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25. ORDER DATED 01-01-2002.

Heard Shri N. R. Routray, learned counsel for the applicant and Shri D. N. Mishra, learned Standing Counsel for the Respondents and have perused the records.

In this Original Application, the applicant has prayed for a direction to the Respondents to set aside the order of recovery dated 23.10.1999 and to pay the DCRG amount illegally recovered from the applicant with 12% interest from the date of entitlement i.e. 8.2.91.

Respondents have filed counter opposing the prayer of applicant. No rejoinder has been filed. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. The case of applicant is that he was working as Key man in PWI, Gorakhanath in 1930. On 8.7.1932 he went on three days leave as he was suffering from Leprosy. Because of the gravity of his illness and consequent stigma from his colleagues he remained absent from duty unauthorisedly. He was in occupation of a quarters. Applicant has stated that even though the allotment of qrs. was made to him on pen and paper it was actually in possession of one K. Sethi. Applicant has stated that he had approached the Tribunal earlier in OA No. 530/92, and in pursuance of the order of this Tribunal he was granted invalid pension w.e.f 2-2-1991. He has also received his provident fund settlement but his DCRG amount has not been paid. He has made many representations but without any result. In the context of that the applicant has come up in this OA with the prayers referred to earlier.

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Respondents in their counter have stated that the relevant quarters was vacated by one Shri Banamali, Chowkidar and the applicant occupied the quarters and asked that an order of allotment should be issued in his name. This was done and the applicant was in lawful possession of the quarters. The rent of the qrs. was also recovered from the applicant till July, 1982 but after that no rent could be recovered because the applicant was on unauthorised absence. Respondents have stated that ultimately the qrs. was vacated on 23.7.1993 and for unauthorised occupation from July, 1982 to July, 1993, an amount of Rs. 17,775/- has been charged. It is submitted that another amount of Rs. 3067/- is due to be recovered towards festival advance, elect. charges, Urban Bank dues and overpayment of DA. Applicant was due to get DCRG for an amount of Rs. 2551/- but as the total amount due to be recovered from the applicant is Rs. 20,342/-, the DCRG amount has been adjusted. The petitioner has made several averments in this OA regarding the qrs. alleged to have been in his occupation and has stated that he is not required to pay at the normal and higher rate for alleged occupation of the quarters from 1982 to 1993 as has been averred by the Respondents. But even leaving aside this liability, I find that the applicant is due to pay to the authorities towards festival advance and other items mentioned earlier, an amount of Rs. 3067/- which is more than the amount of Rs. 2551/- which is the amount of DCRG due to be paid to him. It is submitted by learned counsel for the applicant that the applicant has in the meantime passed away and his wife who was entitled to family pension

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was also passed away. It is submitted by learned counsel for the applicant that all the children of the applicant are major and are not entitled to get family pension after the death of the applicant and his wife. As the amount of Rs. 2551/- has been adjusted and leaving aside the amount due for house rent, the other amount due to be recovered from the applicant is more than the amount of DCRG. I hold that the applicant is not entitled to get back his DCRG. The other aspect is the remaining amount ^{which} according to the Respondents are due to be recovered from the applicant. As the applicant and his wife have passed away, the Railway Authorities should consider the writing of the amount outstanding against the applicant in accordance with rules. It is also seen from the order dated 17.2.94 of the Tribunal disposing of the OA No. 520/92 (Annexure-2) that the Tribunal has directed that the case of one of the sons of the applicant, in case he applies, for employment should be considered sympathetically. It is submitted by learned counsel for the applicant that so far the son of the applicant has not been given any appointment. As this is not a prayer in this OA is not necessary to pass any order with regard to this prayer. The Departmental Authorities are certainly expected to carry out the earlier order of this Tribunal with utmost despatch.

With the above observations, the OA is disposed of. NO costs.

Somnath Somani
(SOMNATH SOMANI)
VICE CHAIRMAN
1.1.2002

KNM/CM.

Four copies of
final order
dt. 1.1.2002 issued
to counsel for
both sides.

Agg
S.O.G.)

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8/1/02