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Reserved on 06.02.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD**

**Original Application No. 486 of 2002**

Allahabad this the, 28th day of Feb., 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD  
Hon'ble Ms. Jayati Chandra, Member (A)**

Shyam Behari Lal, aged about 64 years, Son of Late Shri Dukkhi Lal, Resident of Preet Vihar Khushalpur, Moradabad.

**Applicant**

**By Advocates: Sri Mannu Mishra  
Sri Ashok Trivedi**

**Versus**

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.
3. Assistant Divisional Accounts Officer, Northern Railway, Moradabad.
4. Divisional Rail Manager, Northern Railway, Firozpur Division, Firozpur.

**Respondents**

**By Advocate: Sri Prashant Mathur**

**O R D E R**

**By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD**

The applicant has prayed for the following relief(s): -

- “(a) Quash the order dated 5.12.2001;
- (aa) issue an order or direction in the nature of mandamus directing the respondents to pay the arrears of his salary w.e.f. 30.4.1991 to 19.5.96 and traveling allowances, for April, Oct., December 1989 and March, June, July 1990.





- (b) Direct the respondents to refund the amount of Rs.32,575/- deducted from gratuity towards the alleged penal rent of the residential accommodation.
- (c) Direct the respondents to pay the salary alongwith other allowance with effect from 30.04.1991 to 03.02.1993.
- (d) Direct the respondents to refix the pension after taking into consideration of the arrears of salary with effect from 30.04.1991 to 19.05.1996."

2. The brief facts of the O.A. are as follows: -

That the applicant was appointed as a Trade Apprentice on 17.02.1958 in Loco Workshop, Northern Railway, Charbagh, Lucknow. He was transferred from Lucknow to Moradabad as an Apprentice (Boiler Maker) in 1961. He was promoted as Semi Skilled (Boiler Maker) in 1963, and he was confirmed on the above post in 1964. He was again promoted as Apprentice Skilled (Boiler Maker) in 1965, and confirmed as a Semi Skilled (Boiler Maker) in 1966. He was confirmed as Boiler Maker Grade-III in 1970. He was also rewarded for his efficiency and excellent work in 1971. He was confirmed as High Skilled Boiler Maker Grade II in 1984, and was confirmed as High Skilled Boiler Maker Grade-I in 1989. He was elected as a Convener of Railway Shramik Sangharsh Samiti, Moradabad, and in that capacity he raised the issues like corruption in the department, particularly in regard to the recruitment of Class-III and IV employees in





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Moradabad Division. In pursuance of the resolution passed by the above Sangharsh Samiti, he talked to Hon'ble Railway Minister, who was passing through Moradabad Railway Station through Train No. 4229 Up, at Moradabad Railway Station Junction. He accompanied the Hon'ble Railway Minister in the same Coach to complete his talks with him. The respondents treated the meetings of the Workers with the then Railway Minister as direct action amounting to an agitation of stopping the Train No. 4229 Up on 21/04/1991, and the services of applicant and one Shri Musharraf Ali, Secretary of the Railway Shramik Sangharsh Samiti were dispensed with under Rule 14 (ii) of Railway Servants (Discipline and Appeal) Rules, 1968 on 30.04.1991. He was arrested under Section 175 of the Railway Act on the charge of stopping the train. An F.I.R. was lodged against him and a Criminal Case No. 151 of 1991 was registered, which is still pending in the Court of A.C.J.M. Railways, Moradabad. However, during the pendency of aforesaid criminal case, he was illegally transferred to another Zone. He challenged the order dated 30.04.1991 and the punishment of dismissal of the same date before the higher authorities and the order of dismissal was substituted to that of reduction of pay by one stage i.e. his pay was reduced from ₹1600/- per month to ₹1560/- per





month in the pay scale of ₹1320-2040/- for a period of two years vide order dated 29.01.1993. The applicant challenged the transfer order before the Central Administrative Tribunal, New Delhi which was dismissed on 15.05.1996. He joined at Ludhiana in Firozpur Division as High Skilled (Boiler Maker) Grade-I on 20.05.1996, and he retired on superannuation on 30.06.1996. The applicant was not paid his retiral benefits for a pretty long period. Subsequently, his pension was fixed without considering the arrears of salary from 30.04.1991 to 28.01.1993 and from 29.01.1993 to 19.05.1996. Moreover, the respondents illegally recovered the amount of ₹32,575/- from the gratuity of applicant towards rent of the alleged unauthorized occupation of the railway residential quarter for six months after retirement, which is highly excessive and illegal. The applicant retained the official accommodation till 04.01.1997 as his wife was seriously ill and he had no other place to shift. The applicant made representations regarding his grievances to the respondents from time to time but no attention was paid to it. The salary of applicant w.e.f. 01.06.1989 to 11.08.1989 amounting to ₹5500/- was also not paid. The applicant moved the Divisional Railway Manager, Moradabad Division to consider his matter in Pension

