

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 302/97.

Date of Decision: 01.05.1998.

Mrs. C. U. Nayudu,

Applicant.

Shri T. D. Ghaisas,

Advocate for
Applicant.

Versus

Union Of India & Another,

Respondent(s)

Shri S. C. Dhawan,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

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- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 302/97.

Dated this Friday, the 1st day of May, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Mrs. C.U. Nayudu,
Retired Sr. Midwife,
Central Railway Hospital,
Ajni, Nagpur.

... Applicant

Residing at -
P. K. Salve Road,
Mohan Nagar,
Nagpur - 1.

(By Advocate Shri T.D. Ghaisas)

VERSUS

1. Union Of India through the
General Manager,
Central Railway,
Mumbai C.S.T.,
Mumbai - 400 001.

... Respondents.

2. The Divisional Rly. Manager
(Personnel),
Central Railway,
Nagpur Division,
Nagpur.

(By Advocate Shri S.C. Dhavan)

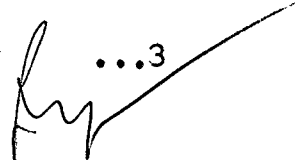
: OPEN COURT ORDER :

! PER : SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN !

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, claiming payment of bonus and encashment of leave at the time of retirement. Respondents have filed reply opposing the O.A. I have heard the Learned Counsels appearing on both sides.

2. The applicant was working as a Sr. Midwife in the Central Railway Hospital, Ajni. She retired from service on superannuation on 31.01.1996. She has been paid all the retirement benefits including pension, except the bonus and amount in lieu of encashment of leave. She is entitled to Rs. 40,000/- towards encashment of leave and bonus of Rs. 3,562/- for the year 1995-96. The respondents have not paid this amount inspite of her retirement and repeated demands. Now she has come to know that some disciplinary enquiry is stated to be pending against her and not yet closed. The applicant has also alleged that with-holding of amount in lieu of encashment of leave and amount due to her towards bonus is illegal and unlawful. Hence, this O.A. is filed for recovering the said amount together with interest.

3. The respondents have stated in their reply that a charge-sheet was issued against the applicant for unlawfully subletting the quarters allotted to her and the disciplinary enquiry is still pending. Till the disciplinary proceedings are completed, the respondents are entitled to withhold the amount which has to be adjusted towards the penal rent. It is stated that the applicant was allotted railway quarters at Ajni, Nagpur. The applicant unauthorisedly sublet the quarters in 1988. Though it is stated as February, 1993 in two to three places in the reply, but at the time of argument the Learned Counsel for the respondents referred to the concerned file and stated that the

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subletting was in 1988. That, as per rules, the respondents are entitled to institute disciplinary enquiry against subletting of quarters in addition to recovering penal rent or damage rent. As per rules the penal rent has been calculated to be Rs. 35,594/-. It is stated that the salary due to the applicant was Rs. 27,791/- and the bonus due to the applicant was Rs. 3,562/-. After adjusting these two amounts, the applicant herself is due to the railways to a sum of Rs. 5,241.00, That the applicant is not entitled to any other reliefs. Due to some communication gap the accounts department has paid the remaining pensionary benefits to the applicant. It is, therefore, prayed that the application be dismissed with cost.

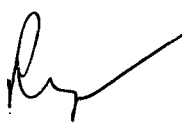
4. The Learned Counsel for the applicant has questioned the legality and validity of the action taken by the respondents in withholding the amount in question. The Learned Counsel for the respondents has justified the action taken by the Railway Administration.

5. The short point for consideration is, whether the respondents are justified in withholding the two amounts mentioned above towards the alleged penal rent due by the applicant.

6. The first legal question pressed by the Learned Counsel for the applicant is that, as per the

General pension rules and railway pension rules, the respondents can with-hold gratuity amount towards rent or penal rent of quarters and respondents have no right to with-hold any other retirement benefits towards rent/penal rent. It may be under general rules what the learned counsel for the applicant submits may be correct. He also invited my attention to the judgement of a Single Member Bench of the Principal Bench of this Tribunal dated 04.11.1997 in the case of Smt. Lilawati V/s. Government of N.C.T. of Delhi reported in 1998 (1) ATJ 258. It is stated in that judgement that except gratuity, the Government cannot with-hold any other pensionary benefits including leave encashment, bonus, etc. That was a case involving the Government of Delhi but we are concerned in this case about the Railway Administration. Therefore, we have to be guided by the Railway Rules and Railway Board circulars. Therefore, the said decision has no application for our present purpose.

