

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA.

Registration No. O.A. No. 61 of 1996

DATE OF ORDER : 16 .10.2001

Dr. Swaran Singh, son of late Labh Singh, resident of 4th Lane Turner Road, Clemant Town, Dehradun (U.P.), at present residing at Chauthai Kuli, Sindri Road, Jharia, District - Dhanbad.

..... APPLICANT.

By Advocate Shri Gautam Bose.

VERSUS

1. The Union of India through the Secretary, Ministry of Science and Technology, Department of Scientific and Industrial Research, New Delhi.
2. The Director, Central Fuel Research Institute (C.F.R.I.), Jealgora, Dhanbad - 828108.
3. The Director General, Council of Scientific and Industrial Research (C.S.I.R.), Rafi Marg, New Delhi - 110001.
4. The Controller of Administration, Central Fuel Research Institute, Jealgora, District- Dhanbad.

..... RESPONDENTS.

By Advocate Shri V.M.K. Sinha, Sr. Standing Counsel.

C O R A M

Hon'ble Shri Lakshman Jha, Member (J)

Hon'ble Shri M.P. Singh, Member (A)

O R D E R

By M.P. Singh, M(A):- The applicant has filed this original application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 6.4.1994 passed by respondent no. 4, the Controller of Administration, Central Fuel Research Institute

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(in short C.F.R.I.), by which the retiral benefits of the applicant amounting to Rs. 1,54,170.10 have been withheld.

2. The brief facts of the case are that the applicant was appointed as Scientist 'C' in the CFRI, Dhanbad in the year 1969. He was promoted to the post of Scientist (E) in 1973, and was posted as Officer-in-charge of the Coal Gassification Division, CFRI, Dhanbad. While working in that capacity, he was served with a charge-sheet by the respondents for absenting himself from service from 1.1.1981 to August, 1983 without any prior notice on several occasions, and remained absent continuously from 30.11.1983 to September, 1986. An inquiry was held, and after concluding the inquiry, the disciplinary authority had imposed the penalty of compulsory retirement. He filed an appeal to the appellate authority, which was rejected by the appellate authority on 25th June, 1991. Thereafter, the applicant filed an OA No. 72/92 in the Tribunal against the order of the disciplinary authority and the appellate authority. The Tribunal vide order dated 15.7.1993 dismissed the application. The applicant moved an appeal in the Hon'ble Supreme Court against the judgement of the Tribunal, which was also dismissed. The case of the applicant is that his pensionary benefits have been withheld, and the same have not yet

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been paid by the respondents. He was given a notice by respondent no. 4 on 6.4.1994, stating that he was to pay a sum of Rs. 1,57,480.50 on account of penal licence fee charged for government accommodation which he was occupying unauthorisedly beyond the permissible period and also on account of Electricity and water charges and excess payment made to him. The applicant had submitted his representation against the notice received from the respondents. According to the applicant, his representation has not yet been disposed of by the respondents.

3. Being aggrieved by this, he has filed the instant application seeking relief by way of quashing and setting aside the order dated 6.4.1994 as contained in Annexure A/1, and also declaring the penal rent on account of non-vacation of government quarter as illegal. He has also sought direction to release his salary for the period from 1981 to 1983 and other retiral dues with 18 per cent interest thereon.

4. The respondents in their reply have stated that as per the Government Rules, a retired government servant is allowed to retain the government quarter for four months on normal licence fee and additional four months on payment of double the standard licence fee, and thereafter the penal licence is recoverable upto the date of his vacating such

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accommodation. The applicant was compulsorily retired on 5th October, 1989. He was, therefore, asked to vacate the quarter. The applicant did not vacate the quarter after the permissible period, and he was, therefore, liable to pay the penal charge for the same. According to the respondents, he was directed to vacate the quarter on 14.12.1993, and he vacated the quarter on 6.1.1994. It is also stated by the respondents that the applicant not only retained the accommodation in his possession for four years and three months after retirement but had also locked his office room. A Committee had to be constituted by the office to unlock the said room. Several store items are outstanding against him, and the cost of those items is also recoverable from the applicant. It is further stated by the respondents that the retiral benefits as admissible to the applicant comes to Rs. 1,54,179.10, whereas the government dues recoverable from the applicant are to the tune of Rs. 1,57,480.50 in addition to a sum of Rs. 1916/- towards non-adjustment of the advance drawn by him. Therefore, a sum of Rs. 5217.40 is payable by the applicant to the Institute.

