

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 305 of 1997.

Dated this Wednesday the 24th day of October 2001.

Shri N. C. Sharma, Applicant.

Shri G. S. Walia, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. C. Dhavan, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Kuldip Singh, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library. No

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(B.N. BAHADUR)
MEMBER (A).

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D.C.R.G. was withheld as also his Leave Salary, which (leave salary) was paid to him in February, 1995. The Applicant, further states that finally on 26.04.1996 a punishment of withholding 10% monthly pension was imposed on him (exhibit A-1). Further, the Respondents recovered an amount of Rs. 54,609.00 from the D.C.R.G. of the Applicant, the total D.C.R.G. which was payable being Rs. 81,675.00. The balance amount was paid to him in November, 1996. The break up of the amounts of recovery are as reproduced in the impugned order dated 30.10.1996 at exhibit 'A' page 9.

2. The Applicant further contends that no proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been taken and that he had vacated the Railway Quarters on 30.04.1994. However, Rs. 30,826.00 was recovered towards penal rent for the period while he was posted at Jhansi. Thus, he contends that principles of natural justice were flouted in the making of this recovery. The Applicant, finally seeks the relief for the quashing and setting aside of the impugned order dated 30.10.1996 (Exhibit 'A'). He also seeks a direction by the Tribunal to the Respondents to refund Rs. 54,609.00 which have been wrongly recovered from his D.C.R.G. alongwith 24% interest thereon.

3. The Respondents have filed a Written Statement of reply, where the claims of the Applicant are resisted, and it is stated that the Applicant continued to occupy the Railway quarter



allotted to him after his transfer from Mumbai to Jhansi vide order dated 29.10.1991. It is stated that such an occupation was irregular and hence the Respondents were entitled to charge damage/market rent and recover the same from the Applicant by action, which included recovery from settlement dues. It is stated that the Respondents are entitled to with-hold the D.C.R.G. till the railway employee vacates the Railway quarters unauthorisedly occupied by him, as per rules of the Railway Administration.

4. The facts of the retention of the railway quarters by the Applicant upon his transfer to Jhansi are set out in detail in paras 5, 6 and 7 of the Respondents' Written Statement, and are not being reproduced here. The relevant rules are provided for adjustment of outstanding dues from retiral benefits like D.C.R.G., etc. are then referred to in para 10 of the Written Statement. Other recoveries which are made, are explained in further paragraphs of the written statement of Respondents.

5. We have gone through the papers in the case and have considered the arguments made by the Learned Counsel on both sides, viz. - Shri G.S. Walia for the Applicant and Shri S.C. Dhavan for the Respondents.

6. The Learned Counsel for the Applicant focused his case entirely on the strength of a recent judgement rendered by the Hon'ble Supreme Court in the matter of Gorakhpur University V/s.



Dr. Shitla Prasad Nagendra. The order on 07.08.2001 is reported at Supreme Court Online.com [2001 SOL Case No. 433]. The arguments made by Shri Walia was that no recovery could be made from the Death-cum-Retirement Gratuity (D.C.R.G.) and that the action of Respondents was infirm in that recoveries were made without providing any opportunity to the Applicant through a proper show cause notice. Learned Counsel argued that in the absence of such opportunity, it was not necessary or possible for him to defend the case here before the Tribunal, as he states that the "trial" could take place only by the Respondents and not by this Tribunal, after a show cause notice has been given and opportunity provided before the Respondents.

7(a). Learned Counsel sought to depend on the following Case Law :

- (i) Ramjilal Chimanlal Sharma V/s. Elphinstone Spinning & Weaving Mill Co. Ltd. reported at 1984 LAB I.C. 1703.
- (ii) Motilal Sharma V/s. University of Rajasthan & Another reported at 1998 (2) ATJ 70.
- (iii) Sri Hari Singh & others V/s. Union of India & others decided by the Principal Bench of this Tribunal reported at 1997 (2) ATJ 165.

