

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 13th DAY OF ^{April} ~~April~~ ²⁰¹¹ ~~2011~~

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)**

Original Application No. 391 OF 2003
(U/S 19, Administrative Tribunal Act, 1985)

Y. N. Singh S/o late Somaru Singh, retired Pharmacist, Northern Railway Hospital, Allahabad, r/o village Dallupur, P.O. Basni, District Varanasi.

.....Applicant
V E R S U S

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, N. R. (Now N.C. Railway) Allahabad.
3. Senior Divisional Personnel Officer, Northern Railway (Now N.C.R.), Allahabad.
4. Chief Medical Superintendent, Northern Railway (Now N.C.R.) Allahabad.
5. Sr. Divisional Accounts Officer, Northern Railway (Now North Central Railway), Allahabad.

.....Respondents

Present for the Applicant: Sri Sudama Ram.

Present for the Respondents: Sri A. K. Roy.

O R D E R

Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

Instant O.A. has been instituted for giving a direction to the respondents to pay entire amount of gratuity with 18% compound interest thereon from the date of retirement of the applicant i.e. 01st August, 1995. Further prayer has also been

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made in order to quash the impugned order dated 05th February, 2003 issued by Senior Divisional Accounts Officer, Northern Railway, Allahabad(Annexure-A-3) and direct the respondents to recover from gratuity only ascertained dues i.e. normal rent electricity and water charges as per rules. Further prayer has also been made in order to give direction to the respondents to count his past service rendered in autonomous bodies and State Government for the purpose of pensionary benefits and re-fix his pension giving all other consequential benefits arisen out of it. Prayer has also been made for giving direction to the respondents to issue the post retirement/complimentary passes and grant compensation of ₹50,000/- for wrongly disallowing the claim of the applicant.

The facts of the case in brief are as follows:-

2. The applicant was appointed as Pharmacists on 30th June, 1964. Restructuring of the cadre of Pharmacists was done which was effective from, 1st January, 1984 as per Railway Board's letter dated 16th November, 1984. The post of Pharmacists were decentralized and become divisional control post on 08th August, 1984. The implementation of the order of decentralization adversely affected the promotion of the applicant. An Original Application No. 397 of 1987 was filed and the same was decided on 13th September, 1993 and respondents were directed that the cadre for re-structuring of

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pay of Pharmacists w.e.f. 1st January, 1984 issued by Railway Board's letter dated 16th November, 1984 should be implemented, the facts have also been alleged for delaying his promotion etc. but the facts relating to that is not necessary to be mentioned. It has also been alleged that the representation was submitted on 07th April, 1993 and 06th March, 2000 for counting of his past service rendered in the U.P. Government/autonomous body from 07th April, 1962 to 29th June, 1964 upto two years two months but the respondents have not counted this period for pensionary benefits whereas, the applicant is entitled for getting counted that period for pensionary benefits. The pay of the applicant was accordingly fixed by the respondents that the applicant has been promoted as Pharmacists Grade ₹455-700 (R.S.)/1,400-12,600/- (R.P.S.) w.e.f. 01st January, 1984 and the salary of the applicant was fixed 515/-P.M. and subsequently promotion was also given in the grade of ₹1,640-2,900 (R.P.S.) w.e.f. 01st March, 1993 and no arrears of difference of pay of fixation was paid to the applicant, later on payment was made but without interest. That the gratuity of the applicant was withheld due to non-vacation of the Railway Quarter which is evident from the letter dated 18th December, 2001. That only by the order of the President the amount of gratuity can be withheld hence the applicant is entitled for 18% interest on delayed payment. The application was moved by the applicant in order to retain

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the Railway Quarter due to the reason that his daughter is studying in Class-11th in Government Girls Inter College, Allahabad. But the respondents denied from permitting the applicant to retain the house. Again application was submitted on 28th July, 1996 but no response was made by the respondents. Applicant requested the respondents to release the amount of gratuity but the same has been denied and a notice was issued by the respondents on 23rd May, 2000 for vacating the Railway Quarter otherwise eviction proceedings will initiated. The applicant filed appeal against the notice dated 23rd May, 2000 and a request was also made to release the amount of gratuity so that the applicant may own his own house. Applicant was also entitled for post retrial complementary pass but the complementary pass was also denied. That according to the extent rules D.C.R.G. (Gratuity) has been kept withheld due to non-vacation of Railway Quarter, but there was no such provision to withheld the amount of gratuity, that the applicant is entitled for the amount of gratuity, issue of complementary pass and for counting his past service rendered in Corporate Body and U.P. Government and in autonomous bodies for the purpose of pensionary benefits. As the respondents has not paid the amount hence the O.A.

