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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 451/2003

New Delhi this the 27th day of January, 2004

Hon'ble Shri R.K.Upadhyaya, Member (A)

Shri P.S.Vimal,
IRTS (Retd.),
Flat No. B-3/12, Rail Vihar,
Indirapuram, Ghaziabad.

...Applicant

(Present in person)

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1. Union of India, through
Secretary, Railway Board,
Ministry of Railways,
New Delhi.

2. General Manager,
South Eastern Railway,
11, Garden Reach Road,
Caluttta-43

...Respondents

(By Advocate Shri Rajinder Khatter)

O R D E R (ORAL)

Hon'ble Shri R.K.Upadhyaya, Member (A)

Applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 claiming that the deductions made from his retirement dues, particularly from Death-Cum-Retirement-Gratuity (for short DCRG) as per letters dated 6.12.2001 and dated 21.12.2001, respectively (Annexures A-2 colly) are bad in law. He, therefore, made a request that this should be declared so and the applicant should be paid full DCRG amount of Rs.3,50,000/- with interest at the rate of 24% per annum. He has also asked for payment of costs of the proceedings and compensation for mental agony and financial hardship.

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2. The applicant had retired on 31.7.2001 while working as Chief Traffic Manager, South Eastern Railway. According to the applicant, he was sanctioned Rs.3,50,000/- as DCRG as per letter dated 25.7.2001. However, the same was not paid immediately but the payment was made in pursuance of order dated 21.12.2001 (Annexure A-2) after deduction of Rs.83,521/-.

3. The applicant has disputed several items of deductions from DCRG which are discussed hereinafter.

(a) An amount of Rs.6771/- has been deducted on account of interest on HBA. The applicant states that the amount so deducted is excessive by more than Rs.1000/-.

(b) The applicant also states that the amount of Rs.16,798/- which has been deducted on account of interest on motor car advance, is also excessive. He states that the balance amount recoverable from the applicant as per letter dated 22.9.98 (Annexure A 7) of Chief Personnel Officer, Eastern Railway, Calcutta was Rs.15,868/- only. Therefore, recovery of Rs.16,798/- is excessive.

(c) The applicant is also aggrieved by the deduction of an amount of Rs. 21,900/- being one month's salary towards Railway Employees Liberalised

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Health Scheme (for short RELHS). According to the applicant, he was not paid the amount as stated but he was paid Rs.21,561 only for the month of July, 2001. According to the applicant, the amount deducted is excessive.

(d) The amount of Rs.82/- being deducted on account of LPG charges on inspection carriage is not pressed being small.

(e) The applicant states that Rs.14672/- has been deducted from his gratuity as deduction towards income tax. According to the applicant, this amount is wrongly calculated and it should have been much less even on the admitted facts. Another grievance in this regard is that the respondents have not issued Tax Deduction Certificate to enable him to claim even refund from Income Tax Department.

(f) The applicant is also aggrieved by deduction of Rs.3298/- towards arrears of house rent. According to the applicant, no prior information about this recovery was given to him. However, he states that no house rent is recoverable from him.

(g) The applicant is also aggrieved by deduction of Rs.20000/- which is kept in deposit.

3. The applicant also attributed certain allegations of harassment against some of the officials

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of the respondents and stated that payment in his case has been got delayed on their account and deductions which were not due have been made from DCRG. Therefore, the respondents should be directed to pay full payment of DCRG along with interest and costs to the applicant.

