

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/705/2017

**Reserved on: 19.12.2018
Order pronounced on: 20.12.2018**

Between:

Sri Ashok M. Matey, S/o. late Mahadev Matey,
Aged about 61 years, Occ: Retd. Assistant Divisional
Physiotherapy Officer, O/o. Medical Director,
Opp. Block Central Hospital, S.C. Railways,
Lalaguda, Secunderabad – 500 017.

...Applicant

And

1. The Union of India,
Rep. by the Chief General Manager,
South Central Railways, Rail Nilayam,
Lalaguda, Secunderabad.
2. The Chief Personnel Officer,
South Central Railways, 4th Floor, Rail Nilayam,
Lalaguda, Secunderabad.

...Respondents

Counsel for the Applicant	...	Mr. R. Yogender Singh
Counsel for the Respondents	...	Mr. Bhim Singh, Advocate for Mr. M. Brahma Reddy, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the recovery of a sum of Rs.9,99,903/- from the gratuity of the applicant.

3. Brief facts of the case are that the applicant retired from the respondents organisation on 31.10.2016. An order was received from the Honourable VII Senior Civil Judge, City Civil Court directing to withhold Rs.8,09,417/- from the applicants retirement benefits. Against this order, the 2nd respondent has

withheld Rs.9,99,903/- from the retirement benefits. Aggrieved over the same the OA has been filed.

4. The contentions of the applicant are that for having stood surety to a chit fund company, the order of recovery was issued by Honourable VII Senior Civil Judge referred to. The applicant further contends that there can be no attachment of gratuity as per Section 60 CPC and also as per the observation of the Honourable Supreme Court in *Radhey Shyam Gupta vs Punjab National Bank & Anr*, in CA No.6440-41 of 2008, reported in *2009(1) SCC 376*, wherein it was held that Gratuity would not be liable for attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Civil Procedure Code.

5. Respondents admit that the amount of Rs.8,09,417/- has been kept in deposit Pension in view of the orders of the Honourable VII Senior Civil Judge , City Civil Court in E.A. No. 359/2016 in E.P. No.150 of 2016. An additional amount of Rs.1,90,486/- was deducted towards railway dues. The respondents cited Honourable Supreme Court Judgment in *U.T Chandigarh & ors vs Gurucharan Singh & anr*, in CA No.9873 of 2013, wherein it was stated that any amount paid by mistake to an employee can be recovered. An interim order was also issued by this tribunal on 10.1.2018, wherein the applicant was directed to make an application within a week of receipt of the order and the respondents to verify and dispose the representation within 2 weeks thereafter. The applicant has not made any such representation.

6. Heard both the ld. Counsel and perused the documents on record. Their arguments were in resonance with the written submission made by them.

7. The dispute is about withholding gratuity. Section 60(1)(g) of CPC clearly prohibits any attachment of gratuity. Honourable Supreme Court has also observed accordingly in the judgment cited by the applicant. Further, the Honourable VII Senior Civil Judge, City Civil Court in E.P No.150 of 2016 has only ordered to withhold the cited amount from the retirement benefits and not from Gratuity. Therefore the action of the respondents is not as per law. The respondents can recover railway dues as per the Supreme Court judgment cited by them but cannot hold on to the Gratuity. The learned counsel for the respondents when specifically questioned as to whether gratuity amount was withheld he had no clear answer. It needs to be mentioned that the delay could have been avoided, had the applicant applied as directed in the interim order of this Tribunal. Nevertheless, the OA succeeds in view of the provisions of law and the Honourable Supreme Court observation in regard to Gratuity. OA is **allowed**. Consequent to allowing the OA, the respondents are directed to consider to take action as under:

(i) If the Civil Court has directed for attachment, the respondents should file an application before the learned Civil Court as to the restraint of immunity in respect of attachment of the Gratuity and get the earlier order of the Civil Court modified. It is only thereafter that the applicant shall be paid gratuity. Till then, the same has to be withheld. In any event, uptill the date of disbursement of the gratuity, the applicant is entitled to interest @ 8.5% (which corresponds to interest available for senior citizens on Fixed Deposits by any nationalized bank).

Therefore, the respondents are directed to take necessary action as to the application to the civil court for necessary order as spelt out in the earlier

paragraph and on obtaining the same, the amount of gratuity be released to the extent of Rs.8,09,417/-, withholding railway dues pointed out from the total Gratuity, with interest @ 8.5% from the date of expiry of 90 days reckoned from the date of superannuation till the date of payment.

- (ii) Time allowed is five months from the date of receipt of this order.
- (iii) There shall be no order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of December, 2018

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