

(2010) 01 CAL CK 0020

In the Calcutta High Court

Case No : W.P.C.T. 30 of 2009 and W.P.C.T. 722 of 2005

Suniti Kumar Chaudhury

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 16, 16(1), 16(4)
Railway Claims Tribunal Act, 1987 — Section 10(c), 3, 8(1)

Citation : (2010) 3 CALLT 102

Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Suniti Kumar Chaudhury, for the Appellant;

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the writ petitioner in person.

2. Assailing the order dated 17th July, 2008 passed in O.A. No. 861 of 2007 by the Central Administrative Tribunal, Calcutta Bench, this writ application has been filed. The impugned order reads such:

"1. The applicant who is a retired Judicial Member of the Railways Claims Tribunal, Kolkata has filed this application praying for the following relief:

(a) A direction may be given to the respondents 3, 4 to refund and pay to the applicant the amount of the pension of his past service which have been deducted from his monthly salaries paid in the RCT, Kolkata, as his appointment in the RCT, was not re-employment but was fresh appointment under Rule 5(1) of the RCT, (salaries and allowances and other conditions of service of Chairman, Vice- Chairman and Members) Rules 1989 for which he was entitled to receive pension of his past service under Rule 5(2) of the said Rules and his case was not covered by the proviso to Rule 3 of the same Rules which as per Rules of interruption has to be carved out from the main provision of that Rule and is distinct from the provisions of Rule 5(1) & (2).

(b) A direction may be given to the respondents 3, 4 and 5 to compensate the applicant for not providing him the service of personal/bungalow peon for the period of his in the RCT, Kolkata from the establishment of the respondent No. 3 at the rate of the monthly salaries of such peon.

(c) A direction may be given to the respondents No. 3 & 4 to pay the leave encashment amounting to Rs. 64,888/ (Rupees Sixty Four Thousand Eight Hundred Eighty Eight) only in terms of Rule 6(3) & (4) of the said Rules and as per letter No. RCT/Kol/Pen/ leave salary/76 dated 29.7.05 without any deduction.

(d) A direction may be given to the respondent No. 3 & 4 to disburse the RCT's pension to this applicant in terms of Rule-8 of the said Rules and as per letter No. RCT/Kol/Pen/LS/76 dated 6.12.05 of the office of the respondent No. 3. The pension became due from the date of retirement of the applicant from the post of Judicial Member of the RCT, Kolkata and so a direction may be given to those respondent for payment of the monthly pension with interest @ 12% p.a.

(e) An order may be passed declaring that Section 10(C) of the RCT Act is void ab-initio and ultra vires Article 13(2) of the Constitution and consequentially this applicant is deemed to be eligible for any further employment under the Govt, or local or other authorities.

2. The grounds on which the relief have been claimed are summed up para-wise as follows:

(a) Relief No. 1: The applicant says that the salary of the applicant as Member (Judicial) in Railway Claims Tribunal is reduced by the amount of pension which the applicant was granted in parent department when he took voluntary retirement. The applicant has refuted the contention made by the respondent that Rule 3 of the gazette notification dated 19.9.89 whereby Rules of Railway Claims Tribunal Act were framed, would be applicable in his case. The applicant on the other hand says that he is covered by Rule 5(2) of the Railway Claims Tribunal Rules and is not covered by the proviso of Rule 3 of the said Rules as claimed by the respondent. The applicant says that the provisions of Rule 5(2) are distinct from the proviso to Rule 3 and deal with different categories of appointees. According to the applicant the proviso to Rule 3 is not an integral part of the "main part" of the Rule and the proviso is applicable to persons including the retired Judge of the High Court who are appointed after retirement on superannuation in their past service. The proviso is not applicable to persons who had to seek retirement from their service before their appointment in the Claims Tribunal as per Rule 5(1). Therefore, according to the applicant, his appointment and salaries etc. are governed by Rule 5(1) & 5(2) and Rule 3 including the proviso is not applicable in his case. Moreover, the applicant contends, proviso to a Rule is not an integral part of the Rule and therefore under no stretch of imagination the applicant will come under the purview of proviso to Rule 3.

It is pertinent here to extract Rule 3 including the proviso and Rule 5(1) & 5(2):

Rule 3:

Provided that in the case of appointment as Chairman, Vice-Chairman or Member of a person who has retired as a Judge of High Court, or who has retired from service under the Central Government or a State Government and who is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers' contribution to a Contributory Provident Fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension or pensionary equivalent of employer's contribution to the Contributory Provident Fund or any other form of retirement benefits, if any, drawn or to be drawn by him.

