

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No; 208/2003.

Lucknow, this the 4th day of October, 2004.

HON'BLE SHRI S.P. ARYA MEMBER(A)

K.N. Srivastava aged about 61 years, son of Shri G.C. Srivastava at present-resident of Munavvarbagh colony, Charbagh, District-Lucknow.

....Applicant.

BY Advocate Shri Umesh Kumar Srivastava.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.

....Respondents.

BY Advocate Shri S.M. S. Saxena

ORDER

BY Shri S.P. Arya Member(A)

The applicant superannuated on 30.6.2002. All the retiral dues were paid to the applicant except Death cum Retiral Gratuity (DCRG). The applicant was allotted railway accommodation No. II/B-30/A. He ~~had not~~ ^{did not} vacated the railway quarter. The applicant by this O.A. seeks for direction to be issued to the respondents for payment of gratuity alongwith interest @18% per annum from the date of retirement till the acteal payment on the grounds that no outstanding dues are pending against made and no departmental or judicial proceedings are going on.

2. It was contended by the respondents that the applicant has not vacated railway accommodation allotted to him nor he has returned the measurement books on the basis of which contractors bills were paid and also not returned the other government property.

~~the~~ Counsel for the respondents has placed reliance on the Railway Services (Pension) Rules, 1993. He also relies on the Railway Services (Pension) Rules, 1993. Rule-16 sub Rule-7 and 8 ^{read as} has reproduced below:-

"(7) A railway servant shall vacate the railway accommodation immediately after his retirement.

(8) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement, or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on the vacation of such railway accommodation."

The rule provides for withholding the full amount of gratuity on non vacation of a railway accommodation by a railway servant on his retirement.

3. The counsel for the applicant has relied on / Madan Mohan Prasad 2003(1) ATJ 246; N.C. Sharma vs. Union of India & Others 2004 (1) ATJ 481; E.K. Sankaran Nair vs. Union of India and Others 2004(1) ATJ 490 and Chunni Lal versus Union of India and Others O.A. 28/02. All the judgments referred above deal with 323 of the Railway Pension Rules 1950, and Rule 15 of the Railway Services (Pension) Rules 1993. There is no reference to Rule 16 of the Railway Pension Rules, 1993 in these judgments. The provision of Rule-16 on which the respondents rely, have held illegal or ultravires. Rule-16 is a mandatory rule and ^{not been} ~~continues~~ to be in force till declared ultravires.

4. It is well settled now that DCRG is akin to pension and cannot be held back after retirement just for the recovery of the dues. Normal house rent inclusive of the electricity and water charges which are 'admitted' or 'obvious' dues can be deducted out of the same, if still due. Accordingly, the respondents can deduct normal rent inclusive of the electricity and water charges from the gratuity of the applicant. However, penal rent or damage rent cannot be recovered from the gratuity. The ^{DCRG} amount of withholding after such

in case 2
deduction has to be paid immediately ~~if~~ the railway accommodation has been vacated and *if* the same has not been vacated as yet, immediately after the vacation thereof. In case, the applicant has vacated the accommodation earlier, he would also be entitled to interest ^{@ 6 percent} on the delayed payment of gratuity after deducting the normal rent, ~~as~~ from the date the accommodation was vacated till the date of payment thereof.

5. With the above directions, the O.A. is disposed of without any order as to costs.

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(S.P. Arya)

Member(A)