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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 837/92

~~XXXXXX Application No.~~

DATE OF DECISION: 8/04-1994

P.B. Nair

Petitioner

Mr. G S Walia

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. A L Kasture

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M R Kolhatkar, Member(A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of X the Tribunal ?

M R Kolhatkar

Member(A)

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD,) BOMBAY-1

O.A. 837/92

P.B. Nair

.. Applicant

V/s.

Union of India & Another

.. Respondents

Coram: Hon. Shri M R Kolhatkar, Member(A)

Appearance:

Mr. G S Walia
Counsel
for the applicant

Mr. A L Kasture
Counsel for the respondents

JUDGMENT:
(Per: M.R. Kolhatkar, Member(A))

DATED: 8-04-1994

1. The applicant retired from the railway service as Head Clerk (Commercial) on 30th September 1984 when he was in occupation of Railway Quarter No. 83/2, Western Railway Colony, Matunga Road, Bombay. His daughter Mrs. Ambika Nair, a married daughter was residing and sharing the said railway quarter for a period of more than six months prior to the retirement of the applicant. The applicant applied for transfer of the quarter in her name. The request was not acceded to in view of Circular dated 27.12.82 issued by the Railway Board to the effect that the married daughter of the retiring/deceased railway servant is ineligible for ad hoc/out of turn allotment of quarter. The writ petition of the applicant for quashing the said circular came to be transferred to this Tribunal and was renumbered as Tr.A. No. 467/86 and came to be decided in favour of the applicant by the order dated 13.2.1990, the operative portion of which reads as follows:

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"In the result, the instructions contained in the letter of the Railway Board dated 27.12.1982 (Exhibit G) are hereby struck down. We quash the order rejecting the request of the second applicant for allotment of the quarter occupied by her on out of turn basis. The notice dated 21.11.1985 calling upon her to vacate the quarter is also hereby quashed."

2. Consequent on this order the quarter was regularised in the name of the applicant's daughter on 4.10.1991. On account of non-vacation of the quarter by the applicant an amount of Rs. 16,508.25 was withheld by the respondents, which was subsequently released to the applicant on 22.11.1991. The applicant represented to the respondent on 13.12.1991 claiming the interest on the DCRG which was due to him as it was unlawfully withheld vide Exhibit 'C' to which he received a reply on 10.4.92, Exhibit 'E' which is reproduced below:

" This office letter of even No. dated 3.3.92 stands good. As per extant orders, where the conclusion of judicial proceedings are awaited and when the competent authority decide to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen on the date of issue of orders by the competent authority for payment of gratuity. Interest is payable if DCRG released beyond three months after issue of orders. In your case the quarter has been regularised vide memo No. EC/58/10/11(L) dated 4.10.91 and DCRG was paid to you on 22.11.91, within three months time. As such you are not due for interest on delayed payment of DCRG."

3. It is this communication which has been challenged by the applicant. The details of interest claimed on DCRG by the applicant are as below:

"Principal amount of DCRG due to be paid on 1.10.1984 (Rs.16508.25)

a) Interest accrued after 3 months and upto 6 months @ 7% in terms of Rly. Board's letter No. F(E)III/79/PN-1/15 dated 15.4.1991 on the amount of DCRG Rs.16508.25 i.e. from Jan.85 to March 1985. Rs. 288.89

b) Interest @ 10% for 80

months from April 1985 to November 1991 i.e., upto the period DCRG was released in terms of Railway Board's letterNo.F(E)III/79/PN-1/15 dated 15.4.1991

Rs. 11005.50

Total Rs.11294.39

Rs.11294.39

4. The reason for interest claimed by the applicant is that DCRG becomes due to the employee immediately on superannuation. It can be withheld only on account of pendency of disciplinary proceedings or judicial proceedings which was not the case and the Railway Board order dated 27.12.82 to the effect that the married daughter of the retiring railway servant is ineligible for out of turn allotment having been struck down by this Tribunal, the right to receive DCRG relates back to the date of retirement of the applicant viz., 30.9.1984 and since the Railway Administration has utilised the amount for its own purpose he is entitled for the interest thereon and the action of the respondents is ^{even} otherwise unconstitutional and violative of Articles 14 and 16 of the Constitution.

5. The respondents have resisted the claim. According to them interest is payable on withheld DCRG only if there is an administrative lapse. But this is not so in this particular case. The occupation of the quarter by the daughter of the applicant was regularised only on 4.10.1991 and DCRG was released within three months thereof, and therefore the Railway Administration is not liable to pay the interest.

6. There is no doubt that gratuity is included in the definition of pension and according to Railway Board Circular No. F(E)III.79.PNI/15

dated 14.9.1984 regarding payment of interest on delayed payment of death-cum-retirement gratuity" interest payable only where the delay occurs due to administrative lapse).

