

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **04<sup>th</sup>** day of **April** 2018

**Original Application No 330/01041 of 2015**

**Hon'ble Dr. Murtaza Ali, Member – J**  
**Hon'ble Mr. Gokul Chandra Pati, Member – A**

Wajiruddin, S/o late Najiruddin, R/o Aliganj near Shatabdi School District Gaya, Bihar. Also residing at Muslim Mahal, Mughalsarai.

. . . Applicant

By Adv: Shri V.R. Dwivedi

V E R S U S

1. The General Manager, East Central Railway, Hajipur (Bihar), representing Union of India.
2. The Divisional Railway Manager; East Central Railway; Mughalsarai Division, Mughalsarai.
3. The Senior Divisional Operating Manager, East Central Railway, Mughalsarai Division; Mughalsarai.
4. The Senior Divisional Personal Manager, East Central Railway, Mughalsarai Division, Mughalsarai.

. . . Respondents

By Adv: Shri A.K. Sinha, Shri P. Mathur & Shri N.C. Srivastava

**O R D E R**

**By Hon'ble Mr. Gokul Chandra Pati, Member - A**

Heard Shri V.R. Dwivedi, learned counsel for the applicant and Shri N.C. Srivastava, learned counsel for the respondents.

2. This OA has been filed originally with the prayer for the following reliefs:-

“(a) *The Hon'ble Tribunal may graciously be pleased to direct the respondent no. 3 and 3 to correct the length of service which is 41 years one month 17 days not as per the records 38 years two months 23 days and provide every consequential benefits to the applicant including arrear of promotion and pension for which applicant is entitled.*

- (B) That the Hon'ble Tribunal may graciously be pleased to direct the respondent no. 3 to make the payment of gratuity with immediate effect within stipulated period as it has been illegally withheld by the respondent no. 3 and payment should be made with 18% panel interest.**
- (b) The Hon'ble Tribunal may graciously be pleased to direct the respondent no. 4 to ensure all consequential benefits to the applicant within stipulated time as fixed by Hon'ble Tribunal.**
- (c) This Hon'ble Tribunal may further be pleased to award costs of the proceedings in the matter to applicant.**
- (e) Any other relief deemed fit and proper in the circumstances of the case may also kindly be granted to applicant."**

3. Vide the order dated 30.08.2017 of this Tribunal in this OA, learned counsel for the applicant confined his relief only to the payment of gratuity of the applicant which has been withheld by the respondents on account of the dispute relating to vacation of railway quarter by the applicant, although the applicant retired on 31.01.2014. The OA has been filed with a delay condonation application. Since the relief is restricted to release of gratuity, the OA is treated to have been filed within time and delay if any, in filing the OA, is condoned in respect of the relief relating to payment of gratuity.

4. The matter was heard today. Learned counsel for the applicant submitted that the applicant has retired since 31.01.2014 and his entire gratuity has been withheld by the respondents on the ground of dispute relating to vacation of railway quarter in Gaya by the applicant, after the applicant was transferred from Gaya to Mughalsarai in the year 2000. He submitted that as per the case of the applicant, he vacated the quarter in question in 2002 vide the letter of the applicant regarding his vacation of the quarter w.e.f. 09.01.2002 addressed to the GM, EC Railways (respondent No. 1) copy of which is at Annexure No. 4 to the OA. But this has not been accepted by the respondents. He submitted that even if the

contention of the respondents that the applicant had vacated the quarter on 07.03.2013 as per the notice of the respondents dated 18.03.2013 (Annexure No. 8 to the OA) is accepted, still there is no justification to withhold the gratuity of the applicant in full after 07.03.2013, particularly when the rent in respect of the quarter was being deducted from his salary regularly till he vacated the quarter.

5. Learned counsel for the respondents submitted that the applicant has vacated the quarter at Gaya in 2013 and for unauthorized occupation of the quarter, he is liable to pay the penal rent as per the rules.