Rule 5:

(1) The Chairman, a Vice-Chairman or Member who, on the date of his appointment to the Tribunal, was in the service under the Central Government or a State Government shall seek retirement from such service before his appointment to the Tribunal and in the case of a sitting Judge of a High Court who is appointed as Chairman, his service in the Tribunal shall be treated as actual service within the meaning of Sub-clause (b) of paragraph 11 of Part D of the Second Schedule to the Constitution of India.

(2) Subject to the provisions of Rule 3, the Chairman, a Vice-Chairman or member shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him prior to such retirement.

(a) Provided that he shall not be allowed to carry forward his earned leave but shall be entitled to receive cash equivalent to leave salary, if any due, in accordance with the rules applicable to him prior to his retirement.

(b) Relief No. 2: The applicant says that the respondent have not disputed that he was entitled to one personal peon as per the conditions of service. He remained in service as Member for over 2 (two) years. For more than a year the respondent slept over the matter and thereafter they decided as per rule no Bungalow Peon/Personal Peon is given to persons having less than 12 months of service in terms of the copy of the CPOE. Rly's letter No. E/891/4/CLN/Policy/99 dated 5.12.04. The applicant says that the respondent messed up the matter and then put up an excuse for not giving him the service of a personal peon. Therefore the fault is entirely that of the respondent and the applicant is entitled to get compensation as prayed for by him in the O.A.

(c) Relief No. 3: The applicant says that the respondent have not disputed that Rs. 64,888/- was due to the applicant for leave encashment. The respondent have stated in their reply that memorandum was issued for releasing Rs. 44,888/- deducting Rs. 20,000/- towards excess use of mobile phone and office hired vehicle as per audit observation. However, the amount was not released. The respondent have also not made it clear whether it was due to excess use of mobile phone or of office hired vehicle in a subsequent order it was stated that

Rs. 20,000/- was proposed to be deducted from leave encashment due to excess use of office hired vehicle.

The applicant says that he was not informed of any proposal to deduct any amount from his dues for excess use of mobile phone and office hired vehicle. The respondent decided to deduct this amount from these dues on alleged excess use of mobile phone and office hired vehicle although of details of particulars have been brought to his notice.

The respondent further clarified in their reply that the amount of Rs. 44,888/- also could not be released because in the meanwhile an over payment of Rs. 72,135/- was found to have been drawn by the applicant towards Dearness pay merged with pay after its merger with pay and also excess payment of Dearness Pension in the previous service. The applicant has stated very categorically that any payment made on account of previous service of the applicant cannot be a matter of concern to the respondent. The benefit of merger of 50% of Dearness Allowance with basic pay was allowed to the applicant in the Railway Board's circular dated 6.8.04. The applicant has stated that the respondent have not referred to any rule whereby such payment can be treated as excess payment. The respondent have not been able to give, any satisfactory explanation that they have the right to recover the excess payment by the State.

(d) Relief No. 4: Regarding delay in finalisation of his pension the respondent says that he is entitled to get pension in terms of Rule 8, of Railway Claims Tribunal Rules. The pension became due from the date of retirement of the applicant from the post of Judicial Member and therefore he prays for a direction to the respondent for payment of the monthly pension with interest. The applicant says that no reasonable and acceptable explanation has been offered by the respondent for holding up the matter.

(e) Relief No. 5: The applicant says that Section 10(c) of the Railway Claims Tribunal Act is an inconsistent provision in the Act. It is severable from other provisions of the Act and therefore there is no question of taking the benefit of such an inconsistent provision of the Act. This should be declared void under Article 13(2) of the Constitution.

3. With reference to the above grounds and reasons given by the applicant, we proceeded to see what were the answers provided by the respondent. Regarding Relief No. 1 the contention of the respondent is that the service of the Members of the Railway Claims Tribunal is to be governed by the relevant provisions of Railway Claims Tribunal Rules. It is not that provisions of Rule 3 are meant for retired High Court Judges only, as stated by the applicant and that the applicant's service is governed by Rule 5(1) & (2). The respondent have also rebutted the points made by the applicant that proviso to a Rule is not an integral part of the Rule. On the contrary, the respondent stated that the proviso to a part of the Rule as it clarifies the manner in which the Rule will be applicable in certain given conditions. Therefore in such conditions the main Rule cannot be

applied in isolation without the application of the proviso. The contention of the respondent is that Rule 3 including its proviso is applicable in the case of the Member. There was no question of not deducting the pension, drawn from the previous employer, from the salary of the applicant from the Railway Claims Tribunal.

