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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.214 OF 2000.

Cuttack, this the 28th day of December, 2001.


Kishorilal Sahu. .... Applicant.


-Versus-

Union of India & 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?

  
Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
28.12.2001

  
(NITYANANDA PRUSTY)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 214 OF 2000;  
Cuttack, this the 28th day of December, 2001.

C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
A N D  
THE HONOURABLE MR. NITYANANDA PRUSTY, MEMBER(J) .

....

Kishorilal sahu, Aged about 64 years,  
S/o. Late Dhaneswar prasad sahu,  
At-Backside of K.C.Guru, C.I.,  
Sambalpur, 'Gopal Mahal', po;  
Budharaja, District- Sambalpur. .... Applicant.

By legal practitioner: M/s. D.R. patnaik,  
N.S. panda,  
A.K. Routray,  
Advocates.

-Versus-

Union of India represented by its General Manager,  
South Eastern Railway, Garden Reach, Calcutta.

2. Divisional Railway Manager, South Eastern Railway,  
Sambalpur, At/po/Dist. Sambalpur.
  3. Divisional personnel Officer, South Eastern Railway,  
Sambalpur, At/po/Dist. Sambalpur.
  4. Divisional Accounts Officer, South Eastern Railway,  
Sambalpur, At/po/Dist. Sambalpur.
- .... Respondents .

By legal practitioner: Mr. C.R. Mishra,  
Addl. Standing Counsel  
(Railways).

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O R D E R

MR. NITYANANDA PRUSTY, MEMBER (JUDICIAL):

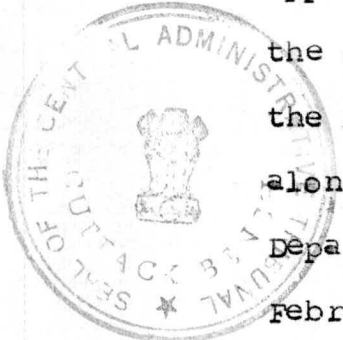
The applicant who was working as Chief parcel  
Supervisor and retired from service on 31-12-1994 has  
filed this Original Application, under section 19 of the  
Administrative Tribunals Act, 1985 challenging the action  
of the Respondents in withholding/deducting Rs.15,147/- from

*[Handwritten Signature]*

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his Death-Cum-Retirement Gratuity (in short D.C.R.G.) amount and praying for a direction to the Respondents to release the said amount of Rs.15,147/- recovered from the D.C.R.G. of the Applicant, with interest at the rate of 18% per annum and also for grant of 18% interest per annum on the total D.C.R.G. amount of Rs.46,213/- from the date of the amount due till the date of actual payment.

2. The case of the applicant falls in a short compass and can be briefly stated herein below. The case of the applicant, in brief, is that as per the pension calculation sheet, at Annexure-2, the applicant was entitled to D.C.R.G. amount of Rs.46,213/- which ought to have been paid to the applicant on the date of retirement i.e. 31.12.1994. From the date of retirement, the applicant several times requested the Respondents 2 & 3 for payment of his D.C.R.G. of Rs.46,213/- along with interest at the rate of 18% per annum but the Department has paid him only Rs.31,066/- in the month of February, 2000 and a sum of Rs.15,147/- was illegally deducted from the above said D.C.R.G. amount without following due procedure of law or initiating any proceedings against the applicant and without giving any opportunity to defend his case properly. It is stated that the action of the Departmental Authorities in not paying him the D.C.R.G. amount on the date of retirement i.e. 31.12.1994 and paying him only Rs.31,066/- in February, 2000 deducting Rs.15,147/- is completely illegal, unjust and arbitrary and as such, the applicant is entitled to interest at the rate of 18% per annum on Rs.31,066/- from 31.12.1994 till February, 2000 and 18% per annum on the withheld amount of Rs.15,147/- w.e.f. 31.12.1994 till the date of actual payment.



