

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 288 of 1991 (L)

Jai Ram Krishna Srivastava Applicant

Versus

Union of India through the Secretary, Ministry
of Railways, Govt of India, Rail Bhawan,
New Delhi and others.

. Respondents

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

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the orders dated 27.2.1990 and 12.9.1990 (Annexure 7 & 8) with a direction to the respondents to release the death cum retirement gratuity of the applicant with interest @ 20% per annum over the amount payable to him from the date of retirement, and for further directing the respondents to release complimentary passes to the applicant with retrospective effect i.e. the date from which such passes were withheld.

2. Briefly, stated the facts of this case, inter alia, are that the applicant is a retired officer of North Eastern Railway who retired from the post of Divisional Engineer (Horticulture) w.e.f. 31.1.1990. One Sri S.N. Srivastava working as Chargeeman, painting shop is applicant's son-in-law and he is still working in the same capacity. Due to illness of applicant's eldest daughter (who is wife ^{being married with him} of aforesaid Sri S.N. Srivastava) ~~she~~ continued to live with the applicant even after her marriage as there was no body to look after her in the house of her in-laws. In March 1989, the aforesaid Sri S.N. Srivastava applied for

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sharing accommodation in residential quarter No. 91/A of the Railway Colony, Gorakhpur which was allotted to the applicant and the applicant gave no objection certificate for sharing accommodation with Sri S.N. Srivastava (vide Annexure-1 to this application). On 3.8.1989, the General Manager (Engineering) passed an order and accepted the application of Sri S.N. Srivastava for sharing accommodation with the applicant and in January 1990 on the eve of retirement of the applicant, the aforesaid Sri S.N. Srivastava applied and requested the General Manager for allotment of quarter No. 91/A Railway Colony, Gorakhpur to him on retirement of the applicant. On 1.2.1990, the Chief Workshop Manager, Head of the Department of the Workshop gave no objection for out of turn allotment of Quarter No. 91/A to Sri S.N. Srivastava in exchange of Quarter No. 132/3 which was being occupied by the Confidential Assistant to the Chief Engineer (Vide Annexure 3 A to this application), and on 2.2.1990 the Assistant Secretary, Public Grievances in the Office of Senior Deputy General Manager who was incharge of Quarter allotment addressed a note to the Chief Workshop Manager, Gorakhpur and asked him to allot the quarter in favour of Sri S.N. Srivastava on out of turn basis under Rule 4(b) of Chapter V of N.E. Railway Quarter allotment Rules 1988. It has further been stated that the order dated 27.2.90 is clearly illegal as death cum retirement gratuity of a retired Officer cannot be withheld under any circumstances and moreover when clearly on the basis of record, the applicant was not responsible for allotment of Quarter No. 91/A to Sri S.N. Srivastava on out of turn basis and as such there is no justification

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to withhold his death cum retirement gratuity: and in view of the above, it is clear that the order dated 27.2.90 cannot be upheld and is liable to be quashed. On 14.3.90, the applicant represented the matter to the General Manager and requested for release of his gratuity, and the applicant in his representation clearly stated that he committed no illegality in handing over possession to Sri S.N. Srivastava of Quarter No. 91/A of Railway Colony, Gorakhpur which was allotted to Sri S.N. Srivastava by the competent authority. On 20.4.90, the applicant represented to the General Manager(Engg.) i.e. Chief Engineer with a copy to the General Manager(Personnel) and the applicant thereafter in the month of May, 1990 met the General Manager alongwith a representation and requested for justice. It has further been stated that on 4.9.90, the General Manager (Engg.) sent a letter to the Chief Workshop Manager ~~who~~ is also head of the Department and said something in relation to allotment of Quarter No. 91/A and on 12.9.90 the General Manager(Engg.) passed an order and stopped issue of complimentary pass to the applicant vide letter No. W/575/1/69/1/IX/W-7. (Annexure-8) and having found no redressal, the applicant has approached this tribunal.

3. In the short counter-reply filed by the respondents it has interalia, been contended that in compliance of the interim order dated 20.9.1991 passed by this tribunal, the passes ~~of~~ ² the applicant as well as 60% his D.C.R.G. has been released(Vide Annexure C-1);

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and now only a sum of Rs. 7,899.75 as 40% of his balance D.C.R.G. is due against the applicant, and the details of dues which were lying outstanding against the applicant have been shown in Annexure C-2 which shows that a total sum of Rs. 40,067.25 were lying outstanding as per letter dated 8.11.1991. It has further been contended that since irregular allotment of the Railway quarter in favour of the aforesaid son-in-law of the applicant has already been kept in abeyance (Wide Annexure-7 to O.A.) and the applicant is still residing in the aforesaid quarter without regular allotment, hence the D.C.R.G. of the applicant has been withheld.

