

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

ORDER DATED 26.08.2004.

Non-payment of the D.C.R.G. amount of Rs.17,146/- and post retiral passes to the Applicant is the subject matter of challenge in this Original Application under section 19 of the Administrative Tribunals Act, 1985. It is an admitted fact that the Applicant took voluntary retirement from Railway Service w.e.f. 25.8.1998. At the time of retirement he was working as Loco Shunter at Kantabanjhi Station of the erstwhile South Eastern Railways, and he was allotted a Railway Qrs.No.L/37/1 Type-II. Since he was not paid his statutory dues by filing this Original Application he has prayed for a direction to the Respondents to release his withheld gratuity amount of Rs.17,146/- alongwith the heldup passes.

By filing counter, the Respondents have submitted that due to unauthorised occupation of the Railway quarters for the period from 25.8.98 to 4.8.1999 by the applicant an amount of Rs.17,146/- had been recovered towards the damage house rent from the DCRG dues and as per Estt.Sl.No.62/95, his seven sets of complementary passes due to him has also been withheld. Therefore, since the Respondents have acted as per the Rules, this Tribunal may not interfere in the matter.

Having heard Mr.S.R.Mishra-1, learned counsel for the Applicant and Mr.B.K.

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Bal, learned Addl. Standing Counsel appearing for the Respondents/Railways, I have perused the materials placed on record.

Learned counsel for the applicant during hearing has submitted that since no opportunity was given before withholding the complementary passes of the applicant, the said decision of the Respondents apart from contrary to rules, is gross violation of the principles of natural justice. As regards the vacation of the quarters allotted in favour of the applicant it was submitted that even though the applicant intimated his wishes to vacate the quarters on 11.5.98; which fact had also been intimated to the appropriate authorities by the Crew Controller of the Kantabanjhi SE Railway, no clearance certificate was issued in favour of the applicant. Counsel appearing for the Respondents has vehemently submitted that since the Applicant did not vacate the quarters allotted in his ~~fav~~ favour physically, as per the rules, action was taken and accordingly an amount of Rs. 17,146/- was withheld from the DCRG amount of the applicant with seven complementary passes.

Attention has been drawn by the learned counsel for the applicant by placing the extract of the Rules of the Railway quarters and in rule-6 under the heading "Eviction" it has been provided as under:-

"6-Eviction:

(iii) For every one month of unauthorised

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retention of Railway quarters, one set of post-retirement passes should be disallowed. A show cause notice to this effect may be issued to the retired employee before disallowing the pass;"

Since in this instant case no show cause notice has been issued to the applicant before withholding the passes of the applicant, the same is a nullity and therefore, the said decision of the Respondents is discouraged and the Respondents are hereby directed to issue the held-up passes of Applicant forthwith.

As regards recovery of amount from the DCRG of the applicant as the damage rent it is also held that the same is bad in law/ against the principles of natural justice as no notice was put to the applicant before doing/recovering the amount. The Hon'ble Supreme Court in the case of GORAKHPUR UNIVERSITY AND OTHERS vs. DR. SHITLA PRASAD NAGENDRA AND OTHERS (AIR 2001 SC 2433) have held as under:-

"The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show cause notice or any opportunity to him before even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to his whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain

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subsequent orders increasing the rates of penal rent, the applicability of which to the employee itself was again seriously disputed and to some extent justifiably too, the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employer.
 (emphasis supplied).

In view of the legal position, I am of the opinion that the action of the Respondents in recovering the amount towards the damage rent from the DCRG of the applicant is bad ; as it is crystal clear that before reaching such a conclusion no notice was put to the Applicant by the Respondents nor have they taken any recourse to recover the possession of the quarters from the applicant. The Respondents, are, therefore, directed to immediately pay the withheld DCRG amount of the Applicant ; preferably within a period of sixty days from the date of receipt of a copy of this order.

However, I make it clear here that this order shall not have the effect of foreclosing the rights of the Respondents/Railways, if any, if the Respondents/Railways chose to workout the same, as is permissible in law.

In the result, this O.A. is allowed. No costs.

AFR

Manoranjan Mohanty
 26/08/04
 (Manoranjan Mohanty)
 Member (Judicial)