The same is reproduced below:

" The Govt. have had under consideration the question of raising the rate of interest payable to a railway employee on delayed payment where the delay occurs on account of administrative lapse or for reasons beyond the control of the Govt. servant concerned. In partial modification of this Ministry's letter No.F(E)III.79.PNI/15 dated 3.9.79. The President is now pleased to decide that where the payment of DCRG has been delayed, the rate of interest will be as follows:

- i) beyond 3 months and upto one year 7% per annum
- ii) beyond one year 10% per annum.

These orders are effective from 28.7.1984.

The cases of those railway employees who retired/died while in service before 28.7.1984 would also be covered if death-cum-retirement gratuity has not been paid as on that date of their retirement and there has been delay in its payment beyond three months of the date of their retirement/death for which interest is payable in accordance with the existing orders. In such cases the interest would be worked out at the rates mentioned in the letter dated the date preceding the date of issue of this letter and thereafter at the rates indicated in para 1 above."

7. The short point for determination is whether the doctrine of relation back applies in this case. The Railway Board circular dated 27.12.82 was quashed by this Tribunal's order dated 13.2.1990. The Tribunal's order became final after SLP^{if any} against the judgment was dismissed. The exact date thereof is not clear but that must be immediately preceding the date of regularisation of quarter viz., 4.10.1991. Since the law declared by the Tribunal by quashing of the circular cannot have retrospective effect, the doctrine of relation back does not apply. The declaration of law became final when SLP^{if any} against the same was dismissed. The railway administration moved and

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regularised the quarter in the name of the applicant's daughter but that does not mean that the railway administration was not justified in withholding the DCRG on account of non-vacation of quarters.

8. The powers of the Railway Administration in this regard were fully examined in WAZIR CHAND V. UNION OF INDIA & ORS., FULL BENCH JUDGMENTS (CAT), VOL.II pp. 287 published by Bahri Brothers, Delhi , where it was pointed out that Railway Board have issued a circular dated 24.4.1982 in which appropriate "hold back" amount from DCRG for rent recoveries as permissible under extant rules in case of unauthorised retention of railway quarter was permitted. The Full Bench observed that the Indian Railway Establishment Code was framed by the President of India under Article 309 and Rule 157 thereof authorises the Railway Board to have full powers to make rules of general application to non-Gazetted Railway servants under their control. The "hold back" of part of the DCRG as permitted by the Railway Board circular dated 24.4.1982 was held valid by the Full Bench. However, the Full Bench also observed that withholding the entire amount of gratuity of a railway servant so long as he does not vacate the railway quarter is legally impermissible. Those observations were made in the context of the circular issued by the Northern Railway on 4.5.1982, in this regard. In the instant case the entire amount of DCRG was not withheld and only a portion of the DCRG has been withheld and, therefore, the action of railway administration in withholding the DCRG amount cannot be faulted.

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9. The applicant has contended that there were no judicial proceedings against him and, therefore, DCRG should not have been withheld from him. The applicant is obviously referring to Rule 2308 of the Railway Establishment Code Vol.II which authorises withholding of DCRG for grave misconduct for which disciplinary or judicial proceedings are pending on the date of retirement. But this rule is not applicable in this particular case. The Railway Administration has not proceeded under this rule, but they have proceeded under the circular of the Railway Board dated 24.4.1982.

[9. The applicant contends that the railway quarters were regularised and this very fact shows that the action of railway administration was ab-initio wrong but this contention of the applicant cannot be accepted. DCRG was withheld under the rules which were valid till the time they were declared invalid by this Tribunal in TA No. 467/86. The applicant has reaped the fruits of litigation in the form of stay of eviction during the pendency of the TA No.467/86. After the rule was struck down, the railway administration regularised the quarter and took action to release the withheld amount of gratuity. Therefore, the period from 30.9.1984 till date of judgment viz., 13.2.1990/ dismissal of S.L.P. would not count for interest and the applicant's request in this regard has to be rejected.

10. The applicant, however, is entitled to get interest in terms of Railway Board circular dated 14.9.1984 from the date of decision of Tribunal/dismissal of S.L.P. We, therefore, dispose of the O.A. by passing the following order.

ORDER

The application is rejected except that the Railway Board letter dated 10.4.1992 to the extent that it denies interest to the applicant on the withheld amount of DCRG for the period from the date of judgment/dismissal of S.L.P. against Tr.A No. 467/86 till the actual date of release of DCRG viz., 22.11.1991 should be treated as modified and the Railway Administration is directed to give him interest ^{as per rules} ~~for this short~~ period. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)