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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

Original Application No. 249 of 1996.

Cuttack this the 17th day of September, 1996.

Bimal Krishna Sinha. .... .... Applicant

Versus.

Union of India and others. .... Respondents

( FOR INSTRUCTIONS )

1. Whether it be referred to reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

*Bimal Krishna Sinha*  
( N. SAHU ) 17/9/96  
MEMBER (ADMINISTRATIVE).

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V  
CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 249 OF 1996.

Cuttack this the 17<sup>th</sup> day of September, 1996.

C O R A M :

THE HONOURABLE MR. N. SAHU,  
MEMBER (ADMINISTRATIVE).

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Bimal Krishna Sinha, aged about 60 years,  
Son of Late A.M.Sinha, Retired Assistant  
Project Manager, Bhubaneswar,  
South Eastern Railway(Construction)  
At present residing At New Malgodown Road,  
Gandapur, P.C. College Square, Cuttack-753 003.

... APPLICANT.

By the Advocate.

: M/s. C.A.Rao,  
S.K.Bhera and  
P.K.Sahoo.

Versus.

1. Union of India, represented by  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta-43 (W.B.),
2. Chief Administrative Officer (P).,  
South Eastern Railway,  
Chandrasekharpur, Bhubaneswar.
3. Senior Project Manager (Hqrs.)  
South Eastern Railway,  
Chandrasekharpur, Bhubaneswar.
4. Deputy Chief Personnel Officer,  
South Eastern Railway,  
Chandrasekharpur, Bhubaneswar.
5. Divisional Railway Manager,  
South Eastern Railway, Khurda Road,  
P.O.Jatni, District-Khurda.

.... RESPONDENTS.

By the Advocate : Mr. R.C. Rath,  
Standing Counsel.

O R D E R.

N. SAHU, MEMBER (ADMN.): In this original application filed on 20.3.1996 the following reliefs are claimed :

- (a) The respondents be directed to release the retirement gratuity 3 sets complementary passes each year and other entitlement within a stipulated time.
- (b) The respondents be directed to pay the retirement gratuity with interest at 24% and compensation for non-issue of complementary passes with cost.
- (c) Any other relief/reliefs as deemed fit and proper in the facts and circumstances.

2. The counter affidavit discloses the reasons for non-payment of retirement benefits. The applicant retired on 30.11.1993. He occupied Railway Quarter No. E/60 (Type III) at Cuttack till 30.10.1994. He vacated the quarter on 31.10.1994. He applied for retention of the said quarter for a period of 4 months and he was allowed to retain the same upto 31.3.1994. The applicant wanted further retention from 1.4.1994 to 30.10.1994 on the ground that his son was studying in the M.S. Law College, Cuttack. The Railway Administration did not rely on the genuineness of the request made by the applicant for further retention of the railway quarters. It was therefore held that the period of extended retention from 1.4.1994 to 30.10.1994 was unauthorised and <sup>the applicant was</sup> liable to pay damage rent as per Establishment Serial No. 96/94. The damage rent

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@ Rs.15/- per Sq.ft. was computed for April and May at Rs.1,837.20. Thereafter damage rent @ Rs.25/- per sq.mtr. was calculated from June to October, 1994 and this worked out to Rs.7,655.00 for five months. Thus the total recoverable damage rent was computed at Rs.9,492.20 p.

3. It is argued on behalf of the Railway Administration by Sri R.C.Rath, learned counsel that the Railway Administration has inherent right to withhold full amount of D.C.R.G. in a case where the railway accommodation is not vacated by the superannuated railway servant. He cited Rule 16(8) of the Railway Pension Rules, 1993 in support of the same stand. As per Rule 15 of the aforesaid Rules, the Railway Administration has inherent power to recover all other railway dues which remained outstanding till the date of retirement. Allegations of some outstandings for not handing over various works were alleged at page 3 para-2 of the counter affidavit.

With regard to the claim of complementary passes, the respondents cited Establishment Serial No.110/83 by which the Railway Administration is vested with the power to disallow one set of complementary pass for every month of unauthorised retention of railway quarters by retired officers/staff. Since the applicant had retained the quarters unauthorisedly as per the respondents for seven months, the Railway Administration disallowed seven sets of complementary passes @ three sets per year.

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With regard to the extended retention from April to October, 1994, the respondents found that the college studying certificate issued by the Principal, M.S. Law College, Cuttack was dated 2.11.1994 as per Annexure-6 which is after the vacation of the railway quarters by the applicant. Therefore, the genuineness of the application was doubted. It is stated that the electrical charges from March to October, 1994 amounted to Rs. 4,000/- approximately.