4. Learned counsel of the respondents invited attention to the reply filed and stated that the claims made are not in conformity with the facts of the case. As a matter of fact, the amounts determined have been vetted by Audit before making any recoveries. With regard to the claim of excess amount in respect of HBA, it is stated by the learned counsel that the applicant has not made out any specific grievance of the claim of interest recoverable from him even in his representation dated 15.1.2002 (Annexure A-3) but he merely states that the deduction "is considered excessive". Learned counsel further fairly stated that it is for the applicant to state as to how much is the excess amount and if there is any excess amount of interest recovered from him, it will be examined by the respondents. So far as the claim of excess recovery of interest on motor car advance is concerned, similarly the amount of interest on motor car advance can also be examined if the applicant makes the specific details available for the purpose. So far as the deduction of Rs.20,900/- on account of RELHS is concerned, it is stated that the same has been made in accordance with the rules on the subject. There is no dispute that the pay due to the

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applicant at the time of his retirement was Rs.21900/- and, therefore, no excess amount has been made. He also invited attention to annexure A-4 along with the rejoinder of the applicant wherein the applicant has himself given declaration which reads as follows:-

" This contributon may be deducted from my settlement dues (last basic pay Rs.21,701/-)"

Learned counsel of the respondents stated that the last basic pay of the applicant is Rs. 21900/- and not Rs.21,701/-. Hence, Rs.21,900/- has been deducted towards the contribution of RELHS. No relief is also due to the applicant regarding deduction on account of income tax of Rs.14672/-. It is stated by the learned counsel that the payment of income tax is statutory responsibility of the employer. If the applicant wants any certificate, he may approach the respondents and obtain the same if that was not already issued. So far as deduction on account of arrears of house rent of Rs.3298/- is concerned, it is stated that the applicant was aware of the fact that he had been permanently transferred. Therefore, excess amount of house rent was payable by him as per the rules. Hence, no relief even on this account is due. In this connection, learned counsel also invited attention to the reply filed regarding deduction of Rs.20000/- being kept in deposit on account of electricity which reads as under :-

"Since, the final meter-reading statement for consuming power for staying in the said Railway accommodation by the applicant was not received from Eastern Railway authority, an amount of Rs. 20,000 was kept in deposit from DCRG of the applicant for arranging recovery of

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the arrears of Electricity charges only. However, on receipt of the final bill from the Eastern Railway authorities for a total amount of Rs.16,392/- (out of which Rs.9490/- was already recovered at flat rate of Rs.225/-per month during the material period), the balance recovery of Rs.6903/- was made and residual amount of Rs.13097/- has been passed for payment vide FA & CAO S.E.Railway's cheque No.551935 dated 4.9.03 and sent under registered post to the residential address of the applicant on 5.9.2003".

5. Learned counsel of the respondents also stated that the applicant did not submit the relevant documents and complete particulars and proformas for finalisation of retiral dues in time. According to the learned counsel, some papers were given on the last date of his retirement, i.e., on 31.7.2001 which was also amended from time to time and amended papers were given even on 20.9.2001. Learned counsel stated that because of these short-comings, final payment could not be made to the applicant in time for which the respondents are not responsible. In this connection learned counsel, also invited attention to letter dated 6.12.2001 (Annexure.A 2) of FA & CAO communicating no claim certificate in favour of the applicant. It is stated that the final payment of gratuity could not be settled for want of no claim certificate and as soon as the same was received it was released immediately. Therefore, there was no question of any liability for interest.

6. The applicant has also filed rejoinder reiterating the same claims as in the OA. It has also been stated that the applicant has submitted pension papers "very much in advance at least six months before

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the due date of retirement". It has also been stated in the rejoinder that some of the dues have been recovered only after the retirement of the applicant and no basis for the same has been intimated to the applicant before making such recoveries.

7. The facts in this case as well as the relevant records have been perused carefully and the arguments of the applicant as well as the counsel of the respondents have been taken into account. There is no dispute that the applicant retired on 31.7.2001 and his basic pay on his retirement was Rs.21,900/- PM. However, on account of order dated 15.6.2001 of the Railway Board the applicant was awarded a penalty of reduction in pay of one stage for one month. With this pay reduction w.e.f. 22.6.2001 to 21.7.2001, the pay of the applicant was reduced from Rs. 21900/- to Rs.21400/- PM.

