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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO.923 OF 1996

Cuttack, this the 28th day of January, 1999

C.S.S.Narayan

Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? *No.*

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

28.1.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.923 OF 1996
Cuttack, this the 28th day of January, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

C.S.S.Narayan,
Retired Station Superintendent MMS/
Mandasa Road, presently residing at
Plot No.59, P.S.R.Colony,
Vijayanagara, A.P. Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta-70 043.
2. F.A. & C.A.O., Pension, South Eastern Railway, Garden Reach, Calcutta.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, Dist.Khurda.
4. Sr.Divisional Accounts Officer, South Eastern Railway, Khurda Road, Dist.Khurda Respondents.

Advocate for respondents - Mr.D.N.Mishra
Standing
Counsel(Railway).

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay interest at 18% towards delay in payment of DCRG to him. The second prayer is for a direction to the respondents to refund the amount of Rs.7011/- deducted from the Gratuity with interest at 18%.

(a)

2. Short facts of this case are that the applicant retired on superannuation as Station Superintendent, Mandasa Road, on 30.6.1995. The Death-Cum-Retirement Gratuity amounting to a sum of Rs.57,420/- was sanctioned by F.A. & C.A.O., S.E.Railway, Garden Reach (respondent no.2) in his order dated 30.8.1995 (Annexure-1). The applicant has stated that while calculating the DCRG, 20% of his dearness pay amounting to Rs.580/- was taken into account and DCRG came to Rs.57, 420/-. Department of Pension and Pension Welfare ⁱⁿ ~~is~~ circular dated 14.7.1995 enhanced the amount of ^{^ S. Jam} dearness allowance to be added to pay for calculating DCRG from 20% to 97% in respect of employees who retired after 1.4.1995. This order of the Department of Pension and Pension Welfare is dated 14.7.1995. The applicant has further stated that even though DCRG amount was sanctioned in order at Annexure-1, it could not be paid to the applicant due to revised calculation and ultimately the applicant was paid the revised DCRG on 9.6.1996. According to the applicant, the revised DCRG amount came to Rs.94,265/-, but the applicant was paid Rs.87,254/- deducting an amount of Rs.7011/- without any reason or notice to the applicant. In view of this, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant retired on superannuation as Station Superintendent, Mandasa Railway Station on 30.6.1995 and the very next day following the date of retirement, all the retiral benefits such as leave salary, last wages,

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 CGEIS, Provident Fund and Commuted value of pension were paid to the applicant. DCRG could not be paid due to non-receipt of ~~nonreceipt~~ departmental clearance, such as arrears of house rent, arrears of electricity charges, coaching debits and excess payment, etc. Before the payment of DCRG could be made, revised instructions were issued for taking an element of 97% of dearness pay for determining the DCRG amount. This instruction was circulated in Chief Personnel Officer's letter dated 14.9.1995 vide Establishment Serial No.137/95. That is how according to the respondents, payment of DCRG was delayed. On the point of deduction of Rs.7011/-, the respondents have stated that the break-up of the amount is as follows:

(a) Arrears of House Rent -	Rs. 807/-
(b) Electricity Current Charges- Rs.	60/-
(c) Coaching Debits -	Rs. 151/-
(d) Excess payment made to the the applicant while in service -	Rs.5993/-
	<u>Rs.7011/-</u>
Total -	

The respondents have stated that out of the revised DCRG of Rs.94,265/-, the above amount of Rs.7011/- was deducted and the balance amount was paid to the applicant in Pay Order dated 9.7.1996. The respondents have also stated that while giving intimation to the applicant about payment of DCRG the amount of recovery of Rs.7011/- was intimated to the applicant. The respondents have denied the assertion of the applicant that no intimation with regard to the nature of this deduction of Rs.7011/- has been received by him. The respondents have stated that deduction has been made on valid grounds and under intimation to the applicant and on that ground they have opposed the prayer of the applicant for refund of this amount along with interest. The respondents have also opposed the prayer of the applicant for payment of interest on DCRG amount received by him on the ground that

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the delay in payment was due to administrative procedure and not deliberate.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) appearing for the respondents, and have also perused the records. The contentions of the learned counsel for the petitioner are discussed below.

5. While paying the gratuity amount to the applicant a sum of Rs.7011/- has been deducted towards arrear house rent (Rs.807/-), arrear electricity charges (Rs.60/-), coaching debits (Rs.151/-) and excess payment made to the applicant (Rs.5993/-). The applicant has stated that no intimation with regard to break-up of the deduction of Rs.7011/- and the reason for such deduction had been given to him. The respondents, on the other hand, have averred that these details were intimated to the applicant. The respondents have filed a memo on 8.1.1999 giving details of the amount of Rs.7011/- along with the detailed calculation sheets. From this, we find that detailed calculations with regard to arrear house rent, arrear electricity charges and coaching debit have been indicated in these statements. As regards excess payment made to the applicant, two detailed calculation sheets have been enclosed in which the details of the amount of Rs.5993/- have been given. From the counter of the respondents, it does not appear that these detailed calculation sheets have been given to the applicant earlier. The respondents have merely stated in their counter that the details of the deduction of Rs.7011/- were intimated to the applicant. In any case, the detailed calculation sheets have now been supplied to the learned counsel for the applicant. In view of this,

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it is directed that in case the applicant finds that any of the calculation sheets in respect of the above amount of Rs.7011/- is incorrect, he should file a representation to the departmental authorities within a period of 15 (fifteen) days from the date of receipt of a copy of this order. The departmental authorities are directed to dispose of the representation within a period of 30 (thirty) days from the date of receipt of the same. The applicant's prayer for refund of Rs.7011/- is disposed of with the above direction. Under the circumstances, the question of payment of interest on Rs.7011/- does not arise.