4. I have heard Sri C.A. Rao, learned Counsel for the applicant and Sri R.C. Rath, learned Additional Standing Counsel for the Railway Administration. Sri C.A. Rao has disputed the submissions of the Railway Administration. According to him, the following is the computation of the amounts owed by the applicant and the retirement dues payable by the respondents.

1.	Date of retirement of the applicant.	- 30.11.1993
2.	Date of vacation of quarter (The applicant had possessed the quarter for about 11 months after the retirement from his service.)	- 31.10.1994
3.	i) Quarter rent for 1st 4 months i.e. 1.12.1993 to 31.3.1993 on normal rent i.e. Rs.95/- per month. - ( 4 x 95 )	- Rs. 380.00
	ii) Further quarter rent for next 4 months i.e. from 1.4.1994 to 31.7.1994 is double the normal rent. (2 x 4 x 95)	- Rs. 760.00

iii) Further quarter rent for next 3 months i.e. from 1.8.94 to 31.10.94 is damage rent @ Rs.25/- per sq. mtr.of plinth area per month.(3x25x61.24.)	- Rs. 4,593.00
Quarter rent due for 11 months.	-----
Total	- Rs. 5,733.00
iv) Electricity due on the applicant for 11 months	(+) - Rs. 1,472.00
Total	----- - Rs. 7,205.00
4. Amount due on the respondents ( South Eastern Railway)	- Rs. 69,300.00
5. Amount due on the applicant	(-) - Rs. 7,205.00
Balance due as on 31.10.1994 on the Respondents ( South Eastern Railway) when the petitioner vacated the quarter.	----- - Rs. 62,095.00
6. As per rule respondents are required to pay all the dues within 90 days i.e. by 31.1.95 Since the respondents failed to pay the dues within the stipulated period, they be directed to pay @ 18% compound interest from 1.2.1995 to 31.7.1996.	(+) - Rs. 18,806.00
Due as on 31.7.1995 on the respondents.	----- - Rs. 80,901.00
He stated that the respondents have deliberately misinterpreted the extension application. The applicant was given extension upto 31.3.1994. He sought extension for a further period of four months by his letter dated 20.12.1993 on the ground that	

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his wife was sick and his son was studying in the M.S.Law College, Cuttack. By letter dated 5.1.1994 the Deputy Chief Personnel Officer (C), Bhubaneswar wanted supporting documents to substantiate the claim and the supporting documents were accordingly filed. The study certificate was disbelieved because it was dated 21.11.94 when the applicant stood retired on 30.10.1994. In the Court at the time of hearing, the applicant's counsel Sri C.A.Rao has produced the relevant documents relating to the particulars of his son's studentship in the M.S. Law College. The particulars are as under :

i)	Pre-Law	- Roll No.17, 1992-93
ii)	Inter Law	- Roll No.307, 1993-94
iii)	Final Law	- Roll No.232, 1994-95

what has been shown as 2.11.1994 is the 3rd year of study of the applicant's son. There is absolutely no room to doubt the same. Sri C.A. Rao pointed out that the applicant furnished also a medical certificate vide Annexure-6 dated 6.2.1994 of Dr.R.N.Sahoo. Sri Rao states that as the applicant had filed only a copy of the identity card No.18/892 issued in favour of Sri Dhanurjay Kumar Sinha - Roll No.17 in the 1st year and 309 in the 2nd year, no decision was taken when the medical certificate and college studying certificates were produced before the competent authority in February, 1994. Annexure-6(series) at page 21 has unfortunately become a convenient tool for rejecting the claim.

5. The evidence was misunderstood and misinterpreted

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by the Railway Administration. This is a genuine case since the applicant's son has studied for three years in M.S.Law College. Full evidence of having studied has been produced before the Court, the evidence is genuine. Rejection of this evidence is due to non-application of mind on the part of the respondents.

The applicant is entitled to extension from 1.4.1994 to 31.7.1994 at double the normal rent. It is only for the period of next three months i.e. from 1.8.1994 to 31.10.1994 damage rent has to be calculated.

6. The claim in the counter affidavit that the entire gratuity could be withheld even for a small recovery on account of damage rent is illegal and unsupported by law. In Shiv Charan's case (1992) 19 ATC 129 and the Full Bench decision in Wazir Chand's case (CAT) Vol-II 287, law laid down is that the Railway Administration has no power to withhold the entire D.C.R.G. They can withhold only that part of the D.C.R.G. which is attributable to the excess rent or penal rent or damage rent payable on account of unauthorised occupation provided it is established that the occupation is unauthorised.