On the other hand, the Learned Counsel for the respondents invited my attention to the railway board circular dated 07.08.1989. In this circular it is mentioned that normally only gratuity has to be with-held when any disciplinary enquiry is pending against the Railway servant. Then an amendment is suggested in the circular stating that the authority competent to grant leave can with-held the whole or part of encashment equivalent to leave salary, if the employee is under suspension on the date of retirement or disciplinary or criminal

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proceedings are pending against him, if in the view of the authority there is a possibility of some money becoming recoverable from the employee on the conclusion of the disciplinary enquiry.

In view of this Railway Board circular, which has a statutory force, the Railway Administration has powers to with-hold the amount due towards the encashment of leave salary when disciplinary proceedings are pending against the applicant on the date of her retirement. The enquiry was instituted in 1991 and final orders are not yet passed. Therefore, the enquiry was pending at the time of retirement of the applicant. In view of this circular, the respondents have a right to with-hold the amount due towards encashment of leave to cover any amount that may become recoverable from the applicant after the conclusion of the enquiry.

As far as bonus is concerned, the Learned Counsel for the applicant did not bring to my notice any rule or provision against with-holding of the bonus towards Government dues. Hence, in the circumstances, it cannot be said that the action of the respondents is illegal or without jurisdiction.

7. Another contention of the Learned Counsel for the applicant is that the respondents should have taken proceedings under the Public Premises Act for determination and recovery of penal rent. There

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is no merit in the submission in view of the decision of the Full Bench of this Tribunal in Ram Poojan V/. Union Of India & Others reported in 1994-96 Full Bench Judgements 244. The respondents are not initiating ^{action for} any recovery from the applicant but they are adjusting whatever amount was remaining with them. If the entire amount would have been paid, then ofcourse, the respondents would have taken proceedings under the Public Premises Act for recovering the amount. As far as determination of penal rent is concerned, as observed in the Full Bench judgement, no enquiry is necessary and it can be done as prescribed by the rules. The Railway Rules provides as to how the penal rent to be calculated in different circumstances. Therefore, I find, there is no illegality in determining the penal rent or in adjusting the same.

8. Then there was some argument across the bar about the disciplinary enquiry. The applicant has given reply to the charge-sheet. Enquiry has been completed. The Learned Counsel for the respondents brought to my notice that the Inquiry Officer has submitted the report. Now only the disciplinary authority has to pass an order. Since the applicant retired about two years back and her amount has been held up, it is desirable that the Disciplinary Authority should be directed to pass the final orders expeditiously.

9. Another submission pressed into service


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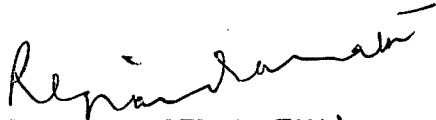
by the Learned Counsel for the applicant is that, for the alleged misconduct of the applicant, number of punishments are given, which is not permissible in law. It was argued that the applicant had to forego her H.R.A., her brother had to forego his H.R.A., then disciplinary action has also been initiated.

As far as applicant is concerned, as per rules, she was not entitled to draw H.R.A. when she is allotted a quarter. Therefore, there is nothing wrong in her not getting the H.R.A. when she is allotted a quarter. As far as her brother is concerned, since he was living unlawfully in the railway quarter, he was not entitled to H.R.A. Anyhow, it is a matter between the applicant's brother and the railway administration and it is not a punishment against the applicant. As far as the disciplinary enquiry is concerned, the railway rules provide that in case of subletting, the railway administration can take disciplinary action besides recovering penal rent. Therefore, the action taken by the Railway Administration is perfectly according to law.

10. If in the disciplinary enquiry the applicant is held to be guilty, then the recovery of penal rent is justified and nothing more need be done. However, if in the disciplinary enquiry, at any stage, either by the Inquiry Officer, Disciplinary Authority, Appellate Authority, Revisional Authority or Tribunal or any Court, holds that the applicant is not guilty of subletting, then the recovery of penal rent would not be justified.

The said question is pre-mature to be decided at this stage. The applicant would be entitled to get the amount in question depending upon the result of the disciplinary enquiry. Therefore, the applicant will have to take necessary steps to recover the amount depending upon the result of the disciplinary enquiry. That question is left open.

11. In the result, the O.A. is dismissed. However, for the reasons already mentioned, the disciplinary authority is directed to pass final orders in the disciplinary case as expeditiously as possible and preferable, within a period of four months from the date of receipt of this order. A copy of this order be communicated to the disciplinary authority, -namely - the Chief Medical Superintendent, Central Railway Hospital, Nagpur, for information and compliance. Liberty is also given to the applicant to take any legal steps including approaching this Tribunal for recovering the amount in question depending upon the result of the disciplinary enquiry. In the circumstances of the case, there will be no order as to costs.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.