

Open Court

**Central Administrative Tribunal Allahabad Bench
Allahabad.**

Allahabad This The 3rd Day Of November, 2008.
ORIGINAL APPLICATION NO. 365 OF 2003.

Present:

Hon'ble Mr. Justice A.K. Yog, Member (J)

Radhey Shyam Mehrotra S/o Shri K.N Mehrotra
aged about 67 years, resident of 166-C, GTB
Kareli, Allahabad.

.....Applicant

By Advocate: Shri S.S. Sharma

Versus

1. Union of India through The General
Manager, North Central Railway,
Allahabad
2. The Divisional Railway Manager, North
Central Railway, D.R.M Office, Nawab
Yusuf Road, Allahabad.
3. The Divisional Superintending Engineer
(Co-ordination), North Central
Railway, D.R.M Office, Allahabad.

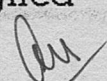
.....Respondents

By Advocate: Shri H.A. Kumar

O R D E R

Heard Shri S.S. Sharma, Advocate on
behalf of the applicant/Radhey Shyam
Malhotra and Shri H.A. Kumar, Advocate on
behalf of respondents.

2. By means of present O.A. under section
19 of Administrative Tribunal Act 1985, the
applicant has approached this Tribunal for
quashing of impugned orders 8.1.2002 and



24.4.2002/Annexures A-1 and A-2. By means of impugned order, respondent's authority have imposed penal rent and further directed for deduction of the same by adjustment from D.C.R.G (Death Com Retirement Gratuity) and pension.


3. Applicant retired on 31.10.1994, but post retiral benefit withheld and unduly delayed for no fault of Applicant. He was paid part-pension in the year 2000 only. On the other hand, the Applicant continued to retrain residential quarter, which was allotted to him during service on rent @ Rs. 66/- per month (as informed by the counsel self representing the Applicant). According to the learned counsel representing the Applicant is entitled for payment of Rs.36,855/- as D.C.R.G., which is due since for last coupe of years in view of respondents' claim of penal rent amounting to Rs. 1,08,759/-. After adjusting amount of D.C.R.G. (i.e. Rs.36,855/-), the Applicant shall still be liable to clear detect

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balance and pay Rs.71904/-. According to the applicant's counsel, he was compelled to retain residential quarter after superannuation, because he was not paid post retiral benefits promptly and he has to under go serious financial constraints.

4. Shri S.S. Sharma, Advocate, learned counsel for the applicant has placed reliance upon the decision in the case of Union of India and others Vs. Madan Mohan Prasad, 2003 (1) Administrative Total Judgments 246. For convenience, relevant extract of the said judgment is being reproduced:

"1. An application was filed by respondent before the Central Administrative Tribunal, Allahabad Bench (hereinafter referred to as the Tribunal) making several claims but subsequently, he confined his claim only to the relief of payment of death-cum-retirement gratuity (for short the DCRG) and the leave encashment. The Tribunal found that the respondent retired from service as head time clerk in the Workshop of North East Railway, Gorakhpur on 31.7.1982. Payment of DCRG as well as leave encashment having not been done despite several representations, he filed an application before the Tribunal for payment of the same along with the interest. The stand of the appellants before the Tribunal has been that the payment of the



said amounts had not been arranged on account of the fact that the respondent did not vacate the railway quarter the railway quarter which he continued to occupy even after retirement. It appears that he had filed an application before the authorities concerned for regularization of the allotment of the house in favour of his son who was living with him before his retirement. The Tribunal relying upon a decision of this Court in *R. Kapoor Vs. Director of Inspection (Printing and Publication) Income Tax and Anr.* (JT 1994 (6) SC 354) took the view that DCRG being akin to pension the same cannot be held back after retirement just for the recovery of the dues of rent and allowed the claim made by him and also directed the payment of interest at 10 per cent annum. It was also brought to the notice of the Tribunal that separate proceedings had been initiated under the Public Premises (Unauthorised Occupants) Act, 1971 not only for recovery of the quarter from respondent but also for recovery of penal damages. The Tribunal stated, however, that aspect was left open to be agitated before the appropriate forum.

2. The learned counsel for the appellants relied upon the decisions of this Courts in *Union of India V. Sisri Kumar Deb* (1991 (1) SCC L&S 781), *Director of Technical Education V. K. Sita Devi* (1991 Supp. (2) 386) and *Wazir Chand Vs. Union of India and Ors.* (JT 2000 (Suppl 1) SC 515). In none of these decisions, the actual import of the effect to the relevant rules regarding payment of DCRG had been considered. In that view of the matter, these decisions cannot be of much help to the appellants. The relevant rule applicable so far as the respondent is concerned is Rule 323, which is available in the manual of Railway Pension Rules, 1950. It is made clear therein that claim against the railway servant maybe on account of three circumstances.

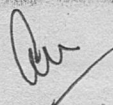


- (a) losses (including short collection of freight charges shortage of stores) caused to the government as a result of negligence or fraud on the part of the railways servant while he was in service.
- (b) Other government dues such as overpayment on account of pay and allowances or admitted and obvious dues such as house rent, post office, life insurance prima, outstanding advance etc.
- (c) Non government dues.

3. It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is admitted and obvious dues. The payment resulting in penal damages is neither admitted nor obvious dues apart from the fact the determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either admitted or obvious. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are admitted or obvious dues can be deducted out of the same, if still due.

4. Subject to this modification, the appeals shall stand dismissed".

5. Contention of the applicant is that respondent's authorities should not be allowed to charge penal rent while they



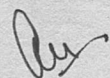
failed to discharge their corresponding statutory obligation (namely withholding post retiral benefits -including DCRG (gratuity) without lawful excuse. Applicant further refers to catena of decision wherein it is held that penal rent (for retaining residential quarter after retirement) cannot be adjusted against claim of D.C.R.G./ pensionary benefits. Reference may be made to the following decisions:

(i) 2001 SCC (L&S) 1032- Gorakhpur University and others Vs. Dr. Shitla Prasad Nagendra and others-

(ii) 1981 SCC (L&S) 200- Som Prakash Rekhi Vs. Union of India

(iii) 1995 SCC (L&S) 13- R. Kapoor Vs. Director of Inspection (Painting and Publication) Income Tax.

6. Learned counsel for the applicant has further referred to Rule 323. A perusal of



Rule 323, Manual of Railway Pension Rules, 1950 says that recovery of Government dues for pension benefits is allowed only on three heads as given therein. Rule further contemplates that sanction to pensionary benefits should not be delayed pending recovery of any outstanding Government Dues. If at the time of sanction any dues remain 'unassessed' and 'unrealized', the same cannot be said to be 'admitted' or 'obvious' as held in the Apex Court decision in the case of Union of India and others (supra).

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 Considered rule order
 of date - party allowing
 Mid (Recall) No 726/08
 A.K. J. 20/11/09

7. To be fair, the applicant should pay rent/damages @ Rs.200/- per month w.e.f. 1.11.2004^{Q4 1994} till he vacated (excluding therefrom the period during which he could retain its possession as normal rent under rates) the official quarter. His liability for occupying 'residential quarter' in question after his retirement may be calculated accordingly and the same may be deposited by the applicant within 8 weeks from today. Respondents and their officers

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are also directed to release amount of gratuity (or any other post retiral benefits- if any) within 2 months from the date of aforesaid deposit of rent/damage.

8. In view of the above, orders dated 8.1.2002 and 24.4.2002 are hereby set aside subject to the above direction.

9. O.A. stands allowed to the extent indicated above.

10. There shall be no order as to costs.



Member (J)

Manish/-