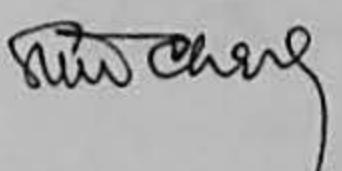
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3. Respondents contested the case and filed Counter Reply and it has been further alleged that to this extent facts are admitted that earlier an O.A. No.397 of 1987 was decided on 13th September, 1993 with direction to the respondents that for restructuring of the pay of Pharmacists w.e.f. 01st January, 1984 issued by the Railway Board vide letter dated 16th November, 1984 should be implemented on the basis of combined scrutiny list of pharmacists of Northern Railway it is wrong to allege that the judgment was not implemented. That the applicant had served in the State Government prior to joining Railway services. His case was examined as per Railway Board's letters dated 08th April, 1985, 23rd April, 1986 and 07th August, 1995 the period of service which was rendered under the State Government can not be counted for the purposes qualifying services because all the State Government department, under which applicant had worked had not permitted the applicant to join in the new department after accepting his resignation. That the earlier services can only be counted if the transfer of the employee from one organization to another organization was with consent of the organization under which he was working and whether the applicant had second employment directly on volition and whether the application has been submitted by the applicant through proper channel, an employee who has rendered less than 5 years of qualifying service is not entitled for terminal

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benefits on the date of his permanent abstraction. That the promotion of the applicant was allowed under cadre restructuring on proforma basis after his retirement hence no arrears of pay is due for payment as per rules. Further alleged that the entire gratuity was withheld due to non-vacation of the Railway accommodation after his retirement, as per instruction the applicant was granted maximum retention permission of Railway Quarter for 8 months as per extent rules and beyond that applicant can not retain the house. There is no provision to release the gratuity amount and allow the post retirement passes during the unauthorized retention of Railway Quarter by a retired railway staff. That on vacation of the railway accommodation by the applicant on 24th December, 2010 his DCRG amount ₹66,566/- have been adjusted on file against the rental and electric charges amounting to ₹1,85,536/- as such question of payment of DCRG and interest there on does not arise, that the O.A. lacks merits and liable to be dismissed.

4. We have heard Mr. Sudama Ram, Advocate for the applicant and Mr. A. K. Pandey, Advocate for the respondents and perused the entire facts of the case. From perusal of the contents of the O.A. as well as Counter Affidavit it is evident that the amount payable to the applicant on account of DCRG on his retirement on 01st August, 1995 was withheld by the



respondents due non-vacation of the Railway Quarter. It has also been alleged that the applicant prior to joining the Railway service had worked with U.P. State/autonomous bodies and the applicant entitled for these period put in other departments be counted for the purposes of pensionary benefits. It has also been alleged that after retirement of the applicant on 01st August, 1995 post retirement complementary passes was not issued to be applicant.

5. Learned counsel for the respondents argued that as the Railway accommodation was not vacated by the applicant after his retirement on 01st August, 1995 hence the amount of DCRG was retained. It has also been argued by the respondents counsel that after retirement an employee can retain the house maximum for a period of 8 months on retirement whereas, the applicant had retained the house upto 2001 that the respondents are well within their rights to retain the amount of DCRG in lieu of the damage rent. It has also been argued that on vacation of the house the amount of DCRG ₹66,566/- was released, but this amount was adjusted against the rental and electric charges amounting to ₹1,85,536/-. Respondents' Advocate produced a circular letter of the Railway Board dated 04th August, 1982 Annexure-CA-1 this relating to unauthorized retention of Railway Quarter by retired Railway Officers and staff – steps to be taken for

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vacation of the house. 'No claim' certificate should not be given unless the employee after retirement has vacated the Railway quarters and cleared all his arrears of rent, electricity and other charges etc. that settlement dues of the employee should be finalized with an appropriate "hold-back" amount from DCRG special contribution to P.F. as the case may, for rent recoveries, as permissible under extant rules. That for every one month of unauthorized retention of Railway Quarters, one set of post-retirement passes should be disallowed. A show cause notice to this effect may be issued to the retired employee before disallowing the pass. Learned counsel for the respondent on the strength of this circular letter of the Railway Board argued that the amount of DCRG was withheld and issue of pass has also been withheld.

