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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.869 of 2011
Cuttack this the 12th day of January, 2015

Smt.K.Bhagabati...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? Yes

R.C. Misra
(R.C.MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.869 of 2011
Cuttack this the 12th day of January, 2015
CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Smt.K.Bhagabati
Aged about 60 years
W/o. of late K. Prakash Rao
Ex Travelling Ticket Examiner under
Sr.Divl.Comml.Manager
Khurda Road
At present residing at Railway Qr.No.A173/D
Loco Colony, Jani
Dist-Khurda
PIN-752 050

...Applicant
By the Advocate(s)-M/s.S.Rath
D.K.Mohanty

-VERSUS-

Union of India represented through

1. The General manager
E.Co.Railway
Rail Vihar
Mancheswar
Bhubaneswar
Dist-Khurda-751 017
2. Member Staff
Railway Board
Rail Bhavan,
New Delhi-110 001
3. Financial Advisor & Chief Accounts Officer
E.Co.Railway
Mancheswar
Bhubaneswar-751 017
4. Chief Personnel Officer
East Coast railway
Rail Vihar
Mancheswar
Bhubaneswar
Dist-Khurda-751 017



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5. Divisional Railway Manager
E.Co.Railway
Khurda Road
PO-Jatni
Dist-Khurda-752 050

6. Additional Divisional Railway Manager cum Estate Officer
E.Co.Railway
Khurda Road
PO-Jatni
Dist-Khurda-752 050

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER**R.C.MISRA, MEMBER(A):**

Applicant in the present O.A. is the wife of late K.Prakash Rao, Ex-Travelling Ticket examiner under Sr. Divisional Commercial Manager, Khurda Road in the East Coast Railways. Her prayer in this O.A. is that the Respondent-Railway may be directed to pay the DCRG amount in respect of her late husband after deducting the normal license fee and electrical charges upto 27.4.2005 when the allotted quarters were vacated. Another prayer is that respondents be directed to pay interest @ 12% on account of delayed release of gratuity, upto the date of actual payment.

2. Facts as narrated in this Original Application can be summed up as follows.

3. Late husband K.Prakash Rao while working as TTE was declared permanently unfit on medical ground on 24.7.2000. He was therefore, retired on medical ground on 30.8.2000. The family continued to stay in the Railway quarters No.A 173/D allotted to late K.Prakash Rao. After passage of sometime, on

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27.01.2003, the applicant's son Sri K.Appa Rao was appointed on compassionate ground by the Railways and posted at Khurda Road. He made an application on 17.3.2003 for allotment of the said quarters to him on the basis of the so called 'father and son' rule. After about two years, on 20.4.2005 the quarters were allotted to him. In the meantime, the applicant's husband has breathed his last on 12.02.2005. On account of non-vacation of the Railway quarters, the payment of DCRG of late K.Prakash Rao was withheld since September, 2000. Even after the death of late Sri Rao and, the vacation of the Railway quarters on 27.4.2005, the payment of DCRG to the legal heirs has been withheld by the respondents in spite of representation by applicant, and that is the grievance that the applicant ventilates in her application.

4. The respondents in the O.A. have filed a detailed counter affidavit enumerating the facts of the case. According to this counter affidavit, the applicant's husband retired on 24.7.2000, vide a notification dated 13.11.2000, on account of medical invalidation. Although he was paid his pension, his DCRG was not paid due to non-vacation of Railway quarters No.A-173/D. On the basis of application made, the competent authority permitted him to retain the quarters from 24.7.2000 to 23.3.2001, a total period of 8 months in two spells. i.e., 24.7.2000 to 23.11.2000 (4 months) on payment of normal rent and 24.11.2000 to 23.3.2001(4 months) on payment of double



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the normal rent. The employee did not vacate the quarters in spite of specific instructions, and again applied for further retention by an application dated 20.3.2001. This request was regretted. Because of continued unauthorized occupation of Railway quarters the DCRG dues were not released. In the meantime, the applicant's husband expired on 12.2.2005. On the basis of representation of applicant's husband on 19.1.2001, the case of compassionate appointment of the applicant's son K.Appa Rao was processed and the order of posting was issued in his favour on 03.01.2003. Thereafter the said K.Appa Rao, on 17.3.2003 applied for the allotment of the said quarters under father & son rule on 17.3.2003. Finally, the said quarters which was under unauthorized retention by the family of the ex-employee was regularized by allotting the same to son of the ex- employee on 20.4.2005. The respondent authorities assessed the total Railway dues payable by the ex- employee to be Rs.1, 26,219/-, DCRG payable being Rs.1,25,631/-. Instead of any amount to be paid to the applicant, she was to pay Rs.588/- to the Railway Organization. Therefore, the applicant was asked to pay Rs.588/- vide letter dated 22.3.2012. The respondents in view of these facts have averred that the applicant is not entitled to receive any amount towards DCRG.

