In the Central Administrative Tribunal
Calcutta Bench

OA No.266 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Ajit Kumar Biswas   .... Applicant

- VS -

1) Union of India, service through
   General Manager, Eastern Railway,
   Fairlie Place, Calcutta.

2) Divisional Railway Manager, Eastern
   Railway, Sealdah Division, Sealdah,
   Calcutta.

                                      .... Respondents

For the Applicant   : Mr. P.C. Das, Advocate

For the Respondents: Ms. Uma Bhattacharya, Advocate

Heard on : 21-7-99   Date of Judgement : 21-7-99

ORDER

        Grievance of the applicant in this application, in short,
is that the applicant was appointed as Diesel Assistance in Sealdah
Division, Eastern Railway on 4.11.48 and retired from service as
Commercial Clerk after completing more than 40 years of service
without any adverse remark. But DCRG money has not yet been released
by the respondents without assigning any reason. Hence, the applicant
filed this application for direction upon the respondents to make
payment of DCRG money and commutation value of pension which were to
be paid by the respondents on the day of retirement. Respondents
did not file any reply though the application was filed by the appli-
cant on 11.3.97.

2.   Ld. Advocate Ms. Bhattacharya, appearing on behalf of the
respondents, prays for time to fily reply since it is a transferred
brief handed over to her.

                                              Contd....

2.   I find that it would be injustice on the part of the applicant if time is granted on this score since applicant had retired from the service and he occupies the quarters for more than 10 years, ~~for that~~ retirement dues have been withheld by the respondents.

3.   Ms. Bhattacharya submits that she got instruction that DCRG money has been withheld due to non-vacation of the quarters by the applicant in time and for that reason DCRG money could not be released in favour of the applicant.

4.   I have considered the submissions of Ld. Advocates of both the parties and perused the records available in the file. Facts remain that the applicant retired on 30.6.98 on superannuation as Commercial Clerk. So, applicant has been paid all retirement benefits except DCRG money and commutation value of pension and these are withheld by the respondents ~~for non vacation of the quarters~~. Respondents did not file any written statement to the O.A. It is found that, according to the Ms. Bhattacharya, applicant did not vacate the quarters and for this reason DCRG money has been withheld. But that fact is disputed by the Ld. Advocate Mr. Das on behalf of the applicant. In this case I find no justification on the part of the respondents to withheld DCRG money and commutation value of pension on the ground of non-vacation of quarters. If the applicant is found unauthorised occupant of the quarters, department could have taken action for realisation of damage rent. But without taking any action, department slept over the matter without granting ~~retirement~~ benefit to the applicant. In a case of Dr. Uma Agarwal - Vs- State of U.P. & Another arising out of a Writ Petition(Civil) No.771 of 1995 the Hon'ble Supreme Court opines that -

> "If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit.

Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

It is found that the government could not settle the claim for which DCRG money has been withheld. Government also had already taken much time to file reply to the OA though the OA was filed on 11.3.97 by the applicant. It is found that steps ought to have been taken by the department for the purpose of granting pension and all other retirement benefits to the government servant on superannuation before the date of retirement of the employee. If the employee has retired from service and retains the quarters beyond the permissible limit; that can be recovered by the government in accordance with the rules. Non-vacation of the quarters after retirement does not confer power on the respondents to realise or withhold DCRG money beyond the reasonable period. In the instant case it is found that 8 years have already elapsed from the date of retirement. In R. Kapur's case reported in 1994(2) ATJ Judgement page 679 the Hon'ble Appex Court opines that :

"Gratuity withheld on account of non-receipt of 'No Demand Certificate' from the Directorate of Estate - Tribunal found that DCRG cannot be withheld because of the pendency of the claim for damages for unauthorised occupation".

In view of the well-settled decision of the Hon'ble Appex Court I am of the view that it would be appropriate on my part to give direction upon the respondents to make payment DCRG money and commutation value of pension within 1 month from the date of communication of this order. Since DCRG money and commutation value of pension are withheld by the respondents, respondents are also liable to pay interest at the rate of Rs.18% on DCRG money and commutation value of pension. However, it be mentioned here that if the applicant retains the quarters beyond

permissible limit after retirement, respondents would be at liberty
to proceed with the case in accordance with the law for realisation
of damage rent and they may approach the appropriate authority or
Court of Law for the purpose of realisation of the outstanding dues
as per Rules. With this observation application is disposed of
awarding cost of Rs.500/- to be paid to the applicant by the respon-
dents.

(D. Purkayastha)
Member(J)