

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 476/87

199

T.A. NO:

DATE OF DECISION 21.7.92

J.P.Mankar

Petitioner

S.B.KASAR

Advocate for the Petitioners

Versus

THE GENERAL MANAGER,
C.R., V.T.

Respondent

SHRI P.R.PAI

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C.REDDY, MEMBER (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

T.C. Reddy
(T.C.REDDY)
MEMBER(J)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO: 6476/87

Shri J.P.Mankar

.... Applicant

V/s

The General Manager,
Central Railway,
Bombay V.T.,
Bombay.

.... Respondent

Coram : HON'BLE SHRI T.C. REDDY, MEMBER (J)

Appearance :

None for the applicant

Shri P.R.Pai, Advocate.
for the respondents.

ORAL JUDGEMENT

21 st JULY 1992.

(PER : T.C.REDDY,M/J)

This is an application filed under Section 19 of the Administrative Tribunal's Act, 1985 by the applicant herein for the following reliefs:

1. Payment of missing Provident Fund amount from 1944 to 1956.
2. Refund of excess penal rent of Rs.925/- deducted from the DCRG from 16.5.1984 to 11.9.1984.
3. Refund of Rs.78/- deducted towards Library books.
4. To declare that the Ministry of Railways letter No.E(G)81-QRI-51 dt.4.6.1983 imposing the punishment of withholding of privilege passes without limit and without following the proper statutory procedure delineated in the Railway Servants (Discipline And Appeal) Rules, 1968, and without following the Rules of Natural Justice, is void, unconstitutional, illegal, unlawful and ultra vires.
5. Immediate restoration of two sets of post-retirement privilege passes per year.

6. Payment of interest at the rate of 18 p.c.p.a on

- i) The P.F. amount withheld from 16.5.1984 and from 1955 till date.
- ii) D.C.R.G. withheld from 16.5.1984 to 4.3.1986.
- iii) Insurance amount of Rs.120 from 16.5.1984 to 16.12.1986.

2. Counter is filed by the Respondents opposing this O.A.

3. The applicant while working as Engineering Instructor (PWI) voluntarily retired. While in service, the applicant was in occupation of the Railway Quarter No.D-363. The grievance of the applicant is, that, his Provident Fund from 11.8.1944 up to 1956 is not paid, that the excess penal rent of Rs.925/- is deducted from the D.C.R.G., that Rs.78 is deducted towards the library books which are returned by him., that the privilege passes are withheld by the department and that certain insurance amount is withheld. The present application is filed by the Applicant for the reliefs as already indicated above.

4. (Payment of missing Provident Fund). Even though, it is the grievance of the applicant that Provident Fund from the year 1944 to 1956 is not paid to him, no material is placed by the applicant, to show that he had contributed provident fund from the year 1944 to 1956. The Respondents in their counter have maintained, that all the Provident Fund due to the applicant had been paid to him after his retirement. So, in view of the contention of the respondents, that the entire Provident Fund due to the applicant has been paid, heavy burden is cast on the applicant to show that Provident Fund for the said period from the year 1944 to 1956 is not paid to the Applicant.

As there is no proof to show that, the Provident Fund from the year 1944 to 1956 had been contributed by the applicant, the question of none payment of the said Provident Fund for the said period does not arise. Hence, the relief

prayed for by the applicant for payment of missing of Provident Fund from the year 1944 to 1956 is liable to be rejected and is accordingly rejected.

5. Refund of Excess Penal rent.

It is the contention of the applicant, that he was never in occupation of any Railway quarter from 16.5.1984 which had been allotted ^{to} him, and that he had vacated the said quarter on 16.5.1984 and after the said quarter was vacated by him on 16.5.1984, that the said quarter which was earlier in the occupation of the applicant had been allotted to the some other officer and hence the deduction of Rs.925/- Penal Rent from the D.C.R.G of the applicant for the period from 16.5.1984 to 11.9.84 is not justified. On the other hand, the case of the respondents is that the applicant was in occupation of the two out houses in the said quarter from 16.5.1984 to 11.9.84 and so in view of this position, that, the excess penal rent of Rs.925/- had been deducted from the D.C.R.G. of the applicant. In fact the said quarter after the applicant vacated the same had been allotted to some other applicant in the year 1985. We have gone through the material placed before us by the respondents, and the material placed by the respondents shows, that, the applicant had been in occupation of the two out houses of the said quarter which was in occupation of the applicant from 16.5.1984 to 11.9.1984. So the penal rent of Rs.925/- was deducted from the D.C.R.G. that was payable to the applicant. So as the applicant was in unauthorised occupation of the said out houses in the Quarter allotted to him, It cannot be said that the amount of the penal rent of Rs.925/- deducted by the respondents is not justified. Hence, the applicant is not entitled to the refund of the said excess penal rent of Rs.925/- and hence, the said prayer of the applicant is liable to be rejected and is accordingly rejected.

6. Refund of Rs.78/- deducted towards Library Books.

The fact that the applicant has borrowed two books of the value of Rs.78/- while he was in service from the Libraries of the respondents is not in dispute in this case. But it is the case of the applicant, that, he had returned the said two books to the Librarian and so he is not liable to pay the sum of Rs.78/-, which is the value of the library books. No proof is placed before us to show, that, the applicant had returned the said library books as contended by him, and that the said books were returned. The applicant should have obtained receipt from the concerned librarian showing the return of the said books. No such receipt for the return of the said library books is placed before us. So in the absence any receipt or documentary evidence to show that the applicant had returned the said library books, it has to be ^{inferred} ~~inferred~~ that the applicant had not returned the said library books, which are worth of Rs.78/-. Hence, we therefore see justification on the part of the respondents in deducting the said sum of Rs.78/- from out of the pensionary benefits payable to the applicant. Hence, the applicant is not entitled to the said relief of the refund of Rs.78/- deducted towards the value of Library books, hence, this prayer is also rejected.

7. Withholding of two railway passes

It is not in dispute that the said two railway passes for which the applicant is entitled for every year are withheld by the respondents for a period of 43 years as a measure of penalty for being in unauthorised occupation of the Railway quarter from 18.5.1979 till 16.5.1984. The applicant's age is nearly 70 years. Admittedly, the applicant had vacated the quarter. The applicant had ceased to be in occupation of the quarter with effect from 11.9.1984. Bearing in mind the fact, the applicant had vacated the quarters from 11.9.1984 and the said privilege passes had been

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withhold from the year 1979, ^{the} order passed by the respondents withholding the passess for the period of 43 years from the year 1983 appears to be penal and unconscionable. Hence it will ^{be} appropriate to give proper direction to the respondents with regard to release of the privilage passes to the applicant. Hence, we direct the respondents to release the privilage passes from the current year and onwards in accordance with the rules and regulations and to make passes available as and when the applidant puts in application for the said passess. As we have refused the other reliefs the applicant is not entitled to any interest on the amount claimed by him. The claim with regard to insurance amount of Rs.120/- is not pressed before us by the Applicant and hence the said claim is rejected. This Original Application ^{allowed in part} is with regard railway passes ^{only} ~~allowed in part~~ as indicated above. The parties shall bear their own costs.

T. Chandrasekhara
(T.C.REDDY)
M/J