

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 536 of 1996.

present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

Harendra Mohan RoyChowdhury
S/o- Late, Nalini Mohan Roychowdhury
239, Green Park,
Calcutta-55
- employed as Chief Booking Clerk
(retired on 28.2.83 (AN)),
E. Rly, Sealdah.

... ... Applicant.

- Vrs.-

1. Union of India,
through General Manager,
E. Rly, 17, N.S. Rd,
Cal-1.
2. Divl. Rly. Manager,
E. Rly, Sealdah,
Calcutta-9.
3. Sr. Divl. Commr. Supdt.
E. Rly, Sealdah,
Cal-9.
4. Divl. Personnel Officer,
E. Rly, Sealdah, Cal-9.
5. Sr. Divl. Accounts Officer,
E. Rly, Sealdah, Cal-9.

... ... Respondents.

For Applicant : Mr. B.P. Manna, Counsel lead by
Mr. B.R. Das, Counsel.

For Respondents : Mr. P.K. Arora, Counsel.

Heard on : 4.12.96.

Ordered on : 4.12.1996.

ORDER

1. The applicant retired from railway service on 28.2.1983. Being aggrieved by the non-settlement of D.C.R.G. amount, and commutation of pension, release of Post-Retirement Complimentary Passes and interest @ 10% per annum for the delay in making the payment he had filed an O.A. No. 151 of 1988 which was disposed of by a

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Judgement dated 15.3.1993. The following direction was given while disposing of the application by this Tribunal -

"... Therefore, we are of the view that as during the pendency of this application pensionary benefits have been paid, but after deducting certain amount from his D.C.R.G, the present application has become infructuous. We, therefore, dispose of this application without passing any order as to costs. Liberty is given to the applicant to file a fresh application, if he feels that certain amount has been deducted from his D.C.R.G. illegally for which cause of action has arisen during the pendency of this application."

Pursuant to the said liberty granted to the applicant, the applicant had filed another O.A. No. 636 of 1993 which was adjudicated by an Order of this Division Bench of the Tribunal on 13.6.1995. While different directions were given as regards 1. the settlement of the D.C.R.G, the following direction was given by the Tribunal in its Judgement dt. 13.6.95 that:-

"...For that purpose, we order that an amount of Rs. 8300/- which has been deducted by the Railways as damage/penal rent and other rent for occupation of the quarters, may not be released till such declaration is made by the appropriate authority on being approached by the railways provided such declaration is made by the authorities within a period of 6 months from the date of communication of this order. We would like to make it clear that should adequate justification arise for extension of time to the railways, liberty is given to them for such prayer with notice to other side. After declaration of the applicant as unauthorised occupant and determination of damages by such forum, the Railway respondents shall have the liberty to adjust their dues from Rs. 8300/- so withheld from DCRG money."

2. The applicant now has filed this application with the two prayers as below -

- a) Re-calculation of the entire amount of gratuity and,
- b) Payment of Interest for delayed payment of gratuity.

3. The case has been opposed by the respondents by filing a reply, which I have perused.

4. I have heard the submission of the learned Counsel for both the parties, perused records and considered the facts

and, sir

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and circumstances of the case. Before the Judgement was passed in O.A. No. 151 of 1988 on 15.3.93 by the Division Bench of this Tribunal, the railway-respondents had passed an Order as set out as Annexure 'A' to the application on 20.7.1988 wherein his D.C.R.G. was passed for payment amounting to Rs. 15,519/- and out of which Electricity Charges amounting to Rs. 1,141/- and Rent to the tune of Rs. 8,300/- were deducted. The sum so calculated as D.C.R.G. was never the subject matter of dispute in the subsequent O.A. No. 636 of 1993 and, therefore, this matter cannot be permitted to be raised now since there was another Judgement in between this Judgement and the first judgement which was passed on 13.6.95. Therefore, I am of the view that the first prayer of recalculation of the DCRG has to be rejected.

5. As regards the second prayer of the applicant for payment of interest for the delayed payment of the D.C.R.G. on the entire amount, I note that in the Judgement dated 13.6.95 passed in O.A. No. 636 of 1993 a sum of Rs. 8,300/- was ordered to be withheld by the railway-respondents which was to be adjusted against the penal/damage rent should a declaration be made against the applicant by the competent authority within a period of 6 months; liberty was also granted to the railway-respondents to apply for extension of such time. I find that there is no record produced before me to the effect that the applicant has ever been declared as an 'unauthorised occupant' by the competent authority. I also do not find that there is any prayer before this Tribunal for extension of time of 6 months as fixed in the Judgement. I further note, interestingly, of course, no averment made by the respondents to that effect for the reasons best known to them. The presumption is, therefore, that the respondents did not take any action pursuant to the liberty given to them and that liberty cannot be exercised now if the respond-



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ents did not take any action within 6 months. Therefore, the respondents are debarred from realising any damage/penal rent on account of alleged unauthorised occupation of the railway quarter by the applicant; at best, the applicant shall have to pay normal rate of rent as per rules for the period concerned or for the over-stayal period. Therefore, I am of the view that the amount of Rs. 8,300/- less the amount of Normal Rent (as applicable at the relevant time) for the period concerned must be realised from the applicant for such over-stayal period.

6. As regards the payment of interest on the entire sum of money I have already come to the conclusion that the prayer for re-calculation of the entire amount of gratuity, which has been computed at Rs. 15,519/- cannot be re-opened now; out of that, a sum of Rs. 1,141/- has already been deducted on account of Electric Charges. The applicant, therefore, received a sum of Rs. 6,078/- out of the total amount of Rs. 15,519/- since after the payment of Electric Charges, the balance amount of Rs. 8,300/- was also withheld by the respondents as per the direction given in the Judgement of this Tribunal on 13.6.1995 in O.A. No. 636/93.

7. I have carefully perused the Judgement passed in the O.A. No. 636 of 1993 and I find that this Tribunal has rejected the prayer of the applicant for the payment of interest on the entire amount of D.C.R.G. I am, therefore, of the view that that question cannot be raised again now in this application since it is barred by the principle of resjudicata. However, I note that liberty was given by this Tribunal in that Judgement to declare the applicant as 'unauthorised occupant' was ~~not observed~~ ^{not observed} by the respondents even though adequate time of x 6 months was given. So, the status of the applicant before me today is

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that he was not an 'unauthorised occupant'. This being the position, the applicant shall receive the balance of gratuity less the normal rent for the period of over-stayal. Mr. Das, 1d. Counsel for the applicant, strongly pressed for payment of Interest on this amount. Mr. Arora opposes the contention of Mr. Das on the ground that the applicant has already received some concession to the effect that the railway-authorities did not go to the appropriate forum to declare him to be an unauthorised occupant. I have considered the submissions made by the 1d. Counsel for both the parties. I am of the view that since the legal status of the applicant before me today is that he was a normal occupant and since there was a ^{defect} in the payment of gratuity, whatever the reason for that, it will be unjust to deny interest to the applicant on the amount of gratuity of Rs. 8,300/- minus (-) Normal Rent for the period of over-stayal at the rate of 10% per annum. Accordingly, I order that the respondents shall pay interest on the said amount of money within a period of 3 months from the date of communication of this Order. I further Order that the interest on the said sum of Rs. 8,300/- minus (-) the Normal Rent accumulated for the period shall be calculated from the date immediately following the expiry of six(6) months from the date of communication of this Judgement/Order dated 13.6.1995 in O.A. No. 636 of 1993 to the date of actual payment.

8. The application is thus disposed of in the light of the observations made above without any Order as to costs.



B.C. Sarma)
Member (A)
4.12.96.