5. The applicant's son was posted as a Khalasi vide order dated 20.1.2003 under the compassionate appointment scheme. The quarters were allotted in favour of him only on

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20.4.2005. About this inordinate delay, the respondents in their counter affidavit have submitted that this delay was caused due to correspondence being made for exchange of quarters between Commercial and S & T Pool, which would be termed as ~~Routine~~ administrative routine.

6. It is further submitted that since the ex-employee did not vacate the quarters in time, the Senior D.C.M. requested the Estate Officer, East Coast Railways to initiate an Eviction case. This Eviction Case bearing No. EC/64/2002 was finalized with orders being passed on 27.5.2003 with a direction issued to the ex-employee to vacate the Railway quarters within a period of fifteen days. But neither the ex-employee nor his wife complied with the order, and finally, the applicant vacated the quarters on 27.4.2005 after allotment in favour of the son. The respondents on the basis of the detailed facts presented by them have defended their action of recovery of outstanding dues from DCRG in accordance with Rule 15(2) of RS(Pension) Rules, 1993.

7. In course of hearing of this case, the learned counsel for respondents filed a memo containing the instruction given by the Department regarding calculation of damage rent and house rent at Rs.1,10,787.00 for retention of Railway quarters beyond the permissible period. The learned counsel for the applicant had argued that the detailed calculation of damage

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rent is not properly reflected, since the square metre of the area was not indicated.

8. The learned counsel for the applicant has submitted a written note of submission, in which it is pleaded that payment of pension and gratuity cannot be withheld on the ground of non-vacation of quarters which was allotted during the period of service. He has cited the decision in *Gorakhpur University vs. Dr. Shitala Prasad Magendra & Ors.* reported in AIR 2001 SC 2433, to defend his point. It is his further submission that in the case of Srinivas Rao vs. UOI reported in (2004) ATT (CAT) 376 it was held that action of the respondents in recovering the amount towards damage rent from DCRG of the applicant is bad since no notice was put to the applicant in this matter.

9. Another vital point that the learned counsel for the applicant has raised is that the order dated 27.5.2003 passed by the Estate Officer in Case No. EC/64/02 is an order under Sub Section-1 of Section-5 of the Public Premises(Eviction of Unauthorized Occupants) Act, 1971, by which the ex-employee and other occupants were directed to vacate the said quarters within fifteen days. But thereafter, no order was passed by the Estate Officer under Section 7 of the said Act for assessment and recovery of damage rent. Recovery of damage rent from DCRG would have been permissible under law, if the Estate Officer had passed appropriate orders under Section 7 of the Act.



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10. The learned counsel for the respondents in his written notes of submission has further repeated the facts of the case. But he has submitted that the ex-employee did not make any representation for release of DCRG, and therefore, the applicant is estopped from raising the issue at a belated stage, after the ex-employee has expired. Another aspect he has touched is that in the eviction proceedings, order of eviction was passed by the Estate Officer, and the ex-employee did not comply with the order, nor did he challenge the order in a judicial forum. The order of eviction was passed on 27.5.2003 and finally on 27.4.2005 the quarters were vacated by the applicant, on allotment of quarters in favour of her son.

11. Having heard the learned counsel for both the sides, I have perused the records. The first issue to be decided is whether the damage rent was assessed and imposed by an order of the Estate Officer under the relevant provision of the PPE Act. Facts, related to the issue have been discussed, and it is evident that the order dated 27.5.2003 passed by the Estate Officer is an order under Section 5 of the said Act. There is no order on damage rent. In this order the Estate Officer directed ex-employee to vacate the quarters within a period of fifteen days failing which he and other occupants were liable to be evicted, if necessary, with force. It is very surprising why the respondents did not enforce this order, if the ex-employee and his family did not voluntarily comply with this order. The

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argument that ex-employee did not challenge this order in the judicial forum is also rather surprising, since the more shocking part is that respondents did not take any steps for enforcement of the order of Estate Officer, leading me to draw an inference that ex-employee and family were allowed to continue in the same quarters.