The Full Bench has summarized its conclusion thus :

1. Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible ;
2. A direction to pay normal rent for the railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order;

3. The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions, etc., without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant ;
4. Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it.

In the first place, withholding of the entire D.C.R.G. is illegal. As held above, the respondents are not justified in treating the entire period of seven months from April to October, 1994 as unauthorised occupation. They can at best treat the period from August to October as unauthorised occupation.

7. With regard to the claim of complementary passes and interest, I am extracting hereunder certain portions of the letter dated 23.8.1995, Annexure-II to the application, to highlight the applicant's plight and the indifference of the Administration.

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Sir I have retired w.e.f. from 30.11.93. ONE YEAR AND NINE MONTHS have been passed after my retirement. It is very much strange that after LAPSE OF ONE YEAR AND NINE MONTHS the administration is informing me that the payment of DCRG is held up due to Non-Receipt of NO CLAIM CERTIFICATE and also asked me to collect NO CLAIM CERTIFICATE FROM SPM/HQ/BBS. Sir is it my duty or administration's responsibility to collect NO CLAIM CERTIFICATE. This is matter may please be clarified.

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Sir Xerox copy of SPM/SERly/CTC's MEMORANDUM No.45 dt.4.5.93 is enclosed herewith for your perusal please. You are requested to go through the said memorandum specially the UNDER LINED SENTENCES. Sir, since so far SPM/HQ/BBS has not sent NO CLAIM CERTIFICATE THE Said MEMORANDUM is to be treated as NO CLAIM CERTIFICATE (NO CLAIM/ NO DEBIT) after 31.7.93. Sir I therefore request you on the basis of memorandum No.45 dt.4.5.93 please process my settlement paper without further delay.

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SIR FOR ME AND FOR ALL PRACTICAL PURPOSES  
THE MEMORANDUM NO.45 DATED 4.5.93 IS THE CLEARANCE  
CERTIFICATE ( NO CLAIM/ NO DEBIT) AFTER 31.7.93.  
THIS MAY PLEASE BE NOTED.

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Once again I am informing that I AM A HEART PATIENT and I require the money very badly for my treatment and the complementary pass is required to perform my journey to DELHI and other places for CONSULTATION WITH HEART SPECIALIST. Sir even after writing so many reminders the administration instead of paying me my legitimate dues i.e. DCRG (At least 95%) making unnecessary unwanted and unfruitfull correspondence which is very much painfull to me and I am disgust with the non co-operating behaviour of the administration.

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The above letter shows heartless indifference to the repeated requests for issue of complementary passes. I have no hesitation in holding that complementary passes should have been issued from the date of retirement till 31.7.1994.

8. The next question is payment of interest on the delayed payment of retirement dues. Three months' grace

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has been allowed by the rules. In spite of the letter dated 31.7.1995 to the Senior Project Manager to issue 'No Claim Certificate', the said certificate has not been issued and gratuity paid. Following the law laid down by the Supreme Court in UNION OF INDIA VS. JUSTICE S.S. SANDHAWALIA 1994 U.P.L.B.E.C.192 and R. KAPOOR VS. DIRECTOR OF INSPECTION, INCOME TAX & ANOTHER J.T.1994(6) SC 354, I direct payment of simple interest @ 18% per annum for the delay in payment of the retirement dues on the amount of Rs.62,095/- from 1.2.1994.

9. Under the various instructions issued by the Railway Administration the respondents are required to hand over the retirement dues on the date of retirement. They are liable to explain the delay. In this case, the decision to delay the payment of retirement dues on account of unauthorised occupation is not an honest decision based on facts. The applicant retired on 30.10.1993 and on that date there was no question of any unauthorised occupation. The Railway Administration enjoins on the respondents to hand over the retirement dues on that date. If there were any recoveries to be made that should have been sorted out much before the retirement date. Those are the instructions on the subject. The respondents have flouted all those instructions and they have legitimised their withholding of D.C.R.G. by a pretext. The applicant's request for extension has never been rejected. The question of unauthorised occupation

arose, even according to the respondents, only on 1.4.1994. Why did they not remit the D.C.R.G. to the applicant for four months after his retirement? It is illegal to withhold the D.C.R.G. by the simple device of not issuing a 'No Claim Certificate' and now explaining this before the Court as attributable to unauthorised occupation. There is no question of anticipating an unauthorised occupation and then justifying the same *ex post facto*.