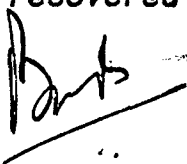
7(b). Learned Counsel also depended on the case of M/s. Hindustan Aeronautics Ltd. V/s. Commissioner of Income-Tax, reported at AIR 2000 SC 2178 to make the point that circulars and instructions of the Board are no doubt binding in law, but when Supreme Court or High Court has declared the law on the question,

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it is not open to a Court to direct that a circular should be given effect to and not the views expressed by the Courts. Learned Counsel said that in respect of recoveries, other than the House Rent, the same position was obtaining, as no opportunity was provided to him through a show cause notice and hence, this could not be argued regarding merits before this Tribunal, at this stage.

8. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri S.C. Dhavan, first took us through the facts of the case and provided facts relating to transfer of the officer vis-a-vis retention of house and made the point that Applicant was put of notice on 23.05.1993. The Applicant had been told clearly of the consequences of retention of house unauthorisedly and he cannot now say that no opportunity was provided. It was argued that no notice was necessary in such cases as per the law settled in the matter of Ram Poojan V/s. Union of India & Others reported at 1996 (1) ATJ 540.

9. The Learned Counsel then took up arguments in regard to the validity of withholding of the D.C.R.G. amount and deduction of dues from the same. He referred to para 9 of his reply citing the Railway Board's letter dated 31.12.1990 and stated that since disciplinary proceedings had been started against the Applicant, the orders could be passed only after retirement. The Learned Counsel sought the support of the following case law to argue the point that amounts due from Government servant could be recovered from the D.C.R.G.



(i) *Union of India V/s. Shiv Charan reported at 1992 (19) ATC 129. Here the point was emphasized that this was a three Member Bench which decided that amounts due because of over stay in Government quarters can be deducted from D.C.R.G., etc.*

(ii) *Amitabh Kumar V/s. Director of Estates reported at 1997 SCW 1404. Here the point made was that even where there was an ad hoc allocation of quarters for the son, the amount could be recovered.*

10. *Rule 15 (a) of the Railway Servants (Pension) Rules, 1993, was also sought to be depended upon. Learned Counsel argued that withholding of D.C.R.G. amount was obviously envisaged in rules, only for the purpose of recovery. He stated that the Tribunal had also followed the above cases, for eg. in the judgement in O.A. No. 161/2000 decided on 14.09.2000 (R. N. Srivastava V/s. Union of India & others). Shri Dhavan also cited the cases of A. B. Krishna & Others V/s. State of Karnataka & Others reported at 1998 SC L&S 906 regarding the operation of Public Premises (E.O.U.) Act, 1971 and the judgement of the Tribunal in O.A. No. 555/96 decided by the Principal Bench on 01.04.1997 (Sri Hari Singh & Others V/s. Union of India & others).*

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11. Learned Counsel for Respondents then dwelt in argument on the facts of the Applicant's case regarding non-vacation of quarters and said that the Applicant should have defended this on merits.

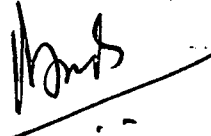
12. Rearguing the case briefly for the Applicant, his Learned Counsel stated that the Full Bench judgement cited, provided no answer to the issue/s raised and, therefore, could not be depended upon in the present case. He also made the point that in Shiv Charan's case, relied upon by the Learned Counsel for Respondents, this issue was not in question and was not discussed. The relief was provided in that case under the wide powers of the Supreme Court on the merits of the case and there was no ratio decidendi. Therefore, he stated that it was the judgement of the High Court cited by him that was binding over the judgements of the Tribunal and that the case of Ram Poojan was not a good law in this regard.

13. It has to be noted, in the first instance, that the entire stress of argument of Learned Counsel for Applicant was to the effect that recovery of the nature involved in the present case could not be made at all from the death-cum-retirement gratuity (D.C.R.G.). In fact, in regard to the merits of the action of recovery he took the stand that since no show cause notice has been served, the matter could be defended by Applicant only in the jurisdiction of the Respondents first and that too, after issue of show cause notice. Let us, therefore, proceed straight

to the case of Gorakhpur University V/s. Dr. Shitla Prasad Nagendra [2001 SOL Case No. 433], on which the Learned Counsel for applicant depended heavily. We will not go on the Headnotes but to the judgement text. Para No. 5 is relevant and depended upon. We quote the relevant portion.

"This court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further."