6. It is admitted fact that the applicant retired from the Railway Services on 01st August, 1995 and the applicant possessed the Railway accommodation and this Railway accommodation was vacated by the applicant in the year, 2001. Admittedly, amount of DCRG was withheld by the respondents due to non-vacation of the Railway Quarter. But in the year 2001 the applicant vacated the house. It is to be decided that according to rules what steps has been or could have been taken by the respondents for getting vacated of the Railway accommodation. Admittedly, no case was filed before the

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prescribed authority under Public Premises Act. In that circumstances applicant can not be said to be the unauthorized occupant. The respondents should have adopted the due recourse of the law for getting the house vacated from the applicant. And for that period applicant is liable for the standard rent. It has been alleged by the respondents in Annexure-CA-2 that the standard rent/normal rent of the house of ₹71/-P.M. but after expiry of the statutory period, the damage rent has been calculated for a period of four months and the normal rent has been calculated as 284/-P.M. afterwards from 01st December, 1995 to 24th December, 2001 the damage rent was imposed @ ₹2457/-P.M., electricity charges and water charges have also been shown. Undisputedly, the applicant is liable to make payment of Water charges and electricity charges as per rules. Learned counsel for the applicant argued that respondents can recover the normal/standard rent from the applicant and standard rent is ₹71/-P.M.. The Learned counsel for the applicant cited (2005) SCC (L&S) 117

Chandra Prakash Jain Vs. Principal/DIG, Police Training College-II, Moradabad and another the Hon'ble Apex Court has held as under:-

"4. The considering the facts and circumstances of the case, we are of the view that the appellant is liable to pay three times the standard rent of the residential quarters in his occupation during the period of

overstay beyond four months from the date of retirement. The standard rent will be calculated taking into account the last basic pay drawn by the appellant before retirement. This exercise will be completed within three months from today and the surplus amount, if any, deducted from the retiral benefits of the appellant, will be paid to him together with interest @12% P.A. from the date of deduction till payment."

7. From perusal of the above judgment of Hon'ble Apex Court it is evident that the rent can be recovered from the retired employee three times standard rent of the residential quarters in his occupation during the period of overstay beyond four months from the date of retirement and standard rent will be calculated taking into account the last basic pay drawn by the applicant before retirement. On the basis of this judgment learned counsel also argued that for maximum three times of the standard rent is to be recovered from the applicant and rest amount be paid to the applicant. We agree with this argument of the learned counsel for the applicant that in view of the judgment of Hon'ble Apex Court the rent from the Railway employee of the Railway accommodation beyond a period of four months three times of standard rent can be recovered and also it must be calculated on the pay which the applicant was drawing at the time of retirement.

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8. Learned counsel for the applicant argued that prior to imposing the damage rent no notice was given to the applicant and show cause notice is must. In this connection learned counsel cited the judgment of A. T. Full Bench judgments 2002-2003 Hon'ble High Court of Bombay page 212 N. C. Sharma Vs. Union of India & Ors. Hon'ble High Court held that prior to imposing the penalty opportunity must be provided to the applicant of hearing and in the present case no prior notice was given by the respondents. Hence in our opinion that in view of the judgment of the Hon'ble Apex Court the respondents are entitled to recover only three times of the standard rent which is to fixed on the last pay drawn by the applicant. Applicant retired on 01st August, 1995 and upto a period of four months of retirement normal rent shall be recovered, but after expiry of four months from the date of retirement three times of the standard rent shall be recovered from the applicant, and this amount respondents can adjust from the amount of DCRG payable to the applicant.

9. It has been argued by the learned counsel for the applicant that the amount of DCRG can not be withheld by the respondent In this connection learned counsel for the applicant cited a judgment of Hon'ble Apex Court (1994) 6 SCC 589 R. Kanpur Vs. Director of Inspection (Painting

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and Publication) Income Tax and Another and the Hon'ble Apex Court has held as follows:-

"6. The Tribunal on a consideration of the above held that death-cum-retirement gratuity (hereinafter referred to as 'DCRG') could not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. Inasmuch as the appellant continued to retain the allotted residence even after retirement, interest at the rate of 10% could be paid to the applicant."

In view of the judgment of Hon'ble Apex Court the amount of DCRG could not be held on the ground that the applicant had not vacated the allotted premises during the course of his employment. Learned counsel also relied upon the judgment of Hon'ble Supreme Court in the Case of State of Kerla Vs. M. Padmanabham Nair "it has been held that the pension and gratuity are no longer any bounty to be distributed by the Government to its employee on their retirement, but are valuable right and property under their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current rate till actual payment." That in view of the judgment the Hon'ble Supreme Court has held that withholding of the amount of DCRG is illegal. Hence the applicant is entitled to the amount withheld by the respondents of the gratuity, it will be just and appropriate to

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permit the respondents to deduct the three times of the standard amount rent from the amount of DCRG and they are also entitled to recover the amount of Water and Electricity charges as per rules.

