

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.28/03

Monday this the 27th day of October 2003

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

E.K.Sankaran Nair
S/o. late E.R.K.Nair,
(Retired Senior Section Engineer
(Permanent Way), South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.
Residing at : Enjakattu House,
Thrikkariyur P.O.,
Ernakulam District, Kerala.

Applicant


(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43
2. The Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.
3. The Senior Divisional ~~Personnel~~ Officer,
South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.
4. The Senior Divisional Accounts Officer,
South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.
5. The Senior Divisional Engineer
(Co-ordination), South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.
6. The Additional Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division,
Jatni P.O., Khurda District,
Orissa-752 030.

Respondents

(By Advocate Mr.P.Haridas)



This application having been heard On 27th October 2003 the Tribunal on the same day delivered the following :

O R D E R


HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Senior Section Engineer(Permanent Way), South Eastern Railway, Cuttack expressed his willingness to be posted as Instructor in the Permanent Way Training School, Khurda Road on a temporary basis indicating that he should be permitted to retain the quarters No.E-3 at Cuttack on the basis of his willingness, by an order dated 8/9.7.99 (Annexure A-3) the applicant was posted on temporary status as Instructor, Divisional Training School (Permanent Way), Khurda Road. The applicant on 2.8.99 submitted Annexure A-4 representation seeking retention of the quarters for 11 months enclosing a medical certificate indicating that for the treatment of his wife she has to remain there. His request was not acceded to and the applicant was directed to vacate the quarters by 15.12.99 positively. The applicant on 27.11.99 submitted another representation referring to Railway Board Circular RBE No.8/90 whereby it has been stipulated that a railway servant on temporary transfer would be entitled to retain quarters during the entire tenure of transfer and also indicating that he may be allowed to continue to occupy the quarters for four months beyond the period of his retirement (Annexure A-6). He was informed by Annexure A-8 reply dated 20.1.2000 that the request had not been acceded to by the competent authority, who had advised the applicant to vacate the quarters forthwith. The applicant thereafter on 27.7.2000 submitted another representation that the applicant would be retiring on 31.7.2000 seeking permission to retain the quarters for a period of six months. While no reply was received, the applicant retired on superannuation on

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31.7.2000. He vacated the quarters on 28.11.2000 finding that was not given regular pension and the other retirement benefits and he was being paid only provisional pension, the applicant filed O.A.258/2001 for a declaration that the refusal on the part of the respondents to grant him regular pension and other retirement gratuity etc. was discriminatory and unconstitutional and for setting aside the corrigendum issued and for a direction to respondents to grant him pension and other terminal benefits. The O.A. was disposed of by an order dated 16.4.2002 setting aside the impugned corrigendum and directing the respondents to grant the applicant's final pension and other retirement benefits as early as possible at any rate within a period of six weeks and directing payment of 12% interest on the belated payment. Since the judgement was not being complied with the applicant moved the Tribunal for action under the Contempt of Courts Act. It was during the pendency of the Contempt proceedings that final pension was given to the applicant and impugned order was issued on 29.8.2002 whereby only a sum of Rs.1,51,090/- was paid to him by way of DCRG deducting a sum of Rs.1,16,458/- as house rent, electricity charges, excess payment and damage rent. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A-1 to the extent the sum of Rs.1,16,458/- is recovered from his DCRG and for a direction to respondents to pay the applicant an amount of Rs.1,16,458/- recovered from the applicant with interest of 12% per annum with effect from 1.8.2000. It is alleged that the recovery made is not correct and it is against the rules.

2. The respondents in their reply statement seek to justify the impugned order and the withholding of Rs.1,16,458/- on the




ground that there has been excess payment as also arrears of house rent and penal rent as calculated in Annexure R-2 and that this amount being due to the Railways in accordance with the relevant ^{rule} Rule 15 of the Railway Services (Pension) Rules-1993 the amount is withheld as per the rules.

3. I have carefully gone through the materials placed on record and have heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.P.Haridas, learned counsel for the respondents. The only point that arises for consideration is whether the respondents were justified in adjusting a sum of Rs.1,16,458 from the DCRG of the applicant on the ground that a sum of Rs.1,16,458 was due, Rs.1,11,459/- as penal rent, Rs.2905/- due as electricity charges and Rs.2094/- was due from the applicant as over payment in accordance with the rules. That the applicant retired from service on 31.7.2000 is not in dispute. Sub-rule (4) (i) of Rule 15 of the Railway Services Pension Rules reads as follows :

(4) (i). A claim against the railway servant may be on account of all or any of the following :

- (a). losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;
- (b). other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance.

4. Over payment of pay and allowances and other dues such as house rent, Post Office or Life Insurance Premia or outstanding advance or loss of shortages could be recovered and adjusted from DCRG, however, the time limit for making such adjustment from DCRG is prescribed in Rule 15, Sub-rule (4) (iv) clause b which



reads as follows :

(b). dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

5. In this case since the the applicant retired on 31.7.2000 any adjustment from the gratuity of the applicant of the dues mentioned in clause (i) of sub-rule (4) could have been made only within a period of three months from the date of the applicant's retirement. Annexure R-2 having been issued on 20.8.2002 and the adjustment having been made by the impugned order (Annexure A-1) dated 29.8.2002 which is far beyond the permissible period of three months, the adjustment and recovery is against the rules and therefore invalid. The impugned order (Annexure A-1) is therefore liable to be rejected only on that scope. Further the Apex Court has in its judgement in Union of India & Ors. Vs. Madan Mohan Prasad reported in 2002 1 SC ATJ 246 held that penal rent or damage rent not being admitted dues cannot be recovered from the gratuity. It is evident from Annexure R-2 that the bulk of the adjustment, namely, Rs.1,09,973/- as by way of penal rent which according to the ruling of the Apex Court should not be adjusted from gratuity. The amount of over payment, pay and allowances as also arrears of rent and electricity charges having not been ascertained within a period of three months of retirement that cannot also be recovered from gratuity as per rules. Further on going through the facts of the case also the respondents going by the stipulation in the Railway Board endorsement RBE No.8/90 were not justified in making recovery of damage rent or penal rent from the pay and allowances of the applicant because it is provided in the circular that during the entire tenure of temporary transfer a railway servant ^{should} be

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entitled to retain the quarters on payment of normal license fee/flat rate rent. It has also been provided there that for a period of four months after retirement the railway pensioner should be allowed to retain the quarters on payment of normal rent. Therefore the applicant having been entitled to retain the quarters on payment of normal rent during the period of temporary transfer and till the expiry of the period of four months from the date of retirement, having vacated the quarters within a period of four months from the date of retirement, was bound only to pay the normal license fee. The recovery and adjustment made in terms of Annexure A-1 is therefore wholly unjustified.

6. In the light of what is stated above, I set aside Annexure A-1 and direct the respondents to pay to the applicant a sum of Rs.1,16,458/-, which was withheld from his gratuity, with interest @ 9% per annum with effect from 1.8.2000 till the date of payment. The above payment shall be made without fail within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated the 27th day of October 2003)


A.V. HARIDASAN
VICE CHAIRMAN

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