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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.17/2010
with
Misc. Application No.10/2010

Date of decision:06.01.2012

HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER.

Amar Singh S/o Shri Sadhu Ram, aged about 53 years, R/o C/o Shri Mahesh Kumar Saini, Near Railway Hospital, Ward No.13, Rajgarh (Sadulpur), District Churu, Rajasthan. The applicant, at the time of Retirement from North-Western Railway, was holding the post of Senior Clerk in the office of IOW, Sadulpur.

Mr. D.S. Sodha, counsel for applicant.

: Applicant

Versus

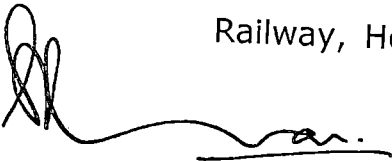
1. The Union of India, through the General Manager, North-Western Railway, Jaipur.
2. The Divisional Railway Manager, North-Western Railway, Bikaner, Rajasthan.
3. The Divisional Finance Manager, North Western Railway, Bikaner, Rajasthan.
4. The Senior Personnel Officer, North Western Railway, Bikaner, Rajasthan.

**Mr. P.M. Vyas, proxy counsel for
Mr. K.K. Vyas, counsel for respondents.**

.....Respondents

ORDER (ORAL)

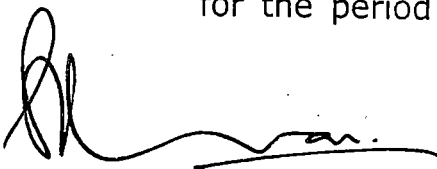
The applicant of this case was first medically decategorized, and then provided an alternative employment as a Clerk, and later a Senior Clerk. Later on, he underwent a fresh medical examination before the Medical Board on 18.01.2006, and through Annexure-A/9, dated 07.02.2006, the CMD, North Western Railway, Headquarter Office, Jaipur, recommended to the Senior



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Medical Superintendent of Bikaner that the recommendation of the Medical Board, as contained in the Minutes of the Medical Board held on 18.01.2006, had been accepted by the competent authority, and the recommendation was forwarded through Annexure-A/9 for further necessary action. Acting upon this, the office of the Divisional Railway Manager, North Western Railway, Bikaner, issued Annexure-A/10, stating that since the recommendation of the Medical Board had been accepted by the Chief Medical Officer of the Railways at Jaipur through his letter dated 07.02.2006, the applicant is removed from service w.e.f. 18.01.2006, the date of the Medical Board itself. Annexure-A/10 was typed on 14.02.2006, signed on 16.02.2006, and from the face of Annexure-A/10 it is apparent that it was served upon the applicant/ received by him only on 20.02.2006.

2. Heard. The learned counsel for the applicant submits that since Executive does not have the powers to give retrospective operation to its orders passed in a routine manner, without the backing of any specific Rules and Legislation, providing for it, the order of removal of the applicant from the service could have operated only from the date of 20.02.2006, on which date the Annexure-A/10 signed on 16.02.2006 was served upon the applicant. He, therefore, refuted the submission made by the respondents in their reply to para 4.14 that the respondents were entitled to deduct from the pensionary benefits the amount of Rs.10,128/-, which was paid towards the salary of the applicant for the period from 19.01.2006 to 20.02.2006, as the applicant



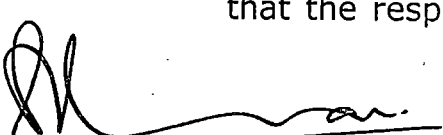
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had been deemed to have retired on 18.01.2006 itself, by operation of the order at Annexure-A/10.

3. Further, in respect of the amount of recovery of Rs. 21,822/-, which had been mentioned in the reply to para 4.14 to have been made towards the damage rent for unauthorized occupation of the Railway quarter by the applicant, it was submitted that in the petition dated 03.05.2006, Annexure-A/14, signed by Smt. Vimla Devi, the spouse of the applicant, a specific averment was made that the penal rent deducted by the office for the period from 11.03.2003 to 31.10.2003 is wrong, because the quarter was surrendered to IPF/BKN office on 03.07.2003 itself. The learned counsel for the applicant submitted that the respondents have in their reply written statement nowhere denied the averment that the quarter was infact surrendered by the applicant on 03.07.2003, and that excess penal rent for at least nearly four months' period has been deducted by the respondents, without any basis.

4. The learned counsel for the respondents argued his case, but has not produced any documents alongwith his reply written statement, which may go to prove/show that the applicant was in continued unauthorized occupation of the concerned quarter till 31.10.2003, and not till only 02.07.2003, as has been admitted by the spouse of the applicant on behalf of the applicant in Annexure-A/14.

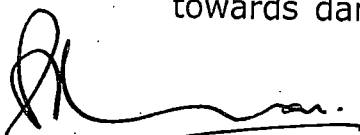
5. After hearing detailed arguments on both sides, it is clear that the respondents could not have given retrospective effect to

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the operation ~~of~~ the order of the removal from service of the applicant on medical ground, since such powers of giving retrospective operation to its orders/directions are available only to the Legislature or the Judiciary, and, only in certain cases to the Executive also, when specifically so permitted by the concerned Legislation/Rule, through a gazette notification in this regard. Therefore, the respondents were not justified in treating the applicant as having been removed from service on 18.01.2006, and recovering the salary for the period from 19.01.2006 to 20.02.2006, already paid correctly to the applicant, once the order of his removal from service on medical grounds was served upon him on 20.02.2006, as is evident from Annexure-A/10. Therefore, it is held that this amount of Rs.10,128/- was wrongly recovered from the DCRG of the applicant.

6. Secondly, in respect of damage/penal rent towards unauthorized occupation of Railway quarters, it is clear that as per Rule 15 & 16 of the Railway Service and Pension Rules, 1973, the respondents are fully within their powers to recover from the retiral benefits any penal rent, which is properly recoverable, and had become due without any element of doubt. In this particular case, the spouse of the applicant had admitted unauthorized occupation of the Railway quarter for the period from 11.03.2003 to 02.07.2003, and had made a submission that the concerned quarter was surrendered on 03.07.2003, which submission has not been refuted by the respondents in their reply written statement. Therefore, it appears that the recovery of Rs.21822/- towards damage rent for unauthorized occupation of the Railway



quarters is also excessive, and the respondents were authorized to recover damage/penal rent only for the period from 11.03.2003 to 02.07.2003.

7. Therefore, the O.A. is allowed partly, and the recovery of Rs.31950/- presently made from the DCRG of the applicant is set aside, but the respondents are permitted to recover only the penal rent for the period from 11.03.2003 to 02.07.2003, as per the admission on behalf of the applicant himself. In respect of the excess recovery made from the DCRG, the respondents shall pay the principal amounts, and 6 per cent interest from the date of such excess recovery till the date of settlement of final dues of DCRG of the applicant.

8. The O.A. is allowed to the limited extent as stated above. In view of the continued insistence and prayers made by the applicant through petitions, and application under RTI Act, for examining his case properly, the M.A. No.10/2010 for condonation of delay is also allowed, in view of the laches and lapses on the part of the respondents. No order as to costs.


[Sudhir Kumar]
Administrative Member

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