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3. Respondents have filed their reply interalia stating therein that the applicant while working as Booking Supervisor at Sambalpur Road Station, retired from service w.e.f. 31.12.1994. All the retirement benefits have been paid to the applicant except the D.C.R.G. due to nonreceipt of Commercial debit Certificate from the concerned Department. The Commercial debit clearance certificate issued by the Concerned Department after getting the list of unaccounted for debits/parcel, way bills from the Deputy C.A.O.(TA), South Eastern Railway, Calcutta. It is stated that since the commercial debit of Rs.14,676/- was lying outstanding against the applicant, it took some time to get it verified from the concerned station and after getting it properly checked up from the Dy.CAO(TA), Calcutta, an amount of Rs.14,676/- has been deducted from the D.C.R.G. amount of Rs.46,215/- of the applicant and the balance amount of Rs.31,666/- has been paid to the applicant vide cheque No.B-234466, dated 11-7-1997. <sup>on a w</sup> comparative reading of the Annexures-A/2 and R/2, it is evident that the amount due towards D.C.R.G. was Rs.46,313/- and the amount deducted therefrom was Rs.14,647/-. Details of which has been given in page-4, below para-6 of the reply of the Respondents.

Applicant in paragraph-4.3 of the Original Application has stated that he had received only Rs.31,066/- towards DCRG in February, 2000 but the Respondents in paragraph-2 of their reply have stated that an amount of Rs.31,666/- has been paid to the applicant in July, 1997 but no document has been filed by either parties in support of their above contentions regarding payment of Rs.31,066/- or Rs.31,666/- either on February, 2000 or in July, 1997.



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4. We have heard Learned counsel for both sides. After hearing learned counsel for both sides, the main point to be decided in this case as to whether the action of the respondents in deducting the amount of Rs.14,647/- from the D.C.R.G. of the applicant in terms of Rule 15(2) and 15(4) of Railway Servant (Pension) Rules, 1993 is justified or not and as to whether the applicant is entitled to get the deducted amount along with interest and also interest on the late paid amount of D.C.R.G. which ought to have been paid to the applicant on the very date of his retirement.

5. In support of <sup>his</sup> ~~the~~ contentions, ~~of~~ the Learned Counsel for the Applicant, ~~he~~ has relied upon the following decisions:

- a. AIR 1970 SC 150 - A.K. KRAIPAK VRS. UNION OF INDIA AND OTHERS;
- b. AIR 1999 SC 1212 - DR. UMA AGRAWAL VRS. STATE OF UP AND ANOTHER;
- c. AIR 2001 SC 2433 - GORAKHAPUR UNIVERSITY AND OTHERS VRS. DR. SHITLA PRASAD NAGENDRA AND ORS.

Learned Additional Standing Counsel Mr. Mishra, has relied on and filed copy of the extract of the Indian Railway Commercial Manual Vol. II.

6. The admitted position in this case is that the applicant has retired from service w.e.f. 31.12.1994 and he is entitled to the D.C.R.G. amount of Rs.46,313/- and an amount of Rs. 14,647/- has been deducted from the said amount and Rs.31,666/- has been paid to the applicant at a date much after the date of his entitlement i.e. the date of his retirement, which may be either on 11.7.1997 or February, 2000 as has been stated in the pleadings of the respective parties. But while the deduction of Rs.14,647/- was



*Mishra*

made, no enquiry was conducted by the Department in fixing the liability and no opportunity was also afforded to the applicant to defend himself before reaching a conclusion by the Department to deduct the above said amount <sup>from</sup> the D.C.R.G. amount of the applicant.

The Hon'ble Supreme Court in the case of A.K. Kraipak (Supra) have been pleased to hold that Rules of natural justice, should be made applicable to the administrative action/enquiries. It is also a well settled principle of law by a plethora of judicial pronouncement of the Hon'ble Supreme Court, <sup>w</sup> also different Hon'ble High Courts and various Benches of this Tribunal that any administrative action which will affect the interest of a Govt. servant, principles of natural justice must be followed. But here in this instant case, the applicant has not been asked to file any show cause or to defend himself before a decision was taken by the Departmental Authorities to deduct Rs.16,647/- from the D.C.R.G. amount of the applicant.

