

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 256 of 1999

Jabalpur, this the 17th day of June 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Prakash Chandra Mishra, aged about 48
years, S/o. Shri Satya Narayan Mishra,
Retired Postmaster, P.O. Goderipara,
district Korla (MP) 497 555. ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,
Through its Secretary,
Ministry of Communication,
Department of Post,
Dak Bhawan, New Delhi.
2. Chief Postmaster General,
Madhya Pradesh Circle,
Bhopal (MP).
3. Director, Postal Services (HQ),
Bhopal (MP).
4. Postmaster General,
Raipur (MP).
5. Director, Postal Services,
Raipur (MP).
6. Superintendent of Post Offices,
Raigarh Division, Raigarh (MP),
496 001.
7. Sub Area Manager, Kurasia Colliery,
South Eastern Coalfields Ltd.,
Chirimiri Area, Korla (MP)
Pin Code - 497553. ... Respondents

(By Advocate - Shri P. Shankaran)

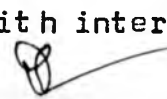
O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :


"(B) set aside the order dated 2.7.98 Annexure A-5
and hold that the action of the Postal Department
in recovering the Penal Rent from the applicant is
without authority, jurisdiction and competence;

(C) direct the respondent/Postal Department to
refund the deduct amount towards Penal Rent to the
applicant with interest;



(D) direct the respondents to release DCRG and Pension to the applicant with 18% interest on delayed payment till the date of realisation;"

2. The brief facts of the case are that the applicant was working as Sub Postmaster and was posted in the Post Office Goderipara with effect from August, 1997. The applicant joined and ^{is} working there as Sub Postmaster. The Central Government or the Postal Department has no Government accommodation of its own nor has any premises to allot the same to the employees of their own department. Accordingly, no Government accommodation was allotted to the applicant by the Postal Department. Goderipara is situated in a place where colliery workers are residing and the work of the Postal Department in Goderipara is also mostly confined amongst the colliery workers. Accordingly the colliery management was kind enough in providing an accommodation bearing house No. 55 in New Miners Quarter to the applicant. The said quarter belong to the South Eastern Coalfields Ltd. Management. The quarter aforesaid was occupied by the applicant in pursuance to the oral order given by the SECL management. Vide order dated 5.2.1998, the applicant was compulsorily retired by the department after an enquiry under the CCS(CCA) Rules, 1965. After retirement he was entitled to get the retiral dues of pension, gratuity, leave encashment and other dues. Provisional pension of Rs. 2,084/- has been sanctioned with effect from 5.2.1998 to the applicant. The Department continued to pay the said amount till August, 1998. On 23.6.1998 an order has been issued sanctioning the provisional retiral gratuity of the applicant to Rs. 63,800/-. The said amount has not been paid to him. Abruptly the Department issued an order dated 27.5.1998 on account of the fact that the said quarter was in possession of the Department. The postal Department has no authority, jurisdiction or grievance against the




applicant for the purposes of vacation of the quarter. The quarter No. 55 was made available to the applicant by the colliery management on its discretion and the Department has nothing to say about it. The applicant submitted a representation to the management. An order dated 2.7.1998 has been issued by the Superintendent of Post Offices, Raigarh Division in pursuance to some order of Director, Postal Services (Hq), Bhopal to recover the penal rent due to non-vacation of the quarter. The normal licence fee is Rs. 85/- per month. Thus the double licence fee would be Rs. 250/- in a month. The respondents Postal Department suddenly started deducting an amount of Rs. 360/- as penal rent from the pension of the applicant and deducted the same for September and October, 1998. The applicant protested against it and when no heed is paid, stopped receiving pension from November, 1998 till date. An order dated 2.12.1998 was issued by the S.P. Raigarh, directing for payment of final DCRG. Another order dated 15.12.1998 was passed directing to pay Rs. 79,750/- to the applicant. The said amount has not been paid till date. No show cause notice and order of cancellation of the allotment has been issued by anybody to the applicant. The Department have no authority and jurisdiction for recovering the amount of penal rent from the pension of the applicant and the same is not permissible under the CCS (Pension) Rules, 1972. No proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 has been initiated against the applicant. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.


4. It is argued on behalf of the applicant that the

residence in question was not of the respondents but it was of the South Eastern Coalfields Limited management. Hence the question of allotment of this quarter does not arise. This quarter was acquired by the applicant in pursuance of the oral order given by the SECL management. No rent was deducted of the said quarter by the respondents from the salary of the applicant and the applicant has never claimed any HRA from the respondents. The applicant filed OA No. 533/1999 which was decided in favour of the applicant vide order dated 17th March, 2004. In this order this Tribunal had quashed the orders passed by the disciplinary authority and the appellate authority and directed the disciplinary authority to impose any other penalty on the applicant other than compulsory retirement, removal or dismissal. He has further drawn our attention towards the decision of the Hon'ble Supreme Court in the case of R. Kapur Vs. Director of Inspection (Painting and Publication), Income Tax and another, (1994) 6 SCC 589, wherein the Hon'ble Supreme Court has held that "Gratuity withheld for not vacating Government accommodation and not paying damages levied under relevant rules for overstay - Right of such a retired employee to gratuity, held, not dependent on vacating the Government accommodation". The learned counsel for the applicant further argued that the respondents have stated in their reply that the provisional retirement gratuity of Rs. 63,800/- has been ordered for payment w.e.f. 5.2.1998 with a clear direction to the applicant that he will vacate the SPMs resident of Goderipara and obtain a certificate to that effect from the present SPM. But the applicant has denied the payment of gratuity in his rejoinder which is not controverted by the respondents in a reply to the rejoinder. He has also drawn our attention towards the judgments of the Hon'ble Supreme Court in the case of Lakshmi Narayan