10. Prayer has also been made by the applicant in order to direct the respondents to count his past services rendered in autonomous bodies and State Government for the purposes of the pensionary benefits and re-fix his pension giving all other consequential benefits arises thereon. In this connection it has been alleged by the respondents that the applicant had put in service in State Government and autonomous bodies prior to joining Railway Services, and he submitted the representation in this connection to count that period which he put in in the State Government/autonomous bodies and it was considered as per Railway Board's letters dated 08th April, 1985, 23rd April, 1986 and 07th August, 1995 and it has been held that the period of service which was rendered in State Government can not be counted for the purpose of qualifying service. Because all the State Government departments under which he had worked, had not given sanction prior to the joining in new department after accepting his resignation from the previous department. It has been provided in the rules that if the application for joining has been forwarded through proper channel and the applicant also submitted the

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resignation from the previous employment according to rules prior sanction must be granted. Under these circumstances burden of proof lies on the applicant whether he submitted the application for joining the Railway Service through proper channel forwarded by the department and whether the resignation was submitted by the applicant and accepted by the previous department. But no documents has been filed to this effect, under these circumstances that period can not be counted. Further alleged by the respondents that in view of the Railway Board's letter dated 08th April, 1985 and 24th March, 1986 for the parent department or the autonomous body to discharge pro-rata pensionary benefits unless the applicant had rendered less then five years of qualifying service and is not entitled to any terminal benefits on the date of his permanent abstraction in the autonomous body/Govt./Railway. It has been alleged that the applicant has been put in about more than two years but as per Railway Servants Rules the previous service less than five can not be counted. As the applicant failed to prove that he submitted application through proper channel and with the approval of the previous department and application for resignation was accepted by the previous department knowing that he is joining the Railway services. Under these circumstances earlier services can not be counted and the applicant is not entitled for this relief.

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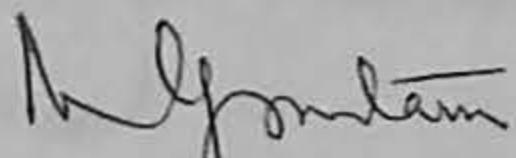
11. It has been alleged by the applicant that the respondents have illegally withheld the issue of post retirement complementary passes. It has been alleged by the respondents that post retirement complementary passes were not issued to the applicant, as he had been illegally and unauthorizedly possessing the Railway Quarter after retirement, and hence the respondents have got the right to withheld the issue of post retirement pass. That for each month one set of pass can be withheld. But we disagree with the contention of the respondents and the applicant is entitled for Railway pass after retirement, it is a right, and in case the applicant has not vacated the house then they can not debar the applicant from ~~getting~~ issuing the pass. Moreover, it can be justified that the respondents withheld the issue of pass upto the date of vacation of accommodation, but afterwards the applicant is entitled for the pass but since vacating the Railway accommodation complementary passes were not issued to the applicant and it is most unjustified act of the respondents. In our opinion applicant is entitled for Railway passes.

12. For the reasons mentioned above we are of the opinion that the applicant is entitled for release of the amount of DCRG withheld by the respondents after deducting the amount of the rent as alleged above. The applicant is also entitled for complementary passes w.e.f. 01st January, 2011.

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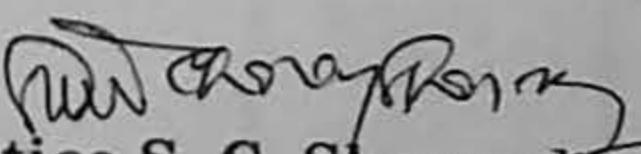
The relief for counting of previous services rendered with the State of U.P./autonomous bodies can not be granted. O.A. deserves to be allowed partly and partly dismissed for the some relief.

13. O.A. is allowed partly. Respondents are directed to release the entire amount of gratuity with interest @ 8% P.A., however, respondents shall be entitled to adjust the amount of rent of three times of the standard rent from the applicant and the respondents shall calculate the amount and inform the applicant about the amount to be deducted from the DCRG. The applicant is also entitled for the post retirement complementary passes w.e.f. 01st January, 2011. But the O.A. is dismissed for counting the previous services rendered with the State Government/autonomous bodies for the purpose of pensionary benefits. The payment shall be made to the applicant within a period of three months from the date when the copy of this order is produced before the respondents. Applicant shall produce the copy of this order before the respondents forthwith. No order as to costs.



[Manjulika Gautam]
Member-A

/Dev/



[Justice S. C. Sharma]
Member-J