6. Learned counsel for the petitioner has relied on several decisions in support of his submission that the amount of Rs.7011/- should not have been ordered to be recovered from the gratuity of the applicant. These are:

- (i) Ranjit Kishore Chakraborty Thakur v. Union of India, (1988) 7 ATC 357;
- (ii) Ashok Kumar Chatterjee v. Union of India, (1990) 14 ATC 528;
- (iii) Swapan Kumar Saha and others v. Union of India, (1993) 23 ATC 902; and
- (iv) A.Raghavan v. Union of India, (1994) 27 ATC 340.

In Ranjit Kishore Chakraborty Thakur's case (supra), the pay of the applicant on his promotion to I.A.S. from the other Civil Service was apparently wrongly fixed and the question of recovery came up. In that case, on behalf of the State Government, it was indicated that the State Government had no intention to recover the overpayment. On that basis, it was ordered that overpayments need not be recovered. This case, therefore, has no application to the instant case where from the gratuity an amount of Rs.5993/-

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has been deducted towards excess payment made to the applicant on account of salary, etc. In **Ashok Kumar Chatterjee's case (supra)**, the amount deducted from gratuity was on account of balance house rent due to increase in rent for the period from 1.2.1969 to 15.11.1977 after retirement of the applicant on 31.10.1982. The Tribunal held that the deduction of the amount from the gratuity without notice and despite applicant's representation was in violation of the relevant Railway rules. In this case, from the applicant's gratuity a sum of Rs.807/- has been deducted towards arrear of house rent and Rs.60/- deducted towards electricity charges. It is seen from the detailed calculation sheet given by the respondents, with copy to the other side, that part of the amount is for higher rent which was not recovered earlier and the other part was for unauthorised occupation of the quarter for four days from 1.7.1995 to 4.7.1995. The respondents have stated that these details had been intimated to the applicant. The learned counsel for the applicant has stated that such details were not intimated to him earlier. Whatever it may be, now that we have ordered that the applicant would be free to file a representation before the departmental authorities with regard to recovery of this amount, it is not necessary for us to take a view whether this amount is recoverable or not. At the first instance, this aspect should be considered, on filing of the representation, by the departmental authorities. The same applies to the electricity charges. In **Ashok Kumar Chatterjee's case (supra)** the applicant had filed a representation for non-recovery, but that was not taken into consideration. That is not the situation here and therefore, this case is distinguishable. **Swapan Kumar Saha's case (supra)** relates

to recovery of overpayment due to erroneous fitment in higher scale. There recovery was struck down because no notice was given to the applicant for recovery. This case is also distinguishable because the instant case is not one of fitment of the applicant in any higher scale. In **A.Raghavan's case (supra)**, recovery without notice was held invalid. But the respondents were given opportunity to initiate fresh action according to law and pass a reasoned order. In the instant case, we have already ordered that the applicant should file a representation within 15 days from the date of receipt of copy of this order and the departmental authorities have been directed to dispose of the representation within a period of thirty days of receipt of the same. It is made clear that in case the applicant is dissatisfied with the order passed by the departmental authorities on his representation, he will be free to approach the Tribunal.

7. As regards the other prayer about payment of interest on the balance amount of DCRG of Rs.87,254/-, we find that the applicant retired on 30.6.1995. In order dated 30.8.1995 at Annexure-1 enclosed by the applicant himself, DCRG according to the old rules was sanctioned to him. This amounted to Rs.57,420/-. Thus, it is seen that within two months of his superannuation, DCRG according to the old rules was sanctioned to him and there was no delay on this count. Further delay in payment of DCRG has occurred for two reasons. Firstly, the method of calculation of DCRG by taking into account a higher percentage of dearness allowance has come later. The applicant has stated that this revised method of calculation was circulated by Department of Pension and Pension Welfare in their letter dated 14.7.1995. The respondents have pointed out that this was circulated by

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the Chief Personnel Officer in his letter dated 14.9.1995 as Establishment Serial No. 137/95. The circular provided that revised calculation should be adopted in respect of all employees who retired on or after 1.4.1995. Apparently, therefore, after receipt of this circular from Chief Personnel Officer, not only the case of the applicant but of all those who had retired on or after 1.4.1995 had to be redone and in the process some more time has been taken by the respondents. This delay cannot, therefore, be termed as wilful or deliberate. The other reason for the delay, as has been urged by the respondents, is that certain amounts recoverable from the applicant had to be calculated towards excess payment and this took time. We have gone through the two detailed calculation sheets. We find that these relate to periods from 1972 till 1986 in one statement and from December 1972 to January 1994 in another statement. Reference to such old records naturally took time and therefore, it cannot be said that the case of the applicant has been deliberately or wilfully delayed in order to put him to harassment. In view thereof, we hold that no case for payment of interest is made out. This claim of the applicant is, therefore, rejected.

8. In the result, therefore, the Original Application is disposed of in terms of the observation and direction given above. No costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN

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