered~~^{recovered} penal rent without cancelling the ~~quarter~~ allotment of quarter to the applicant. The applicant vacated the quarter on 30.3.94. A charge sheet was issued to him on 15.3.94 for unauthorised occupation of railway quarter no. 655-B Loco Colony, Allahabad and it was withdrawn on 11.4.94 on vacation of the quarter of the applicant. He states that the respondents should have taken any action of recovery of penal rent only after issuing a notice and giving an opportunity of explaining his case. He has also challenged the withholding the gratuity by the respondents. He has demanded compensation for pecuniary loss and mental torture.

4. The arguments of Sri Satish Dwivedi learned counsel for the applicant were heard for the applicant. None was present for the respondents. The learned counsel for the applicant has cited the judgement of the Apex Court in R. Kapoor Vs Director of Inspection (Painting and Publication) Income tax and others, 1995 SCC (L&S) 13. ~~See~~ The Apex Court in this case has ~~quoted~~^{quoted} another judgment ~~as~~ in State of Kerala Vs. M. Padmannabhan Nayar to the effect that if there is culpable delay in settlement and disbursement of pension and gratuity, penalty of payments of interest at the current market rate ~~to~~^{should} be imposed. The applicant has annexed to his RA some judgments of this Tribunal in his favour in which ^{it has been held that} cancellation of allotment of quarter shall be done only after giving an opportunity of hearing and taking resort ^{to} the Public Premises (Eviction of ~~unauthorised~~ Unauthorised Occupants) Act 1971. The applicant has also annexed to his RA details of amount recovered from his salary towards penal rent (annexure 5). The


SCC (L&S)

that the penalrent was being recovered from his pay bills during his service. The app

5. The applicant's contention that an order of penalrent passed without show cause notice and ~~order~~ cancellation of allotment of quarter could not make retention of accommodation^{tion} unauthorized and that penalrent can not be recovered without resorting to proceeding under public premisses (Evection of Unauthorised Occupants) Act 1971 is no longer good law in view of judgment of full bench of Allahabad cited in (1996) 34 ATC 434 (FB) which holds that the retention of accommodation after expiry of permissible period of retention would be deemed to be unauthorised and that penal rent can be recovered from salary without resorting to the proceedings under the said Public Premises Act 1971.

6. The OA, therefore, is dismissed as lacking merit.

7. There shall be no order as to costs.


Member-A