

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 1292/96

PRESENT : Hon'ble Mr. B.P. Singh, Administrative Member

Jahar Lall Halдар

- v e r s u s -

1. Union of India represented by  
General Manager, S.E. Railway,  
for Union of India and for himself and  
for Railway Administration,  
Garden Reach, Calcutta-43.
2. Sr. Divisional Personnel Officer,  
S.E. Railway, Kharagpur Divn.  
P.O. Kharagpur -1.  
District - Midnapore.

...Respondents.

For the applicant : Mr. M.M. Roychoudhury, counsel.

For the respondents : Mr. K. Sarkar, counsel.

Heard on 14.8.2000

Order on 28-08-2000.

O R D E R

B.P. Singh, AM

Sri Jahar Lall Halдар has filed this O.A. regarding non-payment of D.C.R.G. amount inspite of representation. The applicant has prayed for the following reliefs:-

"8.

- A) That the Hon'ble Tribunal do issue an order and direction commanding upon the respondents to bring up to this Hon'ble Court the records of the case, so that conscionable justice may be done, interalia, ordering the respondents to pay the retirement Gratuity to the applicant together with interest at the rate of 18% per annum with effect from 1.6.91 upto the date of payment."

2. The brief fact of the case is that the applicant was appointed as Khalasi w.e.f. 8.7.53 in the S.E. Railway and was promoted to the post of Boiler Maker, Grade II w.e.f. 1.1.1986. The applicant was issued a chargesheet and compulsorily retired from Govt. service w.e.f. 9.7.87. He filed O.A. No. 521/90 against the compulsory retirement before this

Hon'ble Tribunal. The Hon'ble Tribunal delivered its decision on 18.12.95 as per Annexure-A/1 by which the compulsory retirement order was quashed and the applicant was directed to be treated on duty from the date he was compulsorily retired till the date of his retirement on attaining the age of superannuation. He was also directed to be paid salary and allowances accordingly as well as admissible retiral benefits. It was further directed that all the payments due to the applicant should be released and disbursed within six months from the date of communication of the order.

2.1. The above order of the Hon'ble CAT was acted upon and all the payments including retiral benefits were paid to him except D.C.R.G. amount. The respondents started eviction proceedings against the applicant for occupying the railway quarter which was cancelled by an order dated 11.4.96 ( Annexure-A/3 ) which stated that in view of the judgment dated 18.12.95 passed by the Hon'ble CAT Calcutta in O.A. No. 521/90 filed by the applicant the instant eviction case may be dropped. Accordingly the case is closed. The applicant made repeated requests for release of his D.C.R.G. amount equal to 16 1/2 months emoluments.

2.2. The applicant states that unless the payment of D.C.R.G. is paid he would not be able to settle and acquire any accommodation once <sup>verifies</sup> he <sup>visits</sup> his present railway quarter.

2.3. In view of the above being aggrieved from the action on the part of the respondents the applicant filed this O.A. and prayed for the reliefs stated above.

3. I have heard Id. counsel Sri M.M. Roychoudhury for the applicant and Id. counsel Sri K. Sarkar for the respondents. I have gone through the O.A. and the reply to the O.A.

4. The Id. counsel Sri Roychoudhury for the applicant has reiterated the facts and pleaded that the applicant is eligible for gratuity equal to 16 1/2 months emoluments by virtue of retirement from railway service w.e.f. 31.5.91. The amount of gratuity is payable under rule 85 of

Railway Service Pension Rules 1993. The applicant is also entitled to get interest at the rate of 18% per annum under Rule 87 of the said Pension Rules w.e.f. 1.6.1991. The Id. counsel further submitted that the applicant made representation vide Annexure-A/2 to the respondents. But the respondents did not reply regarding payment of the gratuity. The <sup>consent</sup> ~~consent~~ of the respondent authorities is against the principles of natural justice and violation of provisions of Arts. 14 and 16 of the Constitution. The Id. counsel further submitted that in the absence of any specific charge or allegations against the applicant the payment of retirement gratuity cannot be suspended or delayed. The Id. counsel further submitted that D.C.R.G. amount cannot be withheld under Rule 16(5) of Railway Pension Rules, 1993 as the same does not apply to the applicant. The Id. counsel further submitted that Indian Railway Establishment Code Vol. II (1960 ~~1960~~ <sup>1960</sup>) provides under Rule 2307 (CSR 351) that pension cannot be withheld by anybody except by the President. The Id. counsel also submitted that in the I.R.E.C. referred to above, pension includes D.C.R.G. under Rule 2302 (10) (CSR 41) and, therefore, the action of withholding the D.C.R.G. on the part of the respondents is against the provisions of the above rules. This position has also been upheld by the Principal Bench, <sup>in the case</sup> New Delhi as well as the Hon'ble Apex Court of Harbans Lal Vs. Union of India 1991 (8) S.L.R. 132 and ATJ 1994 (2) 679 S.C. In view of the above, the Id. counsel pleaded that the non-release of the D.C.R.G. amount by the respondents is against the rules and the decision of the Hon'ble Apex Court. The action of the respondent authorities being illegal and irregular against the decision of the Hon'ble Apex Court is fully justified to be quashed by allowing the O.A. and granting the reliefs prayed for.

