

**(2011) 06 P&H CK 0003**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 563 of 1989 (O and M)

Pran Nath Kumaria

APPELLANT

Vs

The Union of India and others

RESPONDENT

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**Date of Decision:** June 1, 2011

**Acts Referred:**

- Central Civil Services (Pension) Rules, 1972 - Rule 19, 25

**Citation:** (2011) 164 PLR 167

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

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**Judgement**

K. Kannan, J.

The matter in challenge before the writ petition is an attempted recovery from an ex-Army employee, who was visited with

punishment of compulsory retirement for unauthorized absence on leave without sanction. The order of compulsory retirement was challenged

unsuccessfully by the petitioner before this Court and before the Hon"ble Supreme Court. The issue in controversy revolves around the treatment

of his period of stay in the accommodation provided to him beyond the period of compulsory retirement and how the leave period were to be

treated.

2. The impugned proceedings (Annexure P7) was with reference to his continuance in possession of the accommodation from 01.05.1986 to

08.12.1986. The amount collected from the petitioner was at two differential rates, namely, Rs.550/- from 30.11.1985 to 01.05.1986 and

Rs.1,650/- from 01.05.1986 to 08.12.1986. The contention of the petitioner was that he had been prosecuting the proceedings before the High

Court and before the Hon"ble Supreme Court and the possession could not have been treated as unlawful and be liable for any penalty. The

counsel states that the employer would be entitled only to recovery of the market rent and there is no provision for penalty. In my view, the

contention is well-founded for the petitioner to recover damages in respect of public premises in unauthorized occupation which is provided

through Section 7 contemplates assessment of damages on account of use and occupation, but does not contemplate the imposition of any penalty.

The term "use" and "occupation" must be understood only as what rent it could fetch in the open market. If rent of Rs.550/- was to be taken as

the market rent even for the subsequent period from 01.05.1986 to 08.12.1986 that is, for a period of 7 months, the amount could have been only

Rs.3,850/- and not Rs.11,450/- as assessed. I reject the contention of the State, even while rejecting the contention of the petitioner that his

possession could not be termed to be unlawful during the time when he was prosecuting the case before Courts challenging the order of

compulsory retirement, I will hold that the quantum assessed in the impugned order (P7) as regards the damages payable on account of rent and

penal charges are liable to be scaled down to Rs.7,150/-.

3. As regards the other contention relating to the recovery of half pay leave encashment without pay, the justification is that the recoveries are done

in the manner contemplated under Rule 25 of the Central Civil Services Rules of 1972. The learned counsel for the petitioner contends that the

recoveries are not in consonance with Rule 25. The learned counsel also refers me to Rule 19 that deals with grant of leave on medical certificate

as a matter of course. I am not prepared to examine this situation since, although the petitioner produced proof of fitness, leave was not sanctioned

and this act of availing of leave without sanction, was itself treated as misconduct to inflict the punishment of compulsory retirement. The only issue

would be whether Rule 25 would allow for the recoveries in the manner sought for. The said Rule reads as follows:

25. Absence after expiry of leave.- (1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent

after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as

though it were half-pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

4. I do not find that the computation made accords with the bare reading of the Rule. The petitioner has stated in the petition that he already had

one year of earned leave and two years of half pay leave and medical leave. This, according to the petitioner, amounted to leave earned for a

period of two years. In terms of Rule 25, non-sanctioned leave is liable to be debited against his leave account as though it were half pay leave to

the extent of such leave is due. The period of excess of such leave alone would be treated as extraordinary leave. If the contention of the petitioner

is correct as regards the earned leave, the half pay leave and medical leave, there was no period of unsanctioned leave which is in excess. The

recoveries could not have been made without ascertaining the entitlement to the leave which he had already earned. The entitlement of recovery of

Rs.6208.38 for the period between 02.07.1983 to 25.10.1983 has been made without making the calculation in the manner referred to in Rule 25.

The demand contained in the impugned notification (P7) as far as HPE is concerned, is quashed. If any amount is payable by the respondent by a

proper computation under Rule 25, the amount payable to the tune of Rs.7,150/- as damages as "use" and "occupation" is bound to be deducted

from the same. If only the amount calculated under Rule 25 falls short of Rs.7,150/-, the question of recovery arises. The impugned demand

contained through Annexures P4 and P7 are quashed and the writ petition is ordered in terms of the above directions. There is also a consequent

prayer for recovery of gratuity and full pension. The counsel for the respondent states that the demands contained through the impugned notices

were already recovered from the terminal benefits. The amount shall be reworked and if any amount is payable to the petitioner, it shall be

immediately released and the said exercise will be undertaken within 8 weeks from the date of receipt of copy of this order. If any amount is payable, the same shall also attract interest at 6% from the date of the impugned order till date of payment.