12. The Divisional Railway Manager, KUR in his letter dated 16.10.2012 addressed to the learned Railway Counsel has submitted a calculation of damage rent. This has been filed before the Tribunal. The total damage rent towards house rent is calculated as Rs.1,10,787.00, and when other charges are added, the grant total comes to Rs.1,26,219.00. But it is admitted now that the damage rent was not assessed by the Estate Officer, and no order to this effect is passed ~~by~~ under the PPE Act.

13. It is, therefore, decided that order of damage rent was not passed by the Estate Officer under relevant provision of PPE Act.

14. The second important issue is whether the damage rent as assessed by the respondents was recoverable from the DCRG dues of ex-employee. The learned counsel for Respondents has relied upon Rule-15(2) of the RS(Pension) Rules, 1993. Rule 15 of RS(Pension) Rules, 1993, is quoted below.

"15. Recovery and adjustment of Government or railway dues from pensionary benefits -

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(1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity and death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule(4).

15. However, I have to understood "dues as ascertained and assessed". When the damage rent has not been assessed under the relevant provision of the PPE Act it will not be possible to accept that the damage rent is a properly assessed due which could be recovered from gratuity dues.

16. Related to the resolution of this issue is another important matter. In the case of *State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & another (C.A.No.6770 and 6771 of 2003, decided on August, 14, 2013)* reported in (2014) 2 SCC (L&S) 570, the Hon'ble Apex Court has decided that "**it is an accepted position that gratuity and pension are not bounties; an employee earns these benefits by his long, continuous, truthful and unblemished service**".

It has been further laid down as follows:

"A person cannot be deprived of his pension without the authority of law, which is the constitutional mandate enshrined in Article

300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced".

17. Having regard to the submissions of learned counsel for the applicant and the citations mentioned by him, I am led to the conclusion that in the present case, damage rent has not been imposed under the appropriate provision of law, that is, Public Premises Eviction Act, and therefore, cannot be sustained under the law. Moreover, having regard to the law laid down by the Apex Court that withholding any part of the pension or gratuity unless it is under the authority of law is unsustainable, I would also hold that adjusting the damage rent against gratuity as done by the respondents in this case can never be supported.

18. It is, therefore, directed that the respondents shall release the gratuity payable to the applicant after deducting the normal rent for the period of occupation, electricity & water charges and other admittedly recoverable dues.

19. The applicant has prayed for payment of interest @ 12% against the delayed payment of DCRG upto the date of actual payment. The facts of the case reveal that respondents have failed to take appropriate action at various points of time. It is also a fact that the applicant, and the ex-employee did not vacate the quarters in spite of many notices. Perhaps they continued to occupy the quarters unauthorizedly with an

expectation that the applicant's son will be appointed on compassionate ground, and will be incidentally allotted the same quarters. Incidentally, the applicant's son applied for allotment on 17.3.2003, the authorities allotted the quarters on 20.4.2005, a delay of more than two years which has been attributed by respondents to some administrative procedure. However, such delay has led to a complex situation. One fact, however, stands out. Finally on 27.4.2005 the quarters were vacated. Before that the applicant's late husband, the ex-employee had breathed his last. After 27.4.2005, there was no difficulty for the respondents to release the DCRG dues. When damage rent was not assessed under the PPE Act, the respondents were not authorized under law to withhold payment of DCRG to be adjusted against the damage rent. The date of vacation, i.e., 27.4.2005 is important in the sense that at least from that day payment of DCRG could have been ensured.

20. It is relevant to mention here that in the matter of D.D.Tewari(D) THR. LRS vs.Uttar Haryana Bijli Vitran Nigam Ltd. Ors. C.A.No.7113 of 2014 decided on 1.8.2014 reported in 2014(3) SLJ 118 -120, it has been held by the Hon'ble supreme Court as follows.

"It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned Single Judge after advertizing to the relevant facts and the legal position to the relevant facts and the legal position has given a direction to the employer - respondent to pay the erroneously withheld pensionary

benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled. Therefore, this Court has to exercise its appellate jurisdiction as there is miscarriage of justice in denying the interest to be paid or payable by the employer from the date of payment as per the aforesaid legal principles laid down by this Court..."

21. Taking into account the totality of the situation, and the law laid down by the Hon'ble Apex Court, I therefore, direct that the respondents should release the gratuity payable to the applicant forthwith, deducting the normal rent for the period of occupation and electricity and other charges, and other admittedly recoverable dues. They are also directed to pay simple interest of 8% on the gratuity amount with effect from 27.4.2005 upto the date of actual payment.

22. In the result, the O.A. is allowed to the extent as mentioned above. No costs.


(R.C.MISRA)
MEMBER(A)

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