Importantly, stress was placed in the above on the sentence "withholding of quarters allotted while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits." This is the sentence that was stressed upon by the Learned Counsel for the Applicant to make his point. However, this sentence cannot be read in isolation. Specially, it is to be read with the very sentence succeeding it, which explains as follows :



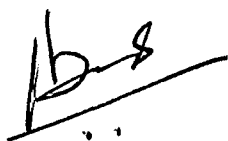
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"Such is the position with reference to amounts towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee."

14. A reading of the entire paragraph and in fact, the judgement in totality, indicates that there is no ratio clearly to the effect that the D.C.R.G. amounts cannot be per se withheld or be drawn upon for adjustments of dues (such as those dues involved in the present case). Therefore, this case cannot help the cause of the Applicant. We have also gone through the judgement in the matter of Hari Singh (supra) cited by the Learned Counsel for the Applicant. The Principal Bench of this Tribunal had decided that recovery of amounts overpaid due to wrong fixation detected after seven years could not be withdrawn without notice. The judgement was given with reference to the relevant provision in the I.R.E.M. and stress was laid on the fact of notice not having been issued. In the present case, however, the fact is relating to Government accomodation being not surrendered where different law and rules hold the field. We will come to that ahead. Similarly, in the matter of Motilal Sharma (supra) decided by the Rajasthan High Court, also depended upon by the Applicant, it has been held that Gratuity and Provident Fund cannot be withheld for non payment of arrears of penal rent. In the matter of R.C. Sharma (supra) decided by the Bombay High Court, it is held indeed that the right to the amount of gratuity is not circumscribed or made dependent to the conduct of the Applicant, subsequent to the date of retirement;



15. The above two decisions rendered by the Bombay and Rajasthan High Court have been carefully seen and would need to be viewed in the light of the judgement of the Hon'ble Supreme Court in the matter of Union of India V/s. Shiv Charan reported at 1992 (19) ATC 129, relied upon by the Respondents. This is a short judgement but is definitely applicable to the basic issue that is being agitated. Here, while directing that the amount due to the Officer concerned should be handed over to him, it clearly allows the deduction of the rent for the period of overstay. It also states that the Appellants, viz.- the Union of India "will be entitled to make claim in accordance with law to which they are entitled to, for any excess or penal rent, and the respondents will be at liberty to make any claim for compensation in the appropriate forum....." Now the point that is clear here is that the deduction of dues, like the one involved in the present case, have been clearly allowed in view of this judgement of the Hon'ble Supreme Court and in view of the fact that we have held that the judgement of Gorakhpur University's case does not help the Applicant. It is clear that the judgement of the Bombay and Rajasthan High Court cited above will not help the case of the Applicant, even assuming that they settled the ratio, as indeed argued by the Applicant.

16. Now once this point is decided, the case will proceed to its merits. Even though Counsel for Applicant refrained from arguing on merits on the plea on the argument that these merits can be dealt with only in the jurisdiction of Respondents, we have gone into the basic pleadings made by either side. The law in this

regard made in the matter of Ram Poojan V/s. Union of India, as cited by the Learned Counsel for Respondents, has been seen. In regard to the break up of the total amount deducted, this is provided in the order dated 30.10.1996 i.e. the impugned order. Rs. 30,876.00 are charged on account of rent on which the contention made by Respondents and briefly argued by his Learned Counsel was stated in para 4.5 of the O.A. In view of the law settled, it is not necessary for proceeding under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for levying a recovery of such rent. The Respondents have stated that this amount pertains to the period when the Applicant unauthorisedly held on to Railway accomodation even though posted to Jhansi. Similarly, on Overdrawn Wages, ^{the Rs.} position has been explained by the Respondents in the Written Statement. The stand taken during arguments by the Learned Counsel for applicant that the merits cannot be argued here, will not help the applicant's case, once it is decided that there is no estoppel, as it were, in the adjustment against D.C.R.G. amount. We cannot, therefore, further analyse merits in view of this stand taken.

17. In the circumstances, therefore, we find no justification for interference in this matter. The O.A. is, therefore, dismissed with no order as to costs.


(KULDIP SINGH)
MEMBER (J).



(B. N. BAHADUR)
MEMBER (A)

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