

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 358 OF 2003
CUTTACK, THIS THE 19th DAY OF April, 2005

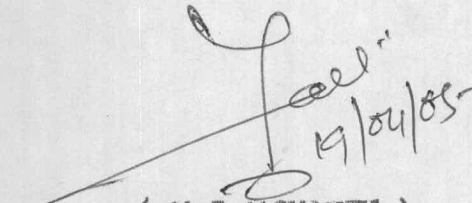
Gouri Subudhi Applicant

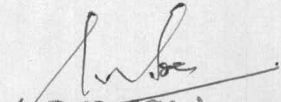
Vs

Union of India & 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 ? Yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

15

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CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 358 OF 2003
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CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Smt. Gouri Subudhi aged about 60 years wife of Late Muralidhar Subudhi, Ex Khalasi of Signal & Telecom Department, Khurda Road, at present residing at/P.O. Arugul, (Via Jatni), Dist. Khurda.

..... Applicant

By the Advocate

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Mr. Achintya Das.

VERSUS

1. Union of India service through General Manager, E.Co. Railways, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda, PIN-751023.
2. Member Staff, Railway Board, Rail Bhavan, New Delhi, PIN-110001.
3. Financial Advisor & Chief Accounts Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda, PIN-751023.
4. Divisional Railway Manager, E.Co. Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN-752050.
5. A.Suresh, Assistant Station Master, Khurda Road, C/o. Station Manager, Khurda Road, P.O. Jatni, Dist. Khurda, PIN-752050.

..... Respondents

By the Advocate

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Miss S.L.Patnaik.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A. has been filed by Smt. Gouri Subudhi, widow of late Muralidhar Subudhi, Ex-Khalasi of Signal and Telecom Department, Khurda Road, ventilating her grievance that the Respondents in contravention of the rules have withheld the release of the DCRG which was due for payment on the death of her husband on 9.3.96. She has, therefore, prayed for issuance of direction to the Respondents to pay the DCRG amount with interest at the rate of 12% for delayed payment and that the Respondents may be permitted to deduct only normal license fee and electrical charges upto 17.3.03 when the applicant vacated the allotted quarters and handed over the same to the concerned Railway authority.

2. The case in short is that the husband of the applicant expired while in service on 9.3.96. The applicant was staying with her children in Quarters No. 170/D which was allotted to her deceased husband. She had applied for retention of this quarters and had also applied for compassionate appointment of her son, Shri P.K.Surjit, on 24.3.96. She was granted permission to retain the quarters. Her son was offered appointment to the post of Assistant Station Master on 13.5.97 but on account of his low medical category, he could not be appointed to the said post and was offered an alternative appointment to the post of Outdoor Clerk on 26.3.98. Her son joined the post on 20.4.98. After his appointment, her son applied to the

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concerned authority on 21.5.98 for reallocoting the same quarters on out of turn basis to him, invoking the rule of "Father and Son" followed by the department in this regard. In terms of the instructions issued by General Manager, South Eastern Railways by his letter dated 7.9.98, such out of turn allotment is normally permissible where the compassionate appointment is made within 12 months from the date of occurrence of the death of Railway servant. The grievance of the applicant is that while his case was turned down by the Chief Personal Officer apparently on the ground that the time gap between the death of his father and the offer of appointment to him was more than 2 years 17 days, although in another case of one Shri Adiseshan where the appointment to the ward of the deceased Railway servant took place after 2 years and 2 months, the request was granted. Thus she has been treated unequally and discriminated. The applicant having no house/own home has been put to huge hardship because of the rejection of her son's out of turn allotment request. Her further grievance is that because of the delay in getting service for her son and because she had no house/own home, she could not vacate the Railway quarters for which the entire amount of DCRG has been withheld by the Respondents, which is against all canons of law.