5. The Id. counsel Mr. Sarkar appearing for the respondents contested the application and pleaded that the applicant was appointed as Khalasi on 8.7.53 in Mechanical Department of S.E. Railway, Kharagpur. Subsequently he was promoted to the post of Boiler Maker Gr.II. While

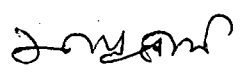
he was working as such a disciplinary proceeding against the applicant was started by an order dated 30.3.87. The applicant was served notice of compulsory retirement from railway service and he was accordingly compulsorily retired. The applicant filed an O.A. being No. 521/90 before this Tribunal against the order of compulsory retirement. The Hon'ble Tribunal vide their order dated 18.12.95 quashed the order dated 30.3.87 and directed that the applicant should be treated as on duty and paid the due salary and allowances including retiral benefits within a period of six months from the date of communication of ~~this~~<sup>that</sup> order. In compliance of the order dated 18.12.95 of the Hon'ble CAT the applicant has been paid all his dues by the respondents except amount of Rs.23,265/- This amount could not be released as the applicant continued to occupy the railway quarter No.6/6/unit No.4 (TOP) at Santragachi till date. The respondent authorities followed the instructions stipulated in Railway Board's letter dated E(G)90 QR3-6 dated 31.12.90 circulated under Establishment Srl. No. 15/91 that D.C.R.G. should be withheld in full for non-vacation of Railway Quarter. As a result the D.C.R.G. amount of Rs.23,265/- relating to the applicant has been held up for non-vacation of railway quarter till date. The D.C.R.G. amount in question ~~should~~<sup>will</sup> be paid to the applicant after ~~deducting~~<sup>vacation of the quarter and</sup> railway dues as per rules. The applicant instead of vacating the railway quarter has filed the instant application. Therefore, the case is baseless and is justified to be dismissed with cost. The Id. counsel has further submitted that the original application which was filed in the Tribunal on 17.10.96 was not served upon the respondents till 21.4.99 as would be clear from the order dated 21.4.99 (Annexure-R/I and R/II) of this Bench. The Id. counsel has further submitted that unless the quarter is vacated there is no question of release of the amount of D.C.R.G. in favour of the applicant. However, as soon as the applicant vacates the railway quarter, he would be paid the D.C.R.G. after deducting the railway dues as per rules. The respondents are within their rights under the proper authority to retain ~~that~~<sup>the</sup> full

amount of D.C.R.G. in terms of establishment Srl. No. 15/91, a ~~A~~ copy of which was given by the Id. counsel to the bench as well as to the Id. counsel of the applicant at the time of hearing. The Id. counsel further submitted that Rule 16(9) of Railway Pension Rules, 1993 is applicable in the case of the applicant which provides authority to withhold full D.C.R.G. In view of the Railway Board circular quoted above as well as provision of the pension rules, the respondents are within their right to withhold the full amount of D.C.R.G. of the applicant. The amount will be released as soon as the applicant vacates the quarter and clears the outstanding dues.

6. The Id. counsel for the applicant was also given a copy of Estt. Srl. NO. 15/91 which authorises the competent authority to withhold full amount of D.C.R.G. for unauthorised retention of railway quarter. In reply to the said order the Id. counsel for the applicant submitted that this is an executive order and the same cannot supersede the statutory order given in I.R.E.C. vol. II (1960) Pension Rule No. 2307 and 2302. He further submitted that in the case of the applicant I.R.E. Code of (1960) Rules 2307, 2302 (10) would apply and also earlier than 1993 Pension Rules will apply in the case of the applicant. From the averments made in the O.A. and the pleadings of the Id. counsel for the applicant, it is clear that the applicant has prayed the reliefs in the O.A. on the ground of various rules of Railway Service Pension Rules, 1993 as would be clear from sub paras under main para 5 of the O.A. The vires of Railway Establishment Sl. No. 15/91 has not been challenged by the applicant either in the O.A. or by filing rejoinder to the reply of the respondents in which reliance has been made on Srl. No. 15/91. In the merit of the case also the Srl. No. 15/91 is not a new provision It is just reiteration of the earlier rule which was in existence since 1982. Similar provision has also been made in Railway Pension Rules, 1993. There ~~has~~ to be some deterrent in the form of withholding the full amount of D.C.R.G. etc. against unauthorised retention of quarter in the larger administrative interest, otherwise it would be difficult for

the administration to control the shortage in availability of the quarter for the employees genuinely in need of allotment. In view of the above I do not find any flaw in the above provision *and resultant act of the respondents.*

7. On the basis of the above discussion it is clear to me that the applicant has retained the railway quarter unauthorisedly from the date of his retirement till date and has not vacated the same so far. The respondent authorities are within their right to withhold the full amount of D.C.R.G. till the quarter is vacated by the applicant. The railway authorities have submitted in their reply that they would release the D.C.R.G. amount immediately after the vacation of the quarter and after adjusting the dues, if any. The applicant is, therefore, directed to vacate the quarter and settle the dues, if any, and intimate about the same to the railway respondents. The respondent authorities are directed to release the D.C.R.G. amount after adjusting the dues within a period of two weeks from the date of communication of the vacation of the quarter by the applicant. The application is disposed of without passing any order as to cost.

  
( B.P. Singh ) 28082020  
Member (A)

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