5. Heard learned counsel for the parties and also perused the record. During the course of arguments, the learned counsel for the applicant stated that the penal rent for overstaying in government accommodation

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is to be charged from the applicant after following the prescribed procedures. No prior notice was given to the applicant for levying the damage rent, and the damage rent as levied by the respondents is also not in accordance with the Rules. He drew our attention to the letter dated 6th April, 1994 (Annexure A/1 collectively, page 24) wherein against Column A-5, it is mentioned that an amount of Rs. 2500/- per month ^{is to be charged &} as penal licence fee for the period from 5.6.1990 to 22.7.1992, and thereafter an amount of Rs. 3750/- per month for the period from 23rd July, 1992 till the date of vacation i.e. 6.1.1994. As against this, it is stated in the letter dated 14th December, 1993 (Annexure A/4) that the applicant is liable to pay the penal licence fee at the rate of Rs. 2500/- P.M. for the period from 4.6.1990 to 22.7.1990 and @ Rs. 4500/- P.M. from 23rd July, 1990 till the date of vacation. The learned counsel for the applicant submitted that the respondents ~~themselves~~ [&] are ~~not~~ mentioning ^{two} ~~the~~ different rates for different period regarding the penal licence fee to be levied against the applicant. Thus, they themselves are not clear about the rate of penal licence fee to be charged from the applicant. He also submitted that an amount of Rs. 41628/- as leave salary for the period from 1.1.81 to 30.11.83 is also payable to the applicant, which has not yet been paid

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by the respondents. He further submitted that the amount of penal licence fee cannot be adjusted or appropriated against the retiral benefits which are due to the applicant. In support of his claim, he relied upon the recent judgement of the Hon'ble Supreme Court in the case of Gorakhpur University and ors vs. Dr. Shitla Prasad Nagendra and ors decided on 7.8.2001, 2001 AIR SCW 2819.

6. On the other hand, the only contention made by the learned counsel for the respondents is that the amount to be recovered by the government from the applicant on account of damage licence fee etc is more than that of retiral benefits. He also failed to point out any authority or case law on the subject ^{whereby} ~~whether~~ the amount of penal licence fee can be recovered/adjusted from the dues which are payable to the applicant on retirement.

7. The question for consideration before us is whether the penal licence fee can be recovered by the ^{respondents} from the amount payable to the applicant as retiral benefits. It is settled legal position that the pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay

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in settlement and disbursement whereof should be viewed seriously. Withholding of quarters allotted, ^{while in service} even after retirement without vacating the same is not a valid ground to withhold the disbursement of the terminal benefits.

The Hon'ble Supreme Court in their judgement dated 7.8.2001 2001 AIR SCW 2819 has held as under;


"Constitution of India, Art. 16 - Pension and other retiral benefits - cannot be adjusted or appropriated for satisfaction of any other dues outstanding against retired employee - University employee not vacating official quarter even after retirement - University taking action to recover penal rent from amount due towards retiral benefits and provident fund - illegal - Moreso, when University acquiesced in occupation by accepting normal rent.

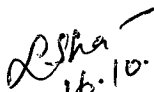
The Hon'ble Supreme Court in their judgement have further observed that the lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive



manner by adopting different and discriminatory standards. The present case of the applicant is squarely covered by the aforesaid judgement of the Hon'ble Supreme Court. In this case, the applicant was compulsorily retired by the respondents on 5th October, 1989. He retained the government accommodation upto 6.1.1994, but no action was taken by the respondents to recover the possession of the quarter in accordance with law, rules and instructions.

8. In view of the legal position as stated above, the respondents cannot adjust the amount of retiral benefits against the penal licence fee recoverable from the applicant. The respondents are, therefore, directed to release the retiral benefits i.e. CPF and gratuity in favoure of the applicant within four weeks from the date of receipt of a copy of this order. The OA is allowed to that extent. There shall be no order as to costs.


(M.P. SINGH)
MEMBER (A)


16.10.2001
(LAKSHMAN JHA)
MEMBER (J)