3. The Respondents have opposed the application on the ground that release of the amount of DCRG is directly linked to the vacation of quarters under Rule 15 of Railway Servants(Pension) Rules,1993(Rules,in short). They have stated that the applicant vacated the Railway accommodation only on

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17.4.03 i.e. after more than 7 years from the date of death of the employee and that was the only ground for which DCRG could not be released. They have further submitted that the applicant was granted permission for retention of quarters only for a limited period. As per the extant provisions of law, in the case of death of Railway employee, the legal heirs can retain the accommodation upto a period of 1 year from the date of death of the Railway servant. This period of retention has been extended upto 24 months with effect from 22.1.99. They have, therefore, argued that as the death of the Railway servant had occurred on 9.3.96, the applicant should have vacated the quarters with effect from 9.3.97 and had it been so done the DCRG amount could have been released to her after deducting normal rent and the damage rent payable by her.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. The Ld. Counsel for the applicant has made strenuous effort to bring out the injustice meted out to the widow both in regard to payment of DCRG and ^{in the matter of} allotting to her son Railway accommodation on out of turn basis. The Ld. Counsel for the applicant has been steadfast on the point that the Respondent Department has no right to withhold payment of DCRG as soon as that amount become payable on the occurrence of the death of the husband of the applicant. He, further, submitted that although he does not dispute the legality of Rule 15 of Rules

for recovery and adjustment of Government or Railway dues for pensionary benefits, but in this case it was a case of withholding of DCRG which is outside the scope of Rule 15. He drew ~~our~~ ^{various} attention to the ~~judgements~~ of the Apex Court on the issue whether the payment of gratuity can be linked with vacation of quarters or linked with unauthorised possession of the allotted accommodation. It is profitable to recollect here that the allegation against the applicant by the Respondents is, firstly, that she did not vacate the quarters immediately on expiry of 12 months ~~of~~ the death of her husband and thereby remained in unauthorised possession of the Railway accommodation inviting action to be taken under Rules 15 and 16 of the Rules. Both these issues, he submitted, have been answered by the Apex Court already. In the case of U.O.I vs Shiv Charan (1991 Suppl.(2) SCC 386), it was held by the Apex Court that "the payment of gratuity can not be linked with the unauthorized possession of the allotted premises by a retiree. The employee has a right to get the DCRG while administration can recover damages for unauthorized occupation of the allotted quarters after retirement. However, in a case where gratuity is being paid, only normal license fee can be deducted from the same along with electric and water charges with the right to the administration to proceed under PP(EUO) Act, 1971 for eviction as well as for recovery and realization of rent/damages as per extant rules." Again, in the case of U.O.I and others vs Madan Mohan Prasad (2003(1) ATJ 246) the above principle has

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been reiterated while discussing the consequence of nonvacation of Railway quarters after retirement. It has been held in that case also that "non-vacation of Railway quarters can not be a ground to hold back DCRG and the leave encashment benefit." It was further held that "the amount of normal rent, electricity and water charges which are admitted and obvious dues can be deducted by the authorities, if still due."

6. The Ld. Counsel for the Respondents repeatedly drew our notice to the provision of Rule 15 stating that under Sub-rule 2 of that Rule liberty has been given to the Railway/Government to adjust against the retirement gratuity or death-cum-retirement gratuity or terminal gratuity dues as ascertained and assessed. Then referring to Sub-rule 8 under Rule 16 she submitted, on behalf of the Respondents, that it has been clearly provided that where a Railway accommodation is not vacated by a Railway servant after superannuation or after cessation of service such as death, the full amount of death gratuity shall be withheld. She also submitted that reliance of the applicant on the judgements referred to by him during oral submission is of little assistance as the validity of Rule 16(8) has not been contested nor it has been found to be bad in law.

7. We have carefully considered the rival contentions and the caselaws placed before us. We find lot of force in the argument of the Ld. Counsel for the Respondents, and, therefore, we propose to address the issue raised by her regarding validity of Rule 16(8) in the face of caselaws referred to by the Ld. Counsel for the applicant. It has been clearly laid down by

the Apex Court that the payment of gratuity can not be linked with the non-vacation of allotted premises by a retired Railway servant/family of a deceased Railway servant because the employee has right to get the gratuity. However, the right of the administration/employer has also been recognized by the Apex Court when it says both in the case of Shiv Charan as well as in the case of Madan Mohan Prasad that the administration has right to recover dues, due to unauthorised occupation and that it has the right to proceed under PP(EUO) Act, 1971 for eviction as well as for recovery and realization of rent/damages. It is also to be noted here that the Apex Court has allowed only recovery/adjustment of normal license fee along with electric and water charges on the ground that recovery of normal rent falls under the term 'admitted' or 'obvious' dues within the meaning of Rule 15 whereas penal rent/damages does not fall under the same Rule. In the view of the law as laid down regarding recovery and adjustment of Government/Railways dues from pensionary benefits, there is conflict between the provision made in Rule 15 and there in Rule 16(8) of the Rule. The provision made under Sub-rule 8 under Rule 16 is violative of the law declared in this regard by the Apex Court in both the cases referred to earlier. Gratuity having been declared as a right of an employee, the provision made under Rule 16(8) that the full amount of retiral gratuity/death gratuity 'shall be withheld' is violative of the law. Under Rule 15, the Government having been given the liberty to adjust its admitted and assessed dues such as