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

5. The learned counsel for the applicant while drawing my attention to the contents of the application and papers annexed thereto, and to the contention of the respondents as set out in the counter-reply has argued that the applicant was retired on reaching the age of superannuation w.e.f. 31.1.1990 and in the month of January, 1990, son-in-law of the applicant namely Sri S.N. Srivastava had applied and requested for allotment of the aforesaid quarter no. 91/A, Railway Colony, Gorakhpur to him on retirement of the applicant as due to long and serious illness of his wife (daughter of the applicant) he has been residing in the aforesaid quarter and had submitted the above application under Rule 4-B of Chapter 5 of the Railway Quarter allotment Rules, 88 and has further argued that since the applicant

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has already handed over full possession of the aforesaid quarter to the aforesaid Sri S.N. Srivastava (New Allottee) and since the applicant informed this fact to all the concerned authorities, the applicant is not in any way at fault and the respondents have arbitrary and illegally withheld the ~~retiral~~ benefits of the applicant and as such the applicant is also entitled for interest ~~on~~ on the ~~retiral~~ benefits, which were paid inordinately to the applicant and in support of his argument has placed reliance on the rulings reported in 1987, L.A.B.I.C.47 (Patna High Court, Full Bench) M/s. Champaran Sugar Co. Ltd. (Petitioner) vs. Joint Labour Commissioner and Appellate Authority and others (Respondents), wherein it has been enunciated " Payment of Gratuity Act (39 of 1972), Ss.4 and 8-Gratuity - Delay in payment-Employee is entitled to receive interest."

7. The learned counsel for the respondents while adverting to the pleadings of the parties and interim order dated 20.9.91 has argued that in compliance of the aforesaid interim order of the tribunal, compliance has already been made by the respondents by paying 60% of the D.C.R.G. and by issuing two sets (two half sets) complementary passed in the year 1991 as would be obvious from the perusal of Annexure C-1, and has further argued that since the aforesaid quarter which was in occupation of the applicant has still not been allotted in the name of the aforesaid Sri S.N. Srivastava, properly, the above impugned order were passed, and has further argued that the applicant is not entitled to any interest.

8. This is noteworthy that it would appear from the perusal of Annexure-6 and 9 to the application that

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possession of the aforesaid quarter was handed over by the applicant to the aforesaid Sri S.N. Srivastava on 15.2.90(F.N.) and this fact finds corroboration from the letter of Deputy Chief Engineer(G.A.) Gorakhpur addressed to the G.M./Engineering, N.E. Railway Gorakhpur also which is Annexure-9 to the application. In this context it is also noteworthy that a perusal of Annexure-5 to the application shows (Annexure-5 is copy of the order dated 10.2.1990 passed by Chief Workshop Manager, Gorakhpur) that with the approval of C.W.M./G.K.P., the aforesaid quarter No. 91-A was allotted to the aforesaid Sri S.N. Srivastava on out of turn basis on medical ground. However, a perusal of impugned order dated 27.2.1990 (Annexure-7) shows that the above allotment order dated 10.2.1990 is under review by C.E.

9. Thus, from the foregoing discussions and after considering the entire material on record and keeping in view the circumstances of the case, I find that there was no fault on the part of the applicant as he handed over the possession of the above quarter to the New allottee Sri S.N. Srivastava long ago on 15.2.90, just after fifteen days of his retirement.

10. This fact should also not be lost sight of that before passing the impugned order dated 27.2.90 and 12.9.90 no opportunity was afforded to the applicant to explain his view points.

11. After considering all the facts and circumstances of the case and all aspects of the matter, the above impugned orders dated 27.2.90 and 12.9.90 being illegal and invalid are liable to be quashed; and I find it

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expedient keeping in view the provisions contained in Rule 68 of the Central Civil Services Pension Rules 1972 and the principles of law as enunciated in the above ruling that the ends of justice would be served if the applicant is allowed interest on the amount of D.C.R.G. which was withheld and which was later on paid on 5.12.91 as per Annexure C-1, at the rate of Rupees twelve percent per annum from 1.5.90 to 5.12.1991; and at the rate of ~~rupees~~ fifteen percent per annum on the remaining amount of the D.C.R.G. from 1.5.90 and onwards till payment is made; and the applicant is entitled for the complimentary passes also as per rules.

12. In the result, the impugned order dated 27.2.90 and 12.9.90(Annexure 7 & 8) being illegal and invalid are hereby quashed and the application of the applicant is allowed as above; and the respondents are directed to make payment to the applicant as directed above, for which he is found to be entitled as per rules, within a period of two months from the date of the receipt of the copy of this judgement. It is made clear that the applicant will be entitled for the payment of the outstanding retiral benefits only after adjustment of the dues, if any, still lying outstanding against him. The applicant is also entitled for complimentary passes as per rules. No order as to costs.


Member (J) 23.10.92

Lucknow Dated 23.10.1992.

(RKA)