

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O. A. No. 504 of 1996

1991

DATE OF DECISION.....

Manindra Prasad Applicant

r 22nd, 2002.

Shri Sudama Pandey Advocate for the Applicant (s).

Versus

U.O.I. & Ors. Respondents

LIC ANT.

Shri Gautam Bose Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. L.R.K. Prasad, Member (A)

The Hon'ble Mrs. Shyama Dogra, Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MEMBER

Hon'ble Smt. Shyama Dogra, Member (J)

ORDER

By Shyama Dogra, Member (J):- The applicant has preferred this Original Application for issuance of direction to the respondents for payment of gratuity (DCRG) amounting to Rs. 1,10,517/-, leave encashment and packing allowances, which were due to be paid on the date of his superannuation on 31.1.1996 as the same has been withheld arbitrarily without assigning any reasons.

2. The brief facts as set out in the O.A. are that the applicant was appointed in the railway on 19.1.1959 and superannuated on 31.1.1996 as Chief

Telecommunication Inspector Hq/Samastipur. It is submitted by the learned counsel for the applicant that on superannuation, retiral benefits and other dues were not paid to the applicant, and the same were withheld unreasonably and arbitrarily without assigning any reason , which is against the decision of the Hon'ble Apex Court in which it has been held that the retiral benefits of the retiring employee is no longer a gift and bounty but a property of the employee and the same cannot be forfeited or withheld except by an order of the President of India. He has also taken us through the various decisions of the Tribunal like OA 154/94, titled Radhika Devi vs. U.O.I. & Ors , OA 563/93, titled Smt. Moti Devi vs. U.O.I. & Ors and OA 605/93, titled Ram Siromani vs. U.O.I. & Ors.

3. It is further submitted by the learned counsel for the applicant that the applicant who was in occupation of a railway accommodation,quarter No. 431-B at Samastipur has already been vacated on 18.6.1996 after due permission from the respondents to retain that quarter after retirement for the said period. And he has not been paid house rent allowance from 8.6.1990 to 7.12.1990 at the rate of Rs. 100/- p. m. The respondents have unauthorisedly and illegally recovered a sum of Rs. 15,450/- on account of damage rent for the period from 7.2.1991 to 3.5.1993 without following the rules and law , and no notice was ever issued to the applicant for vacation of the said quarter or to withhold his retiral benefits, and therefore, withholding his DCRG etc. on the pretext of damage rent for the period from 7.2.1991 to 3.5.1993 is illegal , and the applicant is entitled to receive full payment of the said retiral benefits. It is further submitted that the allotment

The said period of 11 months is unauthorised and illegal , and in view of the Master Circular issued by the Railway Board wherein it is

order for the said quarter was never cancelled , and no action under Public Premises Act, 1971 have ever been initiated against the applicant to withhold the said amount of his retiral benefits on account of the alleged damage rent. In view of this, the applicant has prayed for payment of DCRG amounting to Rs. 1,10,517/-,leave encashment and packing allowances and T.A. as well as refund of the amount of Rs. 15,450/- along with outstanding house rent allowances for the period from June, 1990 to November, 1990.

4. The applicant has also made representation to the respondents vide Annexure A/3, but nothing was done, and the payment of such dues has been delayed unnecessarily inspite of clear instructions from the concerned quarter to expedite the said payment to the retiree , as mentioned in Annexure A/2.

5. The respondents have opposed this application on the grounds that the claim of the applicant with regard to release of DCRG is not maintainable, as the same has been withheld on account of non-vacation of the railway quarter and existing electrical charges. The applicant was allotted railway residential & accommodation at Samastipur , and when he was transferred on promotion on 8.6.1990 from Samastipur to Sonepur Division, he joined the promoted post, but did not vacate the said railway residential accommodation and kept it unauthorisedly till he returned back to Samastipur Division on 3.5.1995 and kept it again without authority even after his retirement on 31.1.1996, and vacated the said quarter on 18.6.1996. The said period of retention of railway quarter is unauthorised and illegal , and in view of the Master Circular issued by the Railway Board wherein it is

