

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Reserved on 08.07.2014**

**Pronounced on 6<sup>th</sup> August 2014.**

**Original Application No.531/2010**

**Hon'ble Mr. Navneet Kumar, Member (J)**

**Hon'ble Ms. Jayati Chandra, Member (A)**

Krishna Dev Mishra, aged about 66 years, son of Late Rama Kant Mishra, Resident of Sujanpura, Alambagh, Lucknow.

**-Applicant.**

**By Advocate: Sri S.M.S. Saxena.**

**Versus.**

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Chief Administrative Officer (Construction), North Eastern Railway, Gorakhpur.
3. Deputy Chief Engineer (Construction)/East North Eastern Railway, Gorakhpur.

**-Respondents**

**By Advocate: Sri Narendra Nath.**

**ORDER**

**By Ms. Jayati Chandra, Member (A).**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) This Hon'ble Tribunal may kindly be pleased to quash of the impugned order dated 25.03.2010 (Annexure No.A-1 to this O.A.).
- (ii) To direct the respondents to pay Rs.2,54,540.00 to the applicant against the retirement gratuity

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*alongwith 12 % interest thereon from 13.01.2004 to the date of its actual payment.*

*(iii). To pass such other orders which are found just fit and proper under the circumstances of the case.*

*(iv). To allow the original application with costs."*

2. The facts of the case as averred by the applicant are that the applicant was appointed as Works Mistry w.e.f. 22.12.1964. He was posted at various places while working as Works Mistry. He was promoted as Inspector of Works Grade-III and finally as Inspector of Works Grade-I in 1986 and was posted at Gonda. He remained at Gonda upto 23.10.1988. In 1989, the applicant was posted as Inspector of Works (Constructions), Gorakhpur. In 1991 at Salempur-Bahraj Project and was Incharge of Store. Thereafter, he has been posted at Chief Inspector of Works, Construction/West, Gorakhpur and was posted upto 1999 at Gorakhpur. He was again transferred to Gonda as Chief Inspector of Works in August, 1999 and he served upto July, 2002. He became back to Gorakhpur as Senior Section Engineer (Construction) in the year 2002 and retired on 31.01.2004. During his entire period of as Incharge of Store from 1991 till the date of his superannuation no material under his custody was found short nor any kind of charge sheet was issued to him. He received PPO dated 10.03.2004 and an amount of Rs.2,54,540.00 was also been paid to the applicant as Commutation of Pension, Leave encashment, Packing Allowances, CGIGS etc. but no retirement gratuity was paid to him despite making several representations to the competent authority. Finally, he filed O.A.No.590/2009 before the Allahabad Bench of this Tribunal. The

Tribunal gave a direction vide order dated 2.12.2009 to finally decide his representation. The respondents have complied with the order of this Tribunal by passing the impugned order dated 25.03.2010 by which he has been informed for the first time that during the seven years that he worked as Dy. Chief Engineer (Constructions), Gorakhpur, due to non-verification of store worth Rs.2,05,841.00, the retrial gratuity of the applicant has been withheld. The details of the alleged non-verified accounts are given below:-

1. 4380 verified by I.O.W., Sitapur, dated 29.05.1992.
2. 4398 verified by I.O.W., Sitapur, dated 18.06.1992.
3. 4402 verified by I.O.W., Sitapur, dated 29.05.1992.
4. 4404 verified by I.O.W., Sitapur, dated 29.05.1992.
5. 4405 verified by I.O.W., Sitapur, dated 29.05.1992.
6. 4407 verified by I.O.W., Sitapur, dated 29.05.1992."