4. Regarding Relief No. 2 the only explanation which the respondent have provided is that the respondent made a good number of correspondence with the appropriate authority regarding the claim for a personal peon by the Member of the Claims Tribunal. When the matter was about to be decided the remaining service of the applicant was less than 12 months and as per the relevant CPO's circular of the Railway Board personal peon could not be granted for the applicant at that stage. Apart from this no other explanation has been provided.

5. Regarding Relief No. 3 it is stated by the respondent that total amount of Rs. 92,135/- (Rs. 72,135/- due to over payment of Dearness pay + Rs. 20,000/- for excess use of office hired vehicle and mobile, phone) has to be adjusted from the dues of the applicant. The dues on account of leave encashment was only Rs. 64,888/-. Therefore the excess amount of Rs. 27,247/- was to be adjusted from the pension and pension relief due to the applicant from the Railway Claims Tribunal. It is further stated by the respondent with reference to both Relief (3) & (4) that decision was taken by the respondent towards payment of Railway Claims Tribunal pension in favour of the applicant. The sanction of the competent authority dated 12.3.08 was communicated to the applicant. The Railway Claims Tribunal, Kolkata also decided that the dues of Rs. 27,247/- should be recovered from the Dearness relief on pension. By this submission the respondent say that grievance regarding delay in payment of pension has been take care of and finally the pension is going to be paid after deducting the dues of Rs. 27,247/-.

6. The response of the response of the respondent to the only other remaining relief i.e. provision of Rule 10 of the Railway Claims Tribunal is that the provision is not inconsistent with the other provisions. It is provided in the Rules keeping in mind the dignity of the Member of the Claims Tribunal. It is also stated by the learned Counsel for the Respondent during oral submission that the Railway Claims Tribunal Act as an act of the Parliament and the Tribunal has no authority to examine the vires of any provision of the enactment by the Parliament. What the Tribunal can do at the most is examine the provisions of subordinate legislations and Rules framed thereunder. Therefore, if the Tribunal is without any jurisdiction in so far as this relief is concerned.

7. We have gone through the submissions and the reasons put forth by the applicant. We have also examined the answer to the definite points made by the applicant. We have also applied out mind to the oral submissions made by the learned Counsel during the hearing. Regarding the dispute of the applicant on the proviso under Rule 3 of the Railway Claims Tribunal Act we hold the view that the Respondent's explanation is tenable and acceptable. On the perusal of the provisions it is clear that provision of Rule 3 does not have an aura of exclusivity.

It is not true that persons who would become Members after seeking voluntary retirement from a previous employer will not come under the purview of Section 3. We also cannot subscribe to the view expressed by the applicant that proviso to a Rule is not an integral part of the Rule. We, therefore, uphold the decision of the Respondent to modify or adjust the amount of salary payable to the applicant as Member of the Claims Tribunal on account of pension drawn by him from the previous service.

8. Regarding the provision of Bungalow Peon we are not satisfied by the explanation given by the Respondent. It is not disputed that the applicant was entitled to persona peon. The Respondent slept over the matter for over one year and only when the remaining service of the applicant fell short of one year, they invoked the provisions of CPOs circular to deny him service of a Bungalow Peon. The applicant, therefore, deserves to be compensated for not being provided with the service of personal peon to which he was entitled. Therefore, we direct the Respondent to compensate him for the same at the rate of the monthly salaries of such peon for the length of his service in the Claims Tribunal.

9. Regarding deduction of Rs. 27,247/- the Respondent's action will be justified provided they are able to satisfy the applicant with proper documents as to the excess use of mobile phone and office hired vehicle to the tune of Rs. 20,000/-. We hold otherwise that the respondent are justified in recovering the over payment of Dearness Pay of Rs. 72,135/- from the retiral dues of the applicant. The applicant's contention that the respondent have no right to adjust the amount as the over payment was made by previous employer is not acceptable. However, we do not find enough explanation as to the allegation of excess use of mobile phone and office hired vehicle. The respondent have not stated anything beyond saying that this has been observed by the Audit. The applicant, it appears, has been kept in the dark as to the month, year, etc. of such excess use and the bills pertaining to such excess use. The respondent, therefore, owe the applicant an