

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.168 of 1995

Friday, this the 31st day of May, 1996

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

V. Damodaran, S/o V. Narayanan,
(Retd. Diesel Fitter), Ticket No.146,
Tondairpet, Madras Division,
Residing at Vattaparambil House,
Ganeshagiri, Shornur -3.

.. Applicant

(By Advocate Mr T.C. Govindaswamy).

Vs

1. Union of India through
the General Manager, Southern Railway,
Headquarter's Office, Park Town P.O., Madras-3.

2. Senior Divisional Personnel Officer,
Southern Railway,
Madras Division, Madras.

3. Senior Divisional Accounts Officer,
Southern Railway,
Madras Division, Madras -3.

4. The Divisional Railway Manager,
Southern Railway, Madras Division,
Park Town P.O., Madras -3.

.. Respondents

(By Advocate Mr TPM Ibrahim Khan (represented)).

The application having been heard on 31st May 1996,
the Tribunal on the same day delivered the following:

O R D E R

Applicant who retired as a Diesel Fitter on 31.5.93, seeks
a direction to respondents to pay him Rs.5000 withheld from the
Death-cum-Retirement Gratuity due to him, with interest thereon
at 18%. According to him, the amount is withheld without notice,
without adjudication and without justification in law. A3 a

farewell letter issued to him after thanking him for "valuable service" rendered during the tenure of office, informed him that a sum of Rs.5000 was due from him. The Head under which the amount was due was not indicated. Applicant wrote A4 letter and informed the respondents that no amounts were due from him. Respondents paid no heed to this and then A5 notice was issued by an Advocate on behalf of applicant. In answer to A5, A6 letter was issued to applicant stating that not only Rs.5000 was due, but also that an additional amount of Rs.6540 was due. Applicant then wrote A7 repudiating the statements in A6, but to no avail. Again he wrote A9 and again to no avail, because by A10 his request was rejected.

2. Though time was granted, respondent-Railways have not filed a reply statement, but the case of the learned counsel for Railways is that a higher rent was due from applicant as he had occupied a Type IV quarter and not a Type II quarter. What is important to notice is that this is not a case of applicant determining the rent and paying it, but a case of respondents determining the rent and recovering it. They cannot change their mind about the quantum of rent, at a time long after the determination of lease itself. Such arbitrariness is not consistent with the rule of law. It is also significant to notice that even this exercise was resorted to without notice and adjudication. To add injury to insult, another demand was made by A6. Paragraph 323 of the Manual of Railway Pension Rules, 1950 clearly stipulates that any claim for recovery should be made within three months of the date of retirement. A postscript in A3 cannot be treated as a demand referable to the aforesaid rule, as it does not even specify the Head under which the amount

was due. Neither is it a demand preceded by notice or determination. The requirements of 'audi alteram partem' must be observed before any deprivation is caused to a citizen including an official. If the respondents made a mistake regarding the quantum of rent, it is they who will pay for the mistake and not the applicant who was not instrumental to the mistake, assuming there was a mistake. The demand evidenced by A6, A8 and A10 are therefore not sustainable. The Original Application is allowed and A6, A8 and A10 are quashed. Respondents will pay the withheld amount with 18% interest thereon with effect from 1.9.93 till the date of payment which in no event shall be beyond three months of today. Interest will run only from 1.9.93, providing reasonable time for payment as three months. No costs.

Dated, the 31st May, 1996.


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/315 .

List of Annexures:

1. Annexure A3: A true copy of the letter No.M/P 3/500/NR dated 1/6/93 issued by the 4th respondent.
2. Annexure A4: A true copy of the representation dated 10/9/93 submitted by the applicant to the 2nd respondent.
3. Annexure A5: A true copy of the Lawyer Notice dated 6/5/94 addressed to the 4th respondent.
4. Annexure A6: A true copy of the letter No:17958/500/Rlys/MAS / E/Pension/W/H DCRG dated 23/6/94 issued by the 3rd respondent.
5. Annexure A7: A true copy of the representation dated 14/7/94 submitted by the applicant to the 1st respondent.
6. Annexure A8: A true copy of the letter No.M/P 3/500/VI/VD/93-94 dated 2/8/94 issued by the 2nd respondent.
7. Annexure A9: A true copy of the letter dated 16/8/94 submitted by the applicant to the 2nd respondent.
8. Annexure A10: A true copy of the letter No:M/P 3/500/VI/PA/1994/ MAS/45 dated 27/10/94 issued by the 2nd respondent.