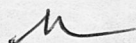




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Adalat but, his representation regarding dues was rejected on 05.12.2001. Hence, he filed the above O.A. mainly on the ground that the applicant is entitled for his pay along with all benefits w.e.f. 30.04.1991 to 29.01.1993, and from 29.01.1993 to 19.05.1996. The applicant being entitled to retain his official accommodation for four months after retirement as a matter of right and further for four months he could have retained the accommodation on account of his wife's illness. The recovery of ₹32,575/- towards penal rent of the alleged occupation is illegal. He is also entitled for the travelling allowance and salary which has not been paid to him. The action of the respondents is highly arbitrary and malafide. No recovery could be legally made from the amount of gratuity. The retiral benefits should not be withheld for not vacating the residential accommodation. Non-availability of documents in the office of respondents is not the fault of applicant, and on that basis he cannot be denied the benefits, due to him.

3. The respondents initially filed a Short Counter Reply, and subsequently a detailed Counter Reply, partly denying the allegations made in the O.A. mainly alleging that the applicant was dismissed from service for having obstructed the passage of Lucknow Mail (4229 Up) at





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Moradabad on 21.04.1991 for 115 minutes by blocking the track and caused disruption of train services, and for causing great inconvenience and discomfort to the general public travelling by Train No. 4229 Up, after proper inquiry. However, in the Revision filed by the applicant before the Revisional Authority i.e. the General Manager, Northern Railway, his punishment of dismissal from service was reduced to reduction of pay by one stage for a period of two years with cumulative effect, and he was transferred from Moradabad Division to Firozpur Division vide order dated 29.01.1993 on administrative ground, where he joined only on 20.05.1996. On attaining the age of superannuation, the applicant retired on 30.06.1996 from Firozpur Division. After his retirement, the applicant has been paid following settlement dues, as per details given below: -

"PF-14709 vide DD No. AB No. 03/F dated 4.7.96

LE-12251 AB No. 128 BM dated 25.4.97

GIS-17064 AB No. 10AM dated 3.2.97

Commutation 32636 Pen No. 17 dated 1/97

DCRG-50708 less 32575 vide AB No. Pen 30 dt. 4/97

Transfer and Packing allowance Rs.1413/- AB No. 117 dt. 27.6.97. On the recommendation of 5<sup>th</sup> Pay Commission the revised due payment was also paid to him. The details are as under: -

- (i) Difference of DCRG Rs.28452/- Pen 120 dt. 30.7.1997
- (ii) Commutation difference Rs.45,437/- Pen 120 dated 30.7.97.





- (iii) Old pension Rs.780/- dated 1/97 Revised Pension Rs.1556/- vide PPO No. 0914.

The arrear of quarter rent and electricity charges, as advised by Moradabad Division, due from the applicant, have rightly been recovered from the settlement dues of the applicant. The O.A. has got no merits and deserves to be dismissed.

4. Rejoinder Affidavit has also been filed by the applicant, reiterating the earlier facts made in the O.A.

5. Further, the applicant has filed a Synopsis particularly in regard to the alleged illegal deduction of penal rent from the gratuity of the applicant for alleged unauthorized occupation of the Railway premises. The applicant has mainly placed reliance on some Case Laws in support of his contention.

6. The applicant also placed reliance on certain documents i.e. annexure-1 to annexure-8 and annexure RA-1, which are mainly relating to letters of the Hon'ble Railway Minister, and Members of Parliament, and letters of the applicants to the respondents. The order passed by the Revisional Authority on the punishment of applicant, notice regarding medical fitness of the applicant when he joined at Firozpur Division on 20.05.1996 and some letter

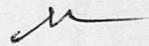




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correspondence regarding extension of time to the applicant to retain the official accommodation and letter sent to the Divisional Railway Manager, Firozpur Division regarding recovery of ₹32,575/- from his gratuity amount.

7. On the other hand, the respondents have filed annexure SR-1, giving details of the penal rent of the Railway quarter, and the recovery of electric bill from the gratuity amount of the applicant.
8. Heard, learned Counsel for the parties and perused the papers on record.
9. A perusal of record shows that the O.A., filed by the applicant, was dismissed by a Division Bench of this Tribunal on 26.05.2009 against which the applicant filed a Writ Petition No. 5251/2009 before the Hon'ble High Court, Allahabad, which was disposed of on 03.09.2011 by remanding the O.A. to this Tribunal for deciding it afresh in the light of directions given in the Writ Petition.
10. Before starting his arguments, learned counsel for the applicant contended that in the changed circumstances, he wants to press the O.A. only with regard to relief No. (b). He does not want to press relief No. (a), (aa), (c) and (d).