6. We have considered the pleadings and submissions of the learned counsels. It is not known whether the respondents have taken any action on the applicant's letter at Annexure No. 4 to the OA informing that he has vacated the quarter on 9.01.2002 to verify the contentions of the applicant therein. Even if it is assumed that the applicant has vacated the quarter on 07.03.2013, as stated in the letter dated 18.03.2013 of the respondents (Annexure No. 8 to the OA), it is not known why the gratuity of the applicant has not been released after his retirement on 31.01.2014 since he had vacated the quarter on 07.03.2013 as per the report of the respondents. In other words, release of gratuity to the applicant has been delayed by more than 4 years after his retirement without any valid reasons, particularly when there is no dispute about his occupation of quarter after his vacation on 07.03.2013.

7. Apart from the delay in release of the gratuity to the applicant by more than 4 years after retirement, the question of recovery of penal rent or damage from gratuity was examined by Hon'ble Supreme Court in the

case of ***Union of India & Ors. Vs. Madan Mohan Prasad*** reported in ***2003 (1) ATJ 246*** with the following observations: -

***“3. It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is ‘admitted’ and ‘obvious’ dues. The payment resulting in penal damages is neither ‘admitted’ nor ‘obvious’ dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either ‘admitted’ or ‘obvious’. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are ‘admitted’ or ‘obvious’ dues can be deducted out of the same, if still due.”***

Further, in the case of ***Union of India Thru The Gen Mgr. N.C.R. & Ors. vs. Central Administrative Tribunal & Anr. In WRIT - A No. - 20681 of 2009***, Hon’ble Allahabad High Court has held as under:-

***“We fully agree with the view of Bombay High Court. Rule 15 (1) says it shall be the duty of the Head Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement. The words ‘due for retirement’, according to us mean the dues upto the date of retirement. Rule 15 (2) of the Rules, 1993 provides for the recovery of Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, means the dues as ascertained and assessed on the date of retirement or death of the railway servant. It does not contemplate dues accruing after the date of retirement .....***

***The Division Bench of this Court in the case of Smt. Marjaddi Vs. Central Administrative Tribunal, Allahabad Bench, Allahabad and others (supra) has also held that the recovery of damages for retention of official quarter against the gratuity is illegal.***

***In the case of Gorakhpur University vs. Dr. Shitla Prasad Nagendra and others, reported in 2001 (2) SCSLJ 247, the post retiral dues of the Professor of the University had been withheld on the ground that the Professor has retained the University's accommodation after his retirement. The Apex Court has held that pension and gratuity are no longer matters of any bounty to be distributed by the 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.....”***

8. In this case, the dues relating to the quarter rent/penal rent have arisen before retirement of the applicant, but it is not known whether these dues relating to occupation of quarter by the applicant including penal rent

etc. have been assessed as per the rule 15 of the Railway Services (Pension) Rules, 1993. We also note that as stated by the counsel for the applicant, the respondents have recovered the quarter rent for occupation of the railway quarter at Gaya from the salary of the applicant till vacation.

9. In view of above, the OA is disposed of with a direction to the respondents to release the gratuity of the applicant after deducting the outstanding rental dues for the applicant's occupation of the railway quarter at Gaya, which have been assessed as per the rule 15 of the Railway Services (Pension) Rules, 1993. It is further directed that the respondents shall also pay an interest on the balance amount of gratuity payable to the applicant at the rate of 9% per annum from 31.01.2014 till the date of actual payment of the dues to the applicant, if the payment is made within two months from the date of receipt of a copy of this order. In case of failure of the respondents to make the payment to the applicant within two months, the respondents shall pay the interest at enhanced rate of 12% per annum on balance amount of gratuity from 31.01.2014 till the date of actual payment and the interest amount paid to the applicant for delayed payment of gratuity to the applicant shall be recovered in full from the officer who would be found responsible for delay in releasing the payment of gratuity to the applicant.

10. The OA is allowed partly as above. No cost.

**(Gokul Chandra Pati)**  
Member (A)

**(Dr. Murtaza Ali)**  
Member (J)

/pc/