

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.601/1999

WEDNESDAY, THIS THE 15TH DAY OF MAY, 2002

HON'BLE MS. MEERA CHIBBER .. MEMBER (J)

R.N. Rastogi,
S/o Late Sri Saligram Rastogi,
R/o of 128/2-107-A, Yashoda Nagar
(Laharia Park near Central Bank),
Kanpur.

Applicant

(By Advocates S/Shri A. Kumar,
C.P. Gupta)

Versus

1. Union of India, through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
DRM Office, Allahabad.

... Respondents

(By Advocate Shri P. Mathur)

O R D E R - (ORAL)

The grievance of the applicant in this O.A. is that even though he has retired as Section Engineer on 31.10.1996, and he wrote to the authorities to permit him to retain the quarter, the same ^{was} ~~not~~ disposed of, that he continued to retain the Government accommodation and ultimately vacated the same on 28.6.1997. Despite that his D.C.R.G. and other retiral benefits are not given to him. Thus, being aggrieved, he filed this O.A. claiming the following reliefs:

The Hon'ble Tribunal may be pleased to direct the respondents to pay the entire gratuity as well as leave encashment due to the applicant after his retirement

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with compound interest. Issue the complimentary passes to the applicant as per rules. He has also prayed for a direction to the respondents to pay the arrears of differences of salary, differences of pension, leave encashment due to the applicant after the revision of Fifth Pay Commission with effect from 1.1.1996 along with other dues payable to the applicant with 18% interest.

2. The respondents have contested the claim of the O.A. by stating that the applicant had retained the government quarter unauthorisedly after his transfer from GMC, Kanpur to Chunar. Similarly, he had remained in unauthorised occupation of quarter No.609-A, Fazalganj Railway Colony, Kanpur. Even after his superannuation without any permission of the competent authority. Therefore, the D.C.R.G. was being held due to unauthorised occupation of quarter No.609-A at Fazalganj Railway Colony, Kanpur. Further, they have stated that the damages charges and the electric charges of the railway quarter comes to Rs.97,930/- which had been adjusted against the due DCRG and Gratuity and the balance amount to a tune of Rs.1,211/- has been passed for payment to the applicant under CO-7 No.4039, dated 13.08.1999. The leave encashment for Rs.790/- in lieu of 3 days LAP at his credit had already been passed for payment under CO-7 No.8554 dated 11.03.1997, and as far as fixation of pay of the applicant on the recommendation of the Fifth Pay Commission is concerned, the same is under process and since the fixation of pay is being done, the revision of the Pension, Gratuity, the additional commutation of Pension, leave encashment's difference and arrears of pay will be made available to the applicant by



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the department. (It is stated on page 44). Thus, it is clear that when the applicant had approached the Tribunal, he had still not been paid the retirement benefits and the revision of pay scale and the Pension thereof after the Fifth Pay Commission. It is submitted by the applicant that he has till date not been given any of the same amount nor his Pension has been revised nor any dues paid to him on account of revision of pay after the Fifth Pay Commission. I had adjourned this matter twice with the direction to the respondents to tell us the latest position but, unfortunately, the respondents' counsel has not been able to give any information. Therefore, we have to go by the pleadings which are available on record.

3. The respondents had not given any break-up nor have annexed any order to demonstrate as to how they have calculated the amount of Rs.97,930/- to be damage charges and electric charges from the applicant. Even if it is assumed that the applicant was an unauthorised occupant after his superannuation, it was incumbent on the part of the respondents to issue a proper order stating therein as to how and from which date the applicant is declared to be an unauthorised occupant and what amount he is liable to pay as damage rent to the respondents so that if it was wrongly calculated, the applicant could have challenged the same. There is no such order forthcoming from the respondents nor they could satisfy me inspite of two adjournments as to how they have come to this amount of Rs.97,930/-. I find no force in the submission made by the applicant's

counsel that without informing him as to what is the amount due from him, the respondents could not have withheld the entire D.C.R.G., Gratuity and Leave Encashment etc., which according to the applicant, has still till date not been paid to him. Even though the respondents have stated in para 18 that CO-7 had been prepared for payment to the applicant on 13.8.1999 and 11.3.1997, but there is no proof of the same having been given to the applicant nor any acknowledgment from the applicant for having been paid to him. It is also seen from the records that earlier when the applicant had been transferred, he had filed an O.A. before the Tribunal and during the pendency of the said O.A., the respondents have modified the said order bringing the applicant closer to Allahabad. Therefore, the applicant had withdrawn that O.A. Thereafter, he had given a representation to the respondents to regularise his retention of the quarter and to permit him to stay there till his superannuation and permissible period thereafter. However, there is nothing on record to suggest that the said representation had been rejected by the respondents. Therefore, I do not find any justification in respondents' action as to why and how they could on their own deduct an amount of Rs.97,930/- as claimed by them without giving the break-up of the same to the applicant or issuing a proper order to that effect. In any case, as per the applicant's averments even the difference of the amounts have still not been paid to him nor his pay has been revised on the recommendation of the Pay Commission and the differences paid to him on account thereof. If that be so, definitely it calls for interference by the Tribunal and with some observations as a chaos of sorry state of affairs in the Railway Department. Admittedly,

the applicant had retired way back on 31.10.1996 and had vacated the quarter also on 28.6.1997. Therefore, there is no justification as to why the retiral benefits of applicant could not be paid to him immediately thereafter. Since the applicant had already vacated the quarter also way back in 1997, the delay cannot be attributed to the applicant. Therefore, the O.A. is allowed. The respondents are directed to release the gratuity as well as the Leave encashment due to the applicant after revising his pay as per the Fifth Pay Commission and give him the same within a period of six months positively along with interest at the rate of 9% per annum from the date it had become available to the applicant in law as per Rule 87 of Railway Service Pension Rules 1993. Liberty is however granted to the respondents to recover any legitimate dues from the applicant which they are entitled to under the rules after following due process of law.

4. As far as complimentary passes are concerned, the respondents have themselves annexed the instructions with M.A.5241/1999 wherein it is clearly mentioned that for every one month of unauthorised retention of Railway quarter, one set of Post retiral passes should be dis-allowed. However, a show cause notice to this effect has to be issued to the retired employee before disallowing the passes. The respondents have not been able to show that any show cause notice was issued to the applicant before disallowing the complimentary passes. However, since these instructions would also be relevant for the period when the applicant was in unauthorised occupation. There is absolutely no

justification whatsoever to deny the same passes to the applicant even now when he has already vacated the Govt. quarters. Therefore, the respondents are also directed to release the complimentary passes to the applicant for this year and thereafter in accordance with rules and instructions.

5. Since the applicant has been dragged to the Court unnecessarily and has been deprived of his D.C.R.G. and other benefits which he was entitled to in law, it would be in the interest of justice to award a cost of Rs.1,500/- in favour of the applicant and against the respondents.

6. With the above directions, the O.A. is allowed.



MEMBER (J)

psp.