8. Even though the applicant has claimed that there has been excessive deduction on account of interest on HBA and motor car Advance, the same does not appear to have been properly represented before the respondents for their consideration. The representation dated 15.1.2002 (Ann.A.3) merely states that there is excessive recovery. Therefore, in my opinion, it is desirable that the applicant makes a fresh representation giving the details of his calculation of interest both on account of HBA as well as motor car advance for consideration of the respondents. In case, the applicant makes such claim

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now, the respondents (particularly respondent No.2) are directed to decide the same within a period of two months from the date of receipt of a copy of this order and fresh representation of the applicant by passing a reasoned and speaking order, under intimation to the applicant.

9. In so far as the deduction of Rs.21900 in respect of RELHS is concerned, both the parties have not been able to place on record the relevant rules prescribing the amount of deduction to be made. As already pointed out, the last pay drawn by the applicant on the date of retirement was Rs.21900/-. However, the applicant's pay was reduced upto 21.7.2001 to Rs.21400/-. Therefore, the retiral average basic pay was less than Rs.21900 as admitted by the respondents. The respondents are directed to look into the matter and decide afresh as per the rules. However, if the amount of basic pay as on last date is to be considered, then no excessive deduction is noticed. The respondents may re-examine this amount once again in the light of rules and instructions on the subject. In case, any excessive amount has been recovered from the applicant, the same be refunded to him. So far as the Income Tax is concerned, the amounts has been paid to the Central Govt. Therefore, the only way open to the applicant is that he makes claim of refund from the income tax department on the basis of tax deduction certificate issued by the employer. In case, no such certificate has been received by the applicant,

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he may ask for the same and the respondents are directed to issue such certificate within one month from the date of receipt of a copy of this order.

10 So far as the amount of Rs.3298/- on account of arrears of house rent of Rs.3208 is concerned, it is again not clear as to how this amount of Rs.3298/- has been calculated. It was desirable that the respondents should have communicated the basis of calculation to the applicant before enforcing any recoveries. They are directed to intimate the applicant the basis of recovery and if the applicant is still aggrieved by the calculation of the respondents, he will be at liberty to challenge the same in accordance with rules on the subject and the remedies available to him in this regard. The Hon'ble Supreme Court in the case of **UOI and Ors Vs. Madan Mohan Prasad** (2003(1)ATJ 246 has held that only 'admitted' and 'obvious' dues (like normal rent and not disputed penal rent) could be recovered from DCRG.

11. The deduction of Rs.20000/ on account of electricity was perhaps not in accordance with the rules on the subject. However, as pointed out by the learned counsel of the respondents in the reply that the excess amount has also been refunded to the applicant and if the applicant is not satisfied with their calculation, he may dispute the same in accordance with law. However, it is clarified that the applicant had given an undertaking as per his letter dated 31.7.2001 (Annexure-5) that if he is

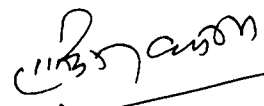
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liable to pay any amounts due to respondents, he is agreeable to the recovery from his DCRG in lieu of Govt. dues that may be found recoverable from him. In view of this declaration the applicant cannot be allowed to state that recovery of due amounts was not proper by the employer.

12. The claim of the applicant for payment of interest or costs is also not admissible to him on the facts of this case. There is ample material on record to confirm that the applicant was also partly responsible for the delay in submitting the requisite details/papers for finalising the retiral dues. There is sufficient material on record that he has not submitted papers "at least six months prior to his retirement" as claimed. On the other hand, some of the papers have been filed within the last week of July itself. It is also noticed that payment has been released immediately after receipt of no claim certificate from FA & CAO dated 6.12.2001 by the impugned order dated 21.12.2001, it cannot be stated that the respondents have unduly delayed the payment.

13. In view of directions as stated in preceding paragraphs, this OA is partly allowed without any order as to costs.


(R.K.Upahyaya)
Member (A)

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