

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 195 of 1989

Date of Decision :

~~Ex. No.~~

The Divsl. Personnel Officer, S.E. Railway, Petitioner.  
Waltair.

Mr. N.R. Devaraj. Advocate for the  
petitioner (s)

Versus

Mr. S. Gurumurthy and another Respondent.

-- Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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M(J)

HRBS  
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.195 of 1989

DATE OF JUDGMENT: 29th July 1991

BETWEEN:

The Divisional Personnel Officer,  
South Eastern Railway,  
Waltair.

.. Applicant

AND

1. Mr. S.Gurumurthy,  
Retired Maistry Fitter,  
Shantinagar,  
Visakhapatnam-530 016.

2. The Labour Court, Visakhapatnam  
rep. by its Presiding Officer.

.. Respondents

COUNSEL FOR THE APPLICANT: Mr. N.R.Devaraj, SC for Rlys.

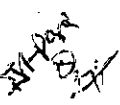
COUNSEL FOR THE RESPONDENT: --

CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)





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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner viz., Railways to quash the orders of the Labour Court, Visakhapatnam passed in C.M.P.No.346/86, dated 15.7.1988. The petitioner contends that the<sup>1st</sup> respondent retired as Mistry Fitter on 1.7.1981 on attaining the age of superannuation. Out of an amount of Rs.10,477=50 ps. sanctioned in favour of the<sup>1st</sup> respondent towards Death-cum-Retirement Gratuity, the following Railway dues were recovered:-

1. Overpayment of pay and allowances for the period from 26.12.1961 to 26.1.1962.	..	.. Rs. 148=57
2. Arrears of difference of House Rent from 1.9.1971 to 30.6.1981	..	.. Rs. 534=25
3. Charges for unauthorised occupation of Railway Quarter from 1.7.1981 to 31.10.1981	..	.. Rs. 981=75
4. Electrical charges	..	.. Rs. 117=22
5. Deposit towards enhanced Electrical charges from 1.1.79 under finalisation	..	.. Rs. 61=92
Total		.. Rs. 1,843=71

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2. Aggrieved by the recovery of the aforesaid amounts from his DCRG, the <sup>1st</sup> respondent filed CMP No. 85/82 before the Labour Court (C), Guntur and the said case has been subsequently transferred to the file of the Labour Court (C), Visakhapatnam, where it was renumbered as CMP No. 346/86. At the time of trial of the case, M.W.1, Head Clerk of DPO's office filed Exhibits M-1 to M-5 in support of the recoveries made from the <sup>1st</sup> respondent's DCRG dues. Despite this oral and documentary evidence, the learned Presiding Officer of the Labour Court found that the Railway could not prove its stand and hence allowed the claim of Rs. 1,843=71 ps.

3. According to Para 323(1) and (ii) of the Manual of Railway Pension Rules, 1950, Government dues such as overpayment on account of pay and allowances and admitted and obvious dues such as House Rent, etc., can be recovered from DCRG even without obtaining the Railway servant's consent. In the case of House Rent, a letter from IOW (Housing), S.E. Railway, Waltair, and a letter from Loco Foreman, S.E. Railway, Waltair were produced to show that the 1st respondent although retired from service on 30.6.81, retained the Railway Quarter at Waltair upto 30.10.81 and vacated the same on 31.10.1981. Hence, it clearly

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goes to show that the <sup>1st</sup>respondent remained in unauthorised occupation of Railway Quarters from 1.7.1981 to 30.10.1981 for which market rate of rent at 4 times the normal rent was rightly recovered from the DCRG of the petitioner. The Labour Court without any justification held this recovery as illegal. The Labour Court erred in observing that the Railway failed to prove that the <sup>1st</sup>respondent was in arrears of House Rent.

4. The 1st respondent being a retired employee does not come within the definition of workman as per Section 2(S) of the Industrial Disputes Act, 1947. Hence, the order of the Labour Court is illegal and without jurisdiction. The petitioner states that documentary evidence showing the Quarter vacation Memo, statement showing the particulars of overpayment made to the respondent amongst others was produced before the Labour Court. The 1st respondent did not produce any documentary evidence to the contrary as per Evidence Act, 1872 but he simply made denials with which the Labour Court agreed and passed the Decree against the petitioner herein which is not in accordance with Law. The petitioner further states that he is entitled to recover the Railway dues from the DCRG dues of the <sup>1st</sup>respondent. So, the Decree of the Labour Court is not in accordance with the evidence and it is liable to be dismissed.

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5. In this case, Shri N.R.Devaraj, Standing Counsel for the Railways/Petitioner, argued the matter. No one represented the respondents.