In the case of Dr. Uma Agarwal (supra), the Hon'ble Supreme Court have been pleased to hold that an employee is entitled for interest on the delayed payment of pension and other retiral dues inter alia observing therein that delay in settlement of retiral dues, is frustrating and must be avoided at all costs. Such delays are occurring even in regard to the family pension for which too there is a prescribed procedure. This is indeed unfortunate. In case where a retired Govt. servant claims interest for the delayed payment, the Court can certainly keep in mind the time schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.



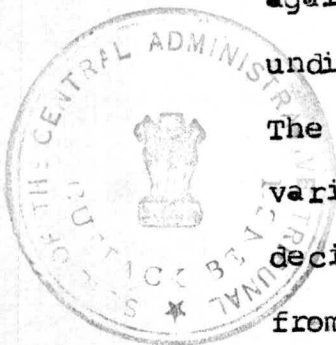
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Here in this instant case, as would be evident, the delay in payment of D.C.R.G. amount was occurred due to the laches of the department and the Applicant is no way responsible for ~~the same~~.

In the case of Gorakhpur University (supra), the Hon'ble Supreme Court have been pleased to hold that the pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in the settlement and disbursement thereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. It has further been held that the University can not be held to be entitled to recover by way of adjustment of such disputed sums or claims against the pension, gratuity and provident fund amount undisputedly due and unquestionably payable to the employee. The Hon'ble Apex Court, various Hon'ble High Courts ~~as also~~ various Benches of the Tribunal have also in a number of decisions categorically held that no amount can be deducted from the retiral benefits of an employee, which he is entitled to get towards pension, gratuity, DCRG and provident Fund etc. and in case any amount is due to be paid by the employee, concerned, then the same has to be recovered from him by following due procedure of law.

The copy of the extract of the Indian Railway Commercial Manual, Vol. II, 3rd edition, 1991, page-141 filed by the respondents indicates the method to be adopted for recovery of the debits from the staff leaving service but no method has been prescribed therein for determination of the

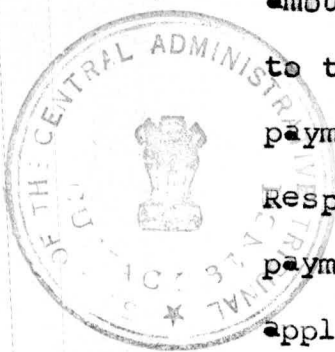


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exact amount which is to be recovered from the outgoing employee on giving him reasonable opportunity to defend his case.

7. After going through the records, hearing the learned counsel for both sides and in view of the settled position of law stated above, we are of the considered opinion that the action of the Respondents in deducting Rs.14,647/- from the D.C.R.G. of the applicant, without giving him reasonable opportunity or without conducting any enquiry before determination of that amount, and delayed payment of the balance amount of D.C.R.G. Rs.31,666/-, much after the date of retirement, is completely unjust, illegal and against the settlement principles of law as the applicant is entitled to the D.C.R.G. amount on the very date of his retirement. In view of this, we direct the Respondents to pay the withheld amount of Rs.14,647/- alongwith interest @ 12% per annum to the applicant from the date of retirement till the actual payment to be made to the applicant. We also direct the Respondents to pay interest @ 12% per annum on the delayed payment of the D.C.R.G. amounting to Rs.31,666/- to the applicant from 31.12.1994 till the date of actual payment since admittedly, it has been paid to the applicant years after the date of retirement. This exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order.

8. So far as the claim amount of the Respondents amounting to Rs.14,647/- is concerned, the Respondents are at liberty to recover the same following due process of law subject to limitation and other rules which are in force.





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9. with the observations and directions made above,  
the original Application is allowed. No costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*28/12/2007*

*Nityananda Prusty*  
(NITYANANDA PRUSTY)  
MEMBER (JUDICIAL)

KNM/CM.