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normal rent, the provision made under Rule 16(8) is excessive legislation added to the Rules in May, 2000 is clearly incongruous, and, therefore, must be struck down. We order accordingly.

8. It is important on the part of the Respondents to realise that the Apex Court has given full credence to the need of administration to keep checking on the incidence of unauthorized retention of quarters after superannuation/cessation from service but right to sue and right to realise damage rent/penal rent or to create a deterrence for unauthorized retention of quarters lies in invoking the provisions of PP(EUO) Act of 1971 and not by any other means. Resorting to any other means will be highhandedness which has to be deprecated. In view of this provision of law, we have no hesitation to hold that withholding of payment of DCRG of the applicant on death of her husband, on any reason, was patently illegal, and, therefore, she is entitled to full relief. Accordingly, we direct the Respondents to release the DCRG amount payable to her on the death of her husband on 9.3.96 with interest at the rate of 9% from 9.6.96 to the last day of the previous month following which the payment is actually made. Liberty, however, is granted to the Respondents to deduct from the said DCRG amount payable to the widow of the deceased Railway servant, the amount of normal rent including payment of electricity and water charges, if any, due from her. The Respondents are also granted liberty to take appropriate action to realise damage rent from occupation of the Railway quarters No. 170/D at Loco colony.

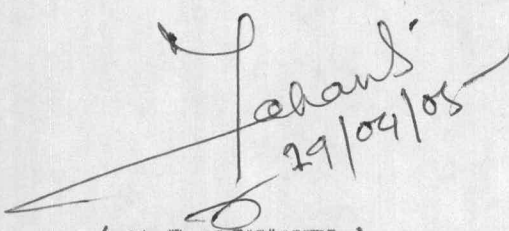
for its retention beyond the period of 12 months from the date of death of her husband under PP(EUO) Act, 1971 for recovery and realisation of rent/damages as per the rules laid down in this regard. Obviously, as the son of the deceased Government servant/applicant's husband has been given appointment under the Respondent Department, proceedings under the PP(EUO) Act, 1971 will lie against him only. Initiation of any proceedings under the Act, however, shall be subject to our order as under.

9. The other point to be decided is whether the denial of the benefit of "Father and Son" Rule to the applicant's family is inequitable. We find that the applicant's application for out of turn allotment of quarters to her son was turned down by the Chief Personal Officer (CPO, in short) without a speaking order. ~~That is no rational answer at all.~~ Apparently, the allegation of discrimination is writ large on it. Our notice have been invited to the Railway Board letter dated 7.9.98 regarding the regularisation of quarters in favour of wards appointed beyond one years limit on compassionate ground, Establishment Sl.No. 80/91 dated 24.4.91 (Annexure-15). According to this Circular, there is no prohibition to regularise quarters in favour of wards appointed beyond one year's limit, only that such cases are to be referred to the respective staff officers of Head Quarters for obtaining General Manager's personal approval which has been delegated to SDGM/CPO. In this case the matter was referred to the CPO, who, however, turned down the request without assigning any reason. Such an action appears to be a case of total non-application of

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mind and the Respondents having failed to provide any reason either to the applicant when his application was rejected or in the counter, we hold that denial of benefit of regularisation of the quarters in favour of the son of the deceased husband of the applicant was a hostile discrimination which accordingly has to be set aside. We, accordingly, quash the CPO, SE Railway, Garden Reach letter No. P/S&T/240/Pt.1, dated 7.1.03 being arbitrary and devoid of reason and direct the Respondents to reconsider the matter and to allot the quarters to the son of the applicant on out of turn basis under "Father and Son" Rule.

10. Accordingly, the O.A. succeeds. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

R KUMAR