Mukhopadhyay Vs. Union of India and others, 2002-III-LLJ-527 wherein the Hon'ble Supreme Court has held that "natural justice - Order to recover amount from retiral benefits, passed without giving opportunity to employee, held not sustainable" and in the case of Union of India & Ors. Vs. Madan Mohan Prasad, 2003(1) ATJ 246, wherein the Hon'ble Supreme Court has held that "Non vacation of Railway quarter after retirement - cannot be a ground to with hold DCRG and the leave encashment". The applicant has also drawn our attention towards the judgments of the Ernakulam Bench of this Tribunal in the case of P.K. Gangadharan Vs. Union of India and others, (1997) 35 ATC 107, wherein the Tribunal has held that "the decision making body cannot make facile assumptions that the act of the party is defenceless - This amounts to prejudging the case - Respondents therefore directed to afford opportunity of hearing to the applicant - Public Premises (Eviction of Unauthorised Occupants) Act, 1971, S.7(2)-S.R. 317-B-22 - Natural justice - Concept of", and also in the case of Raveendran P.N. and another Vs. Union of India and others, (1997) 35 ATC 233, wherein the Tribunal has held that "Proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 not initiated but notices issued for vacation of quarters - Held, invalid."

5. In reply the learned counsel for the respondents argued that vide letter dated 24th January, 1983 issued from the office of Western Coalfields Limited to the Superintendent of Post Offices, Raigarh, it is mentioned that "Please refer to letter No. : KC/Qr/11855-9, dt. 6.10.82 from the Personnel Officer, Kurasia and the discussions held with you today the 24th Jan., '83 for rental charge of two miners quarters at Godripara for using Post Office and residential purpose, shall be Rs. 209/- per month. This rent is based on the norms of the Company for the purpose of rental value to



the various organisations." He has further drawn our attention towards the letter dated 26.8.2003 in which it is mentioned that in Godripara Sup Post Office, the said quarter was not registered in the name of Shri P.C. Mishra but it was allotted on his taking charge on the post of SPM from August, 1997. This residence was earlier allotted by the Coalfields, Kurasia to the Postal Department and Shri P.C. Mishra is not paying its rent directly to the SECL." Hence the argument raised by the applicant in this regard that the said residence was not of the Postal Department but it was of the SECL management and it was occupied by him on oral directions by the SECL management and it was never allotted to the applicant by the Postal Department is absolutely wrong, because this quarter was allotted by the SECL management to the Postal Department vide letter dated 24th January, 1983, while the applicant joined the service in the Postal Department in the year 1997. The applicant was given several opportunity of hearing and several notices were issued to him to vacate the quarter but he did not vacate. So far as the proceedings under the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 is concerned, it does not apply in this case because the applicant has only sought relief for not recovering the penal rent from him. If the applicant does not vacate the quarter the respondents are at liberty to initiate the proceedings under the Public Premises (Eviction of Unauthorised Occupant) Act, 1971. The applicant has been compulsorily retired from service but he is still occupying the Government quarter without any justification. The applicant himself refused to accept the pension as mentioned in the Original Application itself.

6. We have given careful consideration to the rival contentions made on behalf of the parties and we find that



the quarter in question was originally belonged to South Eastern Coalfields Limited Management but it was handed over to the Superintendent of Post Office, Raigarh, Camp: Kurasia Colliery vide letter dated 24th January, 1983 by the SECL Management much before 1997. Hence, the arguments advanced by the applicant that the quarter in question was not of the Postal Department, seems to be not correct. The respondents have filed several notices which were sent to the applicant for eviction of the quarter. Hence on this ground it cannot be said that the applicant was not given opportunity of hearing. But it is seen that the applicant had already filed an O.A. No. 533/99 which was decided by this Tribunal on 17.3.2004 quashing the punishment of compulsory retirement and directing the respondents to impose any penalty on the applicant other than compulsory retirement, removal and dismissal. It was further directed that the intervening period shall be regulated as per rules.

7. It is observed that after passing the aforesaid order dated 17.3.2004 in O.A. No. 533/99, the circumstances have been changed meaning to say that the applicant would be treated in service and, therefore, no recovery of penal rent is liable to be recovered against the applicant as he cannot be said to be an unauthorised occupant of the government accommodation. The applicant is accordingly entitled to get back the amount which has already been recovered from him. Since the punishment of compulsory retirement has been quashed by the Tribunal vide its order dated 17.3.2004 while disposing of the earlier O.A. No. 533 of 1999, the relief pertaining to release of D.C.R.G. has become infructuous.

8. In the facts and circumstances of the case, we allow the O.A. to the extent of quashing the order dated 2.7.1998 (Annexure A-5) with a direction to the



respondents not to further recover the amount of penal rent from the applicant. The amount of penal rent, already recovered from the applicant, be paid to him within a period of three months from the date of receipt of a copy of this order. Respondents may charge normal licence fee from the applicant as per relevant rules. No costs.

(Madan Mohan)
Member (Judicial)

(M.P. Singh)
Vice Chairman

/na/

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....

प तिलिपि अच्ये रिता-

- (1) सचिव, उच्च न्यायालय भवन, (महोदय), जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल
- (4) बंधुपाल, के.सी.ए., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

S. Paul
P. Shankar
30.6.04

Issued
On 30.6.04
BS