6. The Labour Court, Visakhapatnam had come to the conclusion that the Railways had not provided enough material before them to substantiate their case. The provisions of para 323 of Manual of the Railway Pension Rules, 1950 were available with the Railways even at the time of hearing before the Labour Court, Visakhapatnam. We, therefore, do not wish to go into the fact finding aspect of the Labour Court now. We would, however, give our observations on item by item on deductions made by the Railways from the D.C.R.G. amount.

- (1) Overpayment of pay and allowance x for the period from 26.12.1961 to 26.1.1962 - Rs.148=57.

It would appear that this recovery was made consequent to some overpayment relating to a punishment of withholding of increment. What prevented the Railways from making this recovery immediately after the imposition of the punishment is not clear and in any case they cannot raise this demand nearly 20 years after the event. The recovery of Rs.148=57 is, therefore, bad.

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(2) Arrears of difference of house rent from  
1.9.1971 to 30.6.1981 - Rs.534=25.

We find from the exhibit placed before the Labour Court that the rents have been revised at various points of time:

- (a) In the C.E.Circular No.4 of 1975 for the period from 1.10.1970 to 31.3.1973;
- (b) In the C.E.Circular dated 15.11.1977 for the period from 1.4.1973 to 31.3.1978, and
- (c) In the C.E.Circular dated 21.4.1978 for the period from 1.4.1978 to 31.3.1983.

What prevented the respondents to make recovery of the revised rent from time to time as and when the circulars were issued or within a short time thereof is not satisfactorily explained. The respondents without effecting any recovery at the appropriate time cannot accumulate all these dues and in one stroke recover the amount from the D.C.R.G. stating that such recoveries are permissible according to the Railway Pension Rules. The applicant continued in service upto 30.6.1981 and the action of the Railways of a miserably belated recovery of Rs.534=25 for the period from 1.9.1971 to 30.6.1981 in one stroke is bad and disapproved.

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- (3) Charges for unauthorised occupation of Railway Quarter from 1.7.1981 to 31.10.1981 - Rs.981=75.

It is contended by the Railways that the applicant who retired from service on 30.6.1981 occupied the quarter till 31.10.1981 and hence they were charging him market rent at 4 times for this period of four months. A person who retires is entitled to retain the quarter for four months after retirement on normal rent. The charging of market rent at 4 times for this duration of 4 months is, therefore, irregular. The Railways can charge only the normal rent for these four months. They have, therefore, to refund the applicant 3/4th of this amount of Rs. 981=75.

- (4) Electrical charges - Rs.117=22 and  
(5) Deposit towards enhanced electrical charges from 1.1.1979 under finalisation - Rs.61=92.

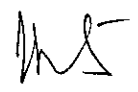
The applicant has not established before the Labour Court that this amount was due from the respondent. Nor was it done before us too. Hence, these amounts deducted must be refunded to the respondent.



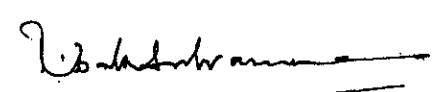
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7. Summing up, the applicant should refund Rs.1,598=21 to the Respondent employee (Rs.1,843=71 - Rs.245=50,) being the normal rent for the four months period preceeding the vacation). The amount of Rs.1,598=21 may be refunded to the respondent Shri S.Gurumurthy within a period of two months from the date of receipt of this order.

8. The application is accordingly dismissed. There is no order as to costs.



(J.NARASIMHA MURTHY)  
Member(Judl.)



(R.BALASUBRAMANIAN)  
Member (Admn.)

Dated: 29<sup>th</sup> July, 1991.



Dy.Registrar(J)

To

1. The Divisional Personnel Officer, S.E.Railway, Waltiar.
2. The Presiding Officer, Labour Court, Visakhapatnam.
3. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
4. One copy to Sd/- S. GURU MURTHY, Asst. Hostry Officer, Shant Nagar, V/Patnam. *S/o Ramaswamy*
- 5 One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd. *530*
6. One spare copy.

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D.J.*

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TYPED BY :  
CHECKED BY :  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

COMPARED BY  
APPROVED BY

THE HON'BLE MR V.C.  
AND  
THE HON'BLE MR. M(J)  
AND  
THE HON'BLE MR. J. NARASIMHA MURTY: M(J)  
AND  
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 29 - 7 - 1991

~~ORDER~~ JUDGMENT

M.A./R.A./C.A. No.  
in

C.A. No. 195/89.

T.A. No. (W.P. No.

Admitted and Interim directions  
issued.

Allowed.

Disposed of with direction.

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal  
DESPATCH  
14 AUG 1991  
HYDERABAD BENCH.

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31/8/91  
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