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mentioned that on transfer if railway accommodation is not vacated, the same would be deemed to be unauthorised for all purposes, and in view of this, the railway authorities are entitled to withhold gratuity etc. of the retiree employee. The learned counsel for the respondents has placed reliance on the decision of the Hon'ble Apex Court in Wazir Chand's case, (2001) 6 Supreme Court Cases 596, wherein it was held that the penal rent for unauthorised occupation by railway servants even after / retirement dues of the appellant, retirement is rightly adjusted against death-cum-

6. The learned counsel for the applicant respondents has also placed reliance on the decision of Full Bench of the Tribunal in Ram Pujan's case, (1996 (3) SLJ 92), which has been relied on in OA 610/95 decided on 18.2.2002, titled Radhe Shyam vs. U.O.I. & Ors, by Patna Bench. He has also taken us through another decision of this Bench passed by Full Bench in OA 194/2002, titled Ram Balak vs. U.O.I. & Ors decided on 10.9.2002. / it is submitted by the respondents' counsel that therefore, / damage rent along with electrical charges / in accordance with law amounting to Rs. 13,014.71 was adjusted from the OCRG, / and the balance amount of Rs. 97,502.29 was paid to the applicant through cheque No. 008542/E dated 2.9.1996. Hence the said deduction is justified for his unauthorised retention of the railway residential accommodation in view of the Master Circular and other provisions applicable for railway accommodation to the employees which has been held valid having statutory force as has been held in Ram Pujan's case.

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7. So far as packing allowances and leave encashment are concerned, the same has also been paid to the applicant which amounts to Rs. 3,450/- and Rs. 56,240/- respectively. So far as payment of TA is concerned, the applicant has not submitted his TA bills

so far , and the same would be paid on his submission as per existing rules. Hence there is no delay in payment of his dues , as alleged by the applicant. Therefore, the question of payment of interest does not arise.

8. The applicant has rebutted the contentions as raised by the respondents in the written statement while filing rejoinder, wherein it is stated that the applicant was spared from Samastipur on 8.6.1990 and joined on the promoted post , and he was duly allotted the said quarter on the payment of normal rent. So far as retention of the quarter after retirement is concerned, he has placed on record Annexure A/4, whereby he was allowed to retain the railway quarter for a further period of four months on the payment of normal rent after his retirement. Therefore, adjustment of damage rent from the DCRG is illegal. He has also given details of various dues to be paid to him by the respondents including leave encashment as he has been paid leave encashment for 200 days, but he is entitled for payment of amount of another 15 days as actual due leave encashment was 215 days and not 200 days.

9. We have heard the learned counsel for the parties and perused the record. It is admitted fact that when the applicant was transferred on promotion from Samastipur to ^{Sonepur} ~~L~~ Division on 8.6.1990, he did not vacate the said railway residential accommodation, and the applicant has not placed on record any document to show that he had requested railway authority to allow him to retain that quarter at Samastipur even after his transfer on promotion to Sonepur. Therefore, as has been held by the Full Bench that in view of the Master Circular which has statutory force, the said period is deemed to

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be unauthorized even on transfer or promotion as there is no documentary proof to show that the applicant was allowed to retain that quarter for the said period from 8.6.1990 to 3.5.1995. Therefore, the contentions raised by the applicant in this regard have no force, and the same are rejected.

10. So far as permission granted to the applicant to retain the quarter for four months after retirement vide Annexure A/4 is concerned, since the same has been filed with the rejoinder, and the respondents could not reply to the said document, the applicant is at liberty to settle his matter with the respondents for the said period for which he was allowed to retain the quarter on payment of normal rent after his retirement, as mentioned in Annexure A/4.

11. So far as payment of other dues like leave encashment and DCRG are concerned, the applicant is at liberty to settle the matter with the respondents after giving full details in this regard, as set out in the rejoinder, and the respondents are directed to decide it after giving the applicant full opportunity to place on record relevant documents in this regard. The respondents are further directed to make payment of TA, without any further delay, if the applicant has submitted his TA bills ~~and~~ if the same has ~~not~~ already been paid. The ^{needful} be done within a period of three months from the date of submission of the details by the applicant along with copy of this order.

12. With these observations, this O.A. stands disposed of, however, with no order as to costs.

/CBS/

Shyama Dogra
22-10-2002
(SHYAMA DOGRA)
MEMBER (J)

L.R.K. Prasad
22-10-00
(L.R.K. PRASAD)
MEMBER (A)