3. These issue notes are in the custody of CBI and the and despite all efforts made by the applicant to obtain copy of the issue notes seized by the C.B.I. before his retirement but he had not been able to obtain them. The applicant has further averred that he was never charge sheeted by the CBI not he was ever called to make a statement or give any evidence as such merely on the basis of wrongfully held non-verification of issue notes, the retrial gratuity of the applicant cannot be withheld. Further, he came to know from the reliable sources that one Sri S.N. Dubey, the then I.O.W. was sentenced by the C.B.I. Court and he preferred a criminal appeal against the order and now he is on bail. The impugned order withholding his gratuity has been passed 6 ½ years after the superannuation of the applicant. Under the provision of Railway Servants (Pension) Rules, 1993 the DCRG

cannot be withheld on alleged misconduct of the applicant nor can the matter be inquired into 6 ½ years after his retirement.

4. The respondents filed their reply in which they have raised the preliminary objection of jurisdiction. They have stated that the applicant had earlier filed OA before the CAT Allahabad Bench of the Tribunal, declaring his address as resident of House N.741K, Near Hanuman Mandir, Sarvodaya Nagar, Bicchiya Gorakhpur. This is the address which has been shown as his address for the purposes of filing of retirement Forms and payment of his retiral dues including pension etc. Now, the present OA has been filed from an address at Sujanpura, Alambagh, Lucknow, which is not the place of his residence as his residence. Rule 6 of CAT (Procedure) Rules, 1987 reads as under:-

“6. Place of filing applications -

(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

(i) the applicant is posted for the time being, or

(ii) the cause of action, wholly or in part, has arisen:

Provided that with the level of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

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5. As per the CPC para 44 the term residence is defined as a place where the person normally stays. If a person resides in a particular place temporarily and casually, it can not be said that it is open to him to file a writ at such place. Further, as per illustration of P.M Gandhi in an act of where no appropriate meaning has been given the court must be guided buy the following interpretation.

“When words are clear and capable of only one construction, the Court cannot adopt any other constructions on the ground that such construction is more consistent with the alleged object and policy of the Act. The court is bound to accept the expressed intention of the legislature when the words are plain and clear. Hardship of inconvenience cannot alter the meaning of the language employed by the legislature, if such meaning is clear on the face of the statute.”

6. In the absence of any definition given in the Administrative Tribunal Act, 1985 in the mater of place of residence, guidance may be taken from various pronouncements. The Hon'ble High Court in the case of **Rashmi Pandey Vs. Chairman/MG Director, Hindustan Petroleum Corpn. Ltd. & Others reported in 2007 (25) LCD-26** has stated in para 13 of the order, which is as follows:-

“Residence, in the ordinary sense, is more or less of a permanent character. The expression ‘resides’ mean to make an adobe for a considerable time; to dwell permanently or for a length of time; to have a settled adobe for a time. It is the place where a person has fixed his nome or adobe.”

7. Further, the impugned order dated 25.03.2010 has been passed in compliance of the direction of CAT, Allahabad Bench dated 02.12.2009 passed in O.A.No.500/2009. Such an order cannot revive the claim of the applicant as replies to the representations cannot furnish a fresh cause of action in terms of Hon'ble Supreme Court judgment passed in C. Jacob R. Director of Geology & Mining, AIR 2009 SC-264 and in U.O.I. vs. Sarkar (2010) SCC (L&S) 1126. No fresh cause of action has been furnished.

8. Coming to the merits of the case, the applicant was the custodian of railway material while he was posted in the office of Dy. Chief Engineer (Construction), East, Gorakhpur. Certain unverified issue notes were seized by Vigilance/CBI on 26.4.1994 while the applicant was posted as Senior Section Engineer, West in the office of Dy. Chief Engineer, (Construction) East, Gorakhpur. The list of unverified issue notes for the value of Rs.2,05,841/- which is issued on 24.8.2006 is shown at Annexure C-1. As the valuation of the issue notes seized by the Vigilance is higher than the amount of DCRG, the same has been provisionally withheld in accordance with Railway Service (Pension) Rules, 1993. The applicant remained 7 years in service from the date of seizure by Vigilance /CBI on 26.7.1994. He was posted in the same place for some time thereafter under Dy. Chief Engineer (Construction) West Northern Railway, Gorakhpur for about 5 years. However, he failed to get issue notes verified during his tenure. Thus, the applicant himself is responsible for non verification of the issue notes. Under Rule 15 of Railway Service (Pension) Rules, 1993, loses

due to shortage in stores shall be recovered from retirement, death, terminal or service gratuity.

9. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA. He has further denied the technical allegations about the jurisdiction stating therein that he had come to Lucknow for prolonged medical treatment of his wife.. Moreover, his counsel advised him that as he was temporarily residing at Lucknow, he can file case before CAT Lucknow Bench. He has also given elaborate procedure for dealing with issue notes etc. Further, the learned counsel for the applicant has placed reliance on the following citations to demonstrate that the nature of his relief is a continued one:-

1. **M.R. Gupta Vs. Union of Indian and Others reported in (1995) 5 SCC-628.**
2. **S.R. Bhanrale vs. U.O.I. & Others reported in 1996 SCC (L&S) 1384.**
3. **Satyavir Singh Vs. Delhi Transport Corp. reported in 2006 (1) ATJ.**
4. **G.K. Gupta Vs. Managing Director CIDC & Other reported in 2012 (3) SCT P-33.**
5. **The Hon'ble High Court of Punjab and Haryana in the case of Moni Ram Vs. State of Haryana & Others reported in 2012 (2) SCT Page-87.**
6. **The Hon'ble High Court of Orissa in the case of Prasanna Kumar Das vs. U.O.,I. & Other reported in 2006 (3) ATJ -439.**
7. **Dr. Iqbal Singh Dillon vs. Punjab University-Chandigarh reported in 2012 (3) SCTP-378.**
8. **The Hon'ble High Court of Himanchal Pradesh in Munni Devi Vs. State of HP & Another reported in 2012 (1) SCT Page-650.**
9. **The Hon'ble Supreme Court in the case of State of Jharkhand Vs. Uma Prasad reported in (2010) 2 SCC (L&S) 511.**

*reminder*

10. **The Hon'ble High Court of Guahati in the case of Sahil Rahman vs. State of Assam & Others reported in 2004 (2) ATJ-80.**

The learned counsel for has cited the above judgments passed by the Hon'ble Supreme Court in support of his averment that no recovery could have been made except by conducting an enquiry in terms of CCS (CCA) Rules. In absence of such enquiry-no recovery could be made and DCRG and leave encashment payable on account of the retirement of deceased be paid to the petitioner.

11. **In the case of R. Appala Narasimhula Vs. Divisional Mechanical Engineer, East-Coast Rly Wallair Visakhapatnam & Others reported in 2005 (1) ATJ-139 the CAT Hyderabad Bench** has held that "Railway Services (Pension) Rules, 1993- Rule-9 (5) (a)- Death cum Retirement Gratuity-Applicant- superannuated-pension paid to him-But DCRG and leave salary not paid on the ground that he was involved in a case of missing wagons- Department held that preliminary enquiry and enquiry report was submitted- No charge sheet issued to applicant- Direction given to pay DCRG and leave salary alongwith interest @ 12 % per annum."

12. **The Hon'ble High Court of Patna in the case of Mangal Prasad vs. Bihar Electricity Board & Others reported in 2012 (3) SCT Page-26** has held that "Recovery of loss from sot retrieval dues of employee-No disciplinary proceedings initiated under Rule 43 (b) against employee for misconduct of causing huge loss of Electricity Board-No finding with regard to misconduct recorded- Responded were not justified in invoking Rule 139 of the Rules of passing an order or recovery."

10. We have seen the records and have heard both the parties.

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**11.** With regard to the technical objection raised by the respondents, it is stated by the applicant that it is not denied that the applicant filed his earlier OA at Allahabad Bench of this Tribunal giving his residential address at House N.741K, Near Hanuman Mandir, Sarvodaya Nagar, Bicchiya Gorakhpur. However, he has made a statement on Oath that due to his wife illness and for her treatment he is temporarily resides at Sujanpura, Alambagh, Lucknow. It is a fact of life that in view of the gradually advancing age of self and spouse a retired employee is very often to required to shift his residence to some other city where the medical treatment is available or in order to stay with the son, or daughter or any other relative, who are part of the family. The respondents have not brought any thing on record to show that the applicant is not residing at the address mentioned by him at the time of filing OA or thereafter. Therefore, we find that there is no ground for raising objection on this ground by the respondents. The same is dismissed. Coming to the issue no fresh cause of action, we are of the agreement with the case cited by the applicant that withholding of gratuity, pension etc. is continue wrong for which no time limited may be set. Moreover, the earlier order of the Allahabad Bench of the Tribunal was not passed on merits.

**12.** The crux of matter is whether the respondents are justified in withholding the gratuity in terms of Rule 15 of the Railway Services (Pension) Rules, 1993.

13. The case of the respondents is that the applicant is responsible for unverified issue notes amounting to Rs.2,05,841/- and therefore under Rule 15 of Railway Services (Pension) Rules, 1993, DCRG may be withheld. However, in order to adjudicate upon this matter the rule has to be read in totality. While Rule 15 (2) has been invoked, the respondents have overlooked the Rule 15 (4) (c) (ii). The provisions of Rule-15 of the Railway Services (Pension) Rules, 1993 is as follows:-

**“Rule-15 Recovery and adjustment of Government or Railway dues form pensionary benefits.**

(1) it shall be duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement.

(2). The Railway of Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3).....

(b).....

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

**(a). loses (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 overpayment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance premia, or outstanding advance;

(c). Non-Government dues.

**(ii). Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in Rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clause items**

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(b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant."

**14. Rule-8 states the following:-**

**"Rule-8-Pension subject to future good conduct-**

(1). (a). Future good conduct shall be an implied condition of very grant of pension and its continuance under these rules.

(b).....

Provide that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2).....

(3). In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct it shall, before passing an order under the sub-rule (1)-

**(a). serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and**

**(b). take into consideration the representation, if any, submitted by the pensioner under clause (a)."**

**15.** In this case it is squarely admitted by the respondents that although there is apprehension that why responsibility of the applicant towards the loss of Rs.2,05,841/- no action under Rule 8 (3) (a) has been taken or even initiated. Thus, the next question is therefore is can disciplinary action of the nature contemplated under Rule 8(3) (a) be taken at this stage?

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Rule 9 of Railway Services (Pension) Rules, 1993, which reads as follows:-

**“Rule-9 Right of the President to withhold or withdrawn pension.-**

(1). The President reserves to himself the right of **withholding or withdrawing a pension or gratuity, or both**, either full or in part, whether permanently or for a specified period, and of ordering recovery from a pension of gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed: Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy-five mensem.

**(2). The departmental proceedings referred to in sub-rule (1)-**

**(a). if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service:**

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

**(b). if not instituted while the railway servant was in service, whether before his retirement or during his re-employment,-**

**(i). shall not be instituted save with the sanction of the President;**

(ii). shall not be in respect of any event which took place more than four years before such institution;

(iii). shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service.

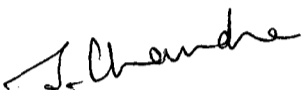
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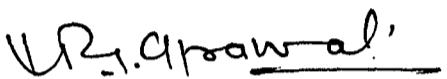
(4).....

(5).....”

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**16.** Therefore, in the light of the rules quoted above, and in the light of judgments cited by the applicant, the OA succeeds. The impugned order dated 25.03.2010 (Annexure No.A-1) is quashed and the respondents are directed to release the gratuity within four months from the date of receipt of a certified copy of this order. No order as to costs.

  
**(Ms. Jayati Chandra)**  
**Member (A)**

  
**(Navneet Kumar)**  
**Member (J)**

Amit/-