10. The conclusion, therefore, is summarised as under :

- (i) There is no unauthorised occupation till 31.7.1994 ;
- (ii) From 1.8.1994 to 31.10.1994 the Railway Administration can impose penal rent or standard rent as per the schedule prescribed. Respondents may check up the calculation furnished by the applicant's counsel at para-4 and if they are satisfied, they are directed to release the amount of gratuity due after deduction of penal rent with interest @ 18% per annum from 1.2.1995 onwards till the date of payment within a period of three weeks from the date of receipt of a copy of this order.
- (iii) With regard to the release of complementary passes, the applicant shall not be treated as a defaulter or a person who has retained the quarters without authority upto 31.7.1994. The applicant shall be compensated for the passes that are due for that period with

interest @ 18% for non-issue of the same within a period of four weeks from the date of receipt of a copy of this order. The precise mode and method of compensation shall be determined by the respondents in a fair manner.

Before parting with the records, I would suggest to the respondent No.1 General Manager, South Eastern Railway, Garden Reach, Calcutta-43 to bring to the notice of the Railway Board the necessity of amending or reconsidering the circulars Nos. E(G) 81 QR 1-51 of 24.4.1982; 4.6.1983 and 17.1.1985. I am extracting the relevant portion from K.P.Sharma's Railway's Establishment Rules & Labour Laws page 455 as under :

" 19.Unauthorised retention of Railway accommodation:

To discourage unauthorised retention of Railway accommodation, the following steps should be taken.

1. "No Claim" certificate should not be given unless the employee after retirement has vacated the Railway quarter and cleared all his arrears of rent, electricity and other charges.

2. While the retirement/death/gratuity or or Special Contribution to P.F. as the case may be, should be withheld in full for non-vacation of Railway Quarter not only after superannuation but in all cases cessation of service, namely, voluntary retirement, death etc.. Further the amount withheld should remain with the administration only in the form of cash without conversion in to any type of security lest the very purpose of withholding full DCRG should get defeated. It may also be kept in view that the gratuity should be released as soon as the quarter is vacated so that there is neither any hardship to the retired employee or its family nor there is any claim for payment of interest on

withheld gratuity for the reasons of any administrative lapse.

3. One set of post-retirement passes should be disallowed for every month of unauthorised retention of Railway quarter by retired officers/staff. The concerned retired officer/staff may be allowed the privilege of post-retirement passes after the period during which the forfeited passes should have been admissible is over. A show cause notice to this effect may be issued to the retired employee before disallowing the passes.

( R.B.'s Nos.E(G)81 QR 1-51 of 24.4.82; 4.6.83 and 17.1.85; Bahri's 20/85, E(G)90 QR 3-6 of 31.12.90, Bahri's 243/90 and E(G)92 QR 1-20(MC) 19.1.93, Bahri's 12/93."

Where the claims are commercial debits to be recovered, the same could be recovered well before the retirement of the official and on the date of retirement, he should be informed well in advance the amount to be recovered from him so that he will have a fair chance to represent his case and the finality of recovery can be arrived at by the time of retirement. There is no question of unauthorised occupation on the date of retirement and there is no justification for withholding the gratuity on the presumption of the applicant's staying beyond the admissible period of four months after the date of retirement. As a matter of policy, the Board can think of withholding, say 10% of the gratuity as a measure of abundant caution. To withhold whole of the gratuity on the probability that the applicant might retain the quarter without permission is against the grain of

judicial decisions on the subject. If retirement gratuity cannot be paid on the date of retirement, when the plethora of instructions of the Railway Administration as well as the Ministry of Personnel and Training from time to time for ensuring speedy payment of retirement benefits on the date of superannuation will only remain pious hopes on paper and by the issue of above instructions, they stand contradicted. It is not the intention of the Railway Administration to withhold legitimate dues on the presumption that in future after availing the permissible period, the applicant might continue to stay on without permission. Other safe-guards can also be thought of. The same observation would apply to the complementary passes also, as is evident from the pathetic petitions of the applicant for issue of complementary passes which remained unheeded.

11. In the result, the application is allowed. In the facts and circumstances of the case, an amount of Rs.1,000/- is awarded to the applicant by way of costs.

*Om Prakash Sah*  
 ( N. SAHU ) 17/9/96  
 MEMBER (ADMINISTRATIVE)