

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

OA No. 635/93

B.I. Pandya

..Applicant

v/s.

Union of India & Ors.

..Respondents

Coram: Hon,Shri Justice M.S.Deshpande, V.C.

APPEARANCE:

Mr. G.S. Walia
Counsel for the applicant

Mr. N.K. Srinivasan
Counsel for the respondents

ORAL JUDGMENT:

(PER: M.S.Deshpande, Vice Chairman)

DATED: 16.2.1994

The applicant, who retired on super-annuation on 30.6.1985, made an application for payment of DCRG on 19.10.1987 and that amount was not paid to him because he was in occupation of railway quarters which he did not vacate. The railway quarter was, however, vacated on 8.10.1993 by the applicant. The question that now arises for consideration is whether the respondents were entitled to withhold the amount of gratuity because the applicant was in possession of railway quarter.

2. Shri Walia, the learned counsel for the applicant relied on the definition of pension in Article 366 (17) of the Constitution of India which says that pension includes gratuity. In UNION OF INDIA V. WING COMMANDER R.R. HINGORANI (Retd.), 1987(2) ATC 939, the Supreme Court pointed out that under section 11 of the Pension Act 1871, no pension granted or continued by government on political consideration, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on

account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such court, and directed that the amount of commuted value of pension to be refunded to the pensioner. In that case also the employee was in possession of Government accommodation and in view of the provisions of S. 7(2) read with S. 14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Supreme Court observed that the Government should consider the feasibility of dropping the proceedings for recovery of penal rent if the respondents were to forgo the claim for interest. There also about ten years had passed since the amount of commuted pension was withheld and if the interest were to be calculated at 9% the interest, it would have amounted to more than Rs. 18,000/-.

3. Shri Walia, counsel for the applicant submits that here also no proceedings have been taken under Section 7 of the Public Premises (Eviction of Unauthorised Occupants), Act 1971 as was the case before the Supreme Court.

4. Normally I should have passed an order directing the respondents to release the amount of Gratuity together with interest @ 12% per annum from 30.6.1985 i.e., when the applicant retired, till the date of payment. Shri N.K. Srinivasan, counsel for the respondents has stated that he has no instructions regarding the charging of rent for the premises upto 4.10.1993 when they were vacated at normal rate without claiming damages. The applicant, therefore, is entitled to a direction that the amount of gratuity shall be

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paid to him together with interest at 12% per annum from 30.6.1985 upto the date of actual payment. The amount shall be paid to the applicant within a period of two months from the date of communication of this order. Shri Walia states on the instructions of the applicant who is present in the court that he would be willing to forgo the interest should the respondents agree to charge normal rent and that they do not insist on payment of damage rent. All that I can say is that the respondents should consider the possibility of accepting the applicant's proposal and if they accept the proposal the applicant may not be paid any interest on the amount as directed above and the respondents will not be entitled to ask for damages. However, this shall not affect in any way the payment of DCRG amount which should be paid within a period of two months from the date of receipt of a copy of this order.

5. With the above directions the application is disposed of with no order as to costs.


(M.S. Deshpande)
Vice Chairman