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11. In view of aforesaid statement of learned counsel for the applicant, a very short controversy remains to be decided by this Bench i.e. as to whether the deduction of ₹32,575/- from the amount of gratuity, payable to the applicant by the respondents, is arbitrary and illegal, as alleged by the applicant and this amount should be refunded to him by the respondents.

12. Learned counsel for the applicant has argued that without giving any opportunity of hearing and without following the prescribed procedure for recovery, the aforesaid amount has been recovered from the amount of gratuity, due to him, which is not justified in the eye of law. It is worth while to mention here that the applicant has not been able to show any prescribed procedure warranting affording of an opportunity to the applicant before deducting the aforesaid amount from his gratuity fund. Learned counsel has drawn our attention towards the observations made by the Hon'ble High Court, Allahabad in the case of *'Dr. Shitla Prasad Nagendra vs. Gorakhpur University and others in Civil Misc. Writ Petition No. 30428 of 1997'*, decided on 17.08.1998, in which the Hon'ble High Court has observed that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any dues outstanding






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against the retired employee. In that case, the Hon'ble Court directed to pay the whole amount with penal interest at the rate of 18% per annum within a period of two months. The applicant has also placed reliance on a Full Bench Judgment of the Principal Bench, Central Administrative Tribunal, New Delhi, rendered in O.A. No. 2573 of 1989, decided on 25.10.1990, in which the following observations were made by the Full Bench: -

*"For the foregoing reasons, and on the basis of true import of 1982 Circular, we hold that withholding of entire amount of D.C.R.G. in the case of a retired railway servant till such period as he does not vacate the railway quarter, is unwarranted. Contrary view expressed in Baidyanath Hazra's case, and in Kshirod Gopal Mukherjee v. Union of India, decided on 26.04.1988 or in any other case does not reflect the correct position in this behalf. We should not have understood that we are questioning the Railway Administration's right to withhold the gratuity in a case covered by Rule 2308 of the Code."*

In the aforesaid case, the Hon'ble Members of the Full Bench at Principal Bench discussed the ambit of the Railway Board's Circular of 1982 and the Pension Circular of the General Manager, and were of the view that the Pension Circular issued by the General Manager which permits the withholding of entire amount of D.C.R.G. till the quarter is finally vacated by the employee cannot override the provisions contained in 1982 Circular of the Railway Board, which permits holding back of the appropriate amount from the D.C.R.G. if the same is





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permissible under the Rules. In other words, in short, it may be said that even in the aforesaid Full Bench decision, the authority of Circular issued by the Railway Board in the year 1982, regarding withholding of the amount has not been negated.

13. Learned counsel for the respondents on the other hand has argued that sub rule 8 of the earlier Circular issued by the Railway Board has been substituted by sub rule 8 vide Notification No. F(E) III/97/N1/14 (Amendment) dated 24.5.2000, which permits the respondents' authorities to withheld or adjust the dues from the gratuity amount of an employee. He has drawn our attention towards the provisions contained in Clause 'C' of sub rule 8 of the Rule 16 of "*Bahri's Railway Services (Pension) Rules, 1993*", which is as follows: -

*"(c) In case the railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the railway administration shall have the right to withhold, recover or adjust the dues from the Death Cum Retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-railway employee and return only the balance, if any, on vacation of the railway accommodation."*

A perusal of the above provisions shows that where an employee does not vacate the railway accommodation

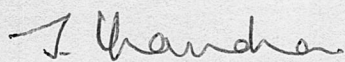




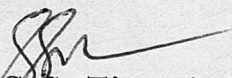
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on superannuation, even after the permissible period of retention, the railway administration shall have the right to withhold, recover or adjust the dues from the Death Cum Retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-railway employee and return only the balance, if any, on vacation of the railway accommodation. This fact is not disputed that after deducting the amount of ₹32,575/-, the balance amount of D.C.R.G. has been paid to the applicant by the respondents.

13. In view of the above discussions, and considering the facts and circumstances of the case, we are of the view that the O.A. has got no merits and deserves to be dismissed. O.A. is dismissed accordingly. No order as to costs.



[Ms. Jayati Chandra]  
Member - A



{Justice S.S. Tiwari}  
Sr. J.M. / H.O.D.

/M.M/