

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 6th day of August 1997.

Original Application no. 674 of 1995

Hon'ble Mr. S. Dayal, Administrative Member

Aejaj Ahmad Ansari, S/o Shri Serajul Haq Ansari, R/o Railway
Quarter No. T-58-A, Purani Loco Colony, Varanasi.

... Applicant

C/A Shri P.A. Ansari
Shri S.A. Lari

Versus

1. Union of India through Secretary Ministry of Railway,
Rail Bhawan, New Delhi.
2. General Manager (P), N.E. Rly., Gorakhpur.
3. Divisional Railway Manager, N.E. Railway, Varanasi.
4. Chief Accounts Officer, N.E. Rly., Gorakhpur.
5. D.P.C. (Divisional Personal Officer), Varanasi, N.E. Rly.,
Varanasi.
6. Divisional Rail Manager Operating, N.E. Rly.,

... Respondents.

C/R Shri P. Mathur

ORDER

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

This is an application under section 19 of the

Dayal
Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs:-

- i. The order quashing letter of D.R.M, Varanasi informing ^{about} for cancellation of allotment by Estate Officer.
- ii. A direction to the respondents not to adjust petitioner's ~~leave~~ leave of average pay for PME as Lr. took time for P.M.E.
- iii. A direction to the respondents to refix pension and make this payment with arrears.
- iv. A direction to the respondents to pay salary from the period from 19.09.90 to 16-12-90.
- v. Commutation of 1/3 of likely increase in pension.
- vi. Double deduction of Rs. 180 @ Rs. 30 pm of group insurance for the period of six months.
- vii. Travelling allowance for attending court of Munsif Magistrate, Balic.
- viii. Travelling allowance for going to Central Hospital Perambur for treatment of Heart disease.
- ix. Payment of Rs. 65000 of D.C.R.G.

3. The facts as given in the application are that the applicant was working as Guard in Northern Eastern Railway Varanasi. He started his career in 1956 and was due to retirement on 31.08.91 as salary of P.M.E (Periodical Medical Examination) held on 16.01.90, he was primary found unfit but he was referred to an Eye Specialist and was decategorised for all categories except C-2 on 19.09.90. The petitioner reported to the Senior Divisional Personnel Officer for duty on 19.09.90. His case was put before screening committee, which came to the conclusion that no suitable post in the

Hand

grade of the applicant was available and the applicant was retired with effect from 10.12.92 after he gave the written consent. He was sanctioned pension in July 1996 @ Rs. 1623/- pm which was revised to Rs. 1635/- pm on his representation. The applicant was also asked wide letter dated 16.07.92 to vacate quarter in his possession. The applicant expressed his inability to vacate quarter in the absence of clearance of his dues. He was also given notice dated 11.02.93 to deposit penal rent of quarter so that all his dues could be cleared.

4- The argument of counsels Shri S.A. Lari for the applicant and Shri Prashant Mathur for the respondents have been heard. The pleadings on record have been taken into consideration. The judgment follows.

5. The first issue which arises is whether, the respondents are within their rights to withhold the payment of terminal benefits to the applicant on the ground of non-vacation of quarter and the consequent non furnishing of no dues certificate by the department to the applicant. A government employee is entitled to payment of all his dues barring pension on the day of his superannuation and is entitled to payment of his pension from the next month onwards. The government employee is entitled to retain his quarter for more than this period admissible for payment of his terminal benefits. Therefore, it is quite clear that the question of payment of terminal benefits can not be linked to vacation of quarter. In-spite of this situation, the department of Railways which is a respondent department in this case has often resorted to non payment of D.C.R.G and encashment of leave to employee who do not vacate their quarter if their payment is to be made after a few months of the date of superannuation

due to some procedural reasons. Such an action on one part of the respondents cannot be considered to be within the ambit of rules regarding payment of pensionary and other terminal benefits.

6. The applicant has raised the issue of non payment of terminal benefits and has placed this proposition before this bench that he is within his right not to handover the possession of the house till he is paid all terminal benefits as per his claim. Such a proposition is as much against the rules as the proposition of the respondents dealt with in the last paragraph. The payment of terminal benefits and handing over the possession of the house after the period of occupation authorised under the rules is completed are two unrelated issues and any retention beyond the period renders the occupant liable to eviction alongwith payment of penal interest. The applicant's contention that he is not to be subjected to ~~eviction~~ and payment of penal interest without passing an order of cancellation of allotment is also not tenable. This law is no longer applicable after judgment of this tribunal in Ram Nagina Pandey Vs. Union of India and another in OA 1602 of 1994 on 06.09.95. It has been held/that case that after 15.01.90, an order of cancellation is no longer necessary. The judgment relies on the law on this issue laid down by apex court in Union of India versus Commander R.R. Hingorani AIR 1987 SC 808 and Union of India and others vs Shiv Charan 1991 Supplementary (2) SCC 386. Therefore, the impugned order dated 9.5.95 (Annexure 8 to the OA) is valid and can not be set aside.

7. As far as the payment of terminal benefits is concerned, the applicant has ~~merely~~ staked his claim to payment

// 5 //

of a number of dues which he feels were notionally admissible to him. The respondents in their counter reply have denied withholding of any other payment except that of D.C.R.G. The applicant has not cited any rules in support of his claims. Some of his substantial claims like that of extended period of PME and salary till date of retirement are based merely on the ground that the respondents delayed his deategorisation and retirement on that ground. It is not the case of the applicant that he was given a treatment which was dissimilar from that given to other employees. The applicant has also not substantiated his allegation of undue delay. It appears from certain annexures to the OA (Annexure 2,4, 6, 7 & 9) that the applicant has been raising the issue of payment of certain dues and the respondents have merely stated in their counter reply that all dues barring D.C.R.G have been paid to him and nothing more is to be paid. The applicant deserves one last chance to state his claim fully with justification and rules in a representation to the respondent which the respondent shall dispose of by a reasoned and speaking order in a time bound manner.

8. As far as the payment of gratuity is concerned, it is admitted by respondents to be pending payment for non vacation of railway premises by the applicant. I have already dealt with the issue earlier and held that the retention of any terminal benefits was unjustified. The respondents have to pay the D.C.R.G at the earliest to the applicant and shall also pay an interest of 12% on the amount of death cum retirement gratuity withheld from the date of superannuation of the applicant till the date of its payment. The interest is being allowed inspite of the fact that there is no specific prayer

Shay

// 6 //

for grant of the same by the applicant because the imposition of penal rent by the applicant and at the same time withholding of amount of gratuity unauthorisedly and non payment of interest on it will penalise an employee heavily at a time when there is a steep fall in his emoluments.

9. In effect, the application is partly allowed.

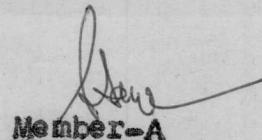
The respondents are directed to:-

i. make payment of death cum retirement ^{gratuity} and interest of 12% on it within a period of two months from the date of communication of this order.

ii. decide any representation received from the applicant regarding any other dues within a period of three months ^{or receipt of representation} provided the applicant makes a representation in terms of paragraph 7 of this judgment within one month from the date of receipt of this judgment.

10. It is made clear that the applicant shall be liable to vacate the quarter within one month of the date of receipt of this judgment in pursuance of the order of the respondents dated 09.05.95 (Annexure 8 to the OA) if he has not vacated it so far. He shall ^{also} be liable to pay penal rent as per rules.

11. There shall be no order as to costs.


Member-A

/pc/