

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 123 of 1992

## Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. S.N. Prasad, Member (J)

The applicant has approached this tribunal under section 19 of the Administrative tribunals Act, 1985 with the prayer for directing the respondents to release two set of passes yearly, with effect from 28.8.1989 and continue issuing the same at the above rate every year; and for further directing the respondents to pay interest on the amount of death-cum-retirement-gratuity paid on 23.4.91, as dis-allowing ~~~would amount to~~~ same double jeopardy, and for further ~~~~~ directing the respondents to refund the amount after adjusting the normal rent payable ~~and~~ after cancelling the order for payment of penal rent, and for further directing the respondents to pay the balance amount after calculating gratuity @ 26 days (working days) in a month after ~~~~~ adjusting the amount illegally recovered.

2. The main grievance of the applicant is that the applicant was Super 'A' Grade guard of mail and express (M/E) in Northern Railway and retired on 31.7.1982 and since he was occupying Railway quarter no. F-31/H Hyder Canal Colony, Lucknow at the time of his retirement, which he could not vacate due to compelling circumstances, and vacated the same on 28.8.1989, with the result, the retirement benefits including payment of D.C.R.C. (death-cum-retirement gratuity); transfer T.A./allowances, complementary

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passes were withheld. On vacating the quarter penal rent of the same was deducted from the amount of D.C.R.G., payable and only a ~~large~~ sum of Rs. 6110/- as balance was paid to the applicant and no interest on D.C.R.G., withheld was paid, thus, causing the applicant double jeopardy i.e. penal rent and loss of interest. It has further been stated that Post retirement passes were not only withheld for about seven years i.e. 83 months, but it was ordered on 25.7.90 (vide annexure A-1) that 83 sets of passes will be debited for unauthorised occupation for 83 months. The applicant thereafter made an appeal to the Divisional Railway Manager, Lucknow, which was replied by the letter dated 13.11.1990 (Annexure A-3). ~~that~~ Despite repeated request, and representation grievance of the applicant were not redressed by the respondents. Thus, the applicant approached this tribunal for the relief ~~sought~~ for.

3. In the counter-reply filed by the respondents, the claim of the applicant has been resisted with the contentions inter-alia, that the applicant had already been informed in the year 1982 that he should make <sup>his</sup> alternative arrangement for the accommodation and despite that instruction, the applicant retained possession of the house, which was allotted to him, illegally for 7 years curtailing the rights of other employees; and therefore, question of interest on D.C.R.G. does not arise at all. It has further been contended that penal rent has been

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demanded from the applicant as per rules and the order withholding the post retirement passes has also been passed as per relevant circular (Annexure-II) for every one month of unauthorised retention of Railway quarter, one set of post retirement passes should be dis-allowed while applicant retained the possession of house unauthorisedly more than 7 years; and in view of the above circumstances, the applicant is not entitled to the relief sought for.

4. Rejoinder-affidavit has been filed by the applicant wherein almost those view points which have already been mentioned in the main application have been re-iterated.

5. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the pleadings of the parties and the papers annexed thereto has argued that the impugned order whereby 83 set of passes have been withheld is not a valid and ~~is~~ legal order, and has further argued that the applicant is entitled to ~~get~~ interest on the delayed payment of the retiral benefits, and has further argued that the applicant is entitled for <sup>~ in his favour ~</sup> calculation of gratuity <sup>~</sup> of 26 days in a month after <sup>~</sup> ~~by way of penal rent~~ adjusting the amount illegally recovered and in support of his arguments he has placed reliance on the following rulings.

(i) (1973) LABIC page 1659 (Delhi High Court) Her Bhajan Singh Sood (Petitioner) Vs. U.O.I. & Others (respondents).

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(ii) (1991) 15 Administrative Tribunal Cases page 445, Satya Prakash (Applicant) Vs. U.I.O. & others (Respondents).

(iii) (1984) SCC (L&S) page 753, Jeevan Lal Ltd. ~~and others~~ (Appellant) Vs. Appellate Authority under the payment of gratuity Act and Others (Respondents).

7. The learned counsel for the respondents while re-iterating the view points as set out in the counter-affidavit has stressed that in view of the Verdict of the Hon'ble Supreme Court, in the case of Hazidal Wahi (Petitioner) Vs. U.O.I. and others (Respondents) dt. 27.11.1989 (photostat copy of which is annexure 12) <sup>the</sup> applicant is not entitled for any interest and has further argued that the claim of the applicant regarding calculation of gratuity @ 26 days in a month cannot in <sup>be</sup> ~~any way allowed~~ <sup>details in the application</sup> ~~and there are no pleading~~ at all to this effect.

8. I have perused the above rulings.

9. This is noteworthy that Annexure-12 to the application of the applicant (compilation No.-II) which is copy of judgement of Hon'ble Supreme Court dated 27.11.1989 as referred to above clearly clinches the entire matter ~~as~~ as it has been enunciated therein that the delay occurred on account of withholding of the gratuity/retiral benefits on the basis of the <sup>Board</sup> aforesaid Railway Circular dated 24.4.82 and not due to any administrative lapses and in such circumstances the petitioners were not entitled to get interest on the delayed payment of retiral benefits etc. This is also

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noteworthy that in the above judgement of the Hon'ble Supreme Court it has been clearly enunciated that the retired employee who was in unauthorised occupation of the Railway Quarters would be entitled for complimentary passes after vacatation of the quarters in his unauthorised possession. This is also noteworthy that in this instant case, the applicant has vacated the quarters, which was in his unauthorised occupation, on 28.8.89. Thus, this being so, the applicant is entitled for issue of complimentary passes in his favour as per entitlement.

10. This is noteworthy that a careful perusal of the application of the applicant, nowhere discloses the grounds or the details of calculation of gratuity @ 26 days (working days) in a month and there is mention to this effect only in relief clause. Thus, after considering entire evidence and material on records and keeping in view the circumstances of the case and all the aspects of the matter, I find that the applicant is entitled for issue of complimentary passes as per entitlement in his favour prospectively from the date of this judgement, and is not found entitled for ~~any~~ <sup>other</sup> relief. However, it will be open for the respondents to consider the matter regarding calculation of gratuity @ of 26 days (working days) in a month and to give consequential benefits arising therefrom, if any, to the applicant.

11. The application of the applicant is allowed as above without any order as to costs.



30.9.  
Member (J)

Lucknow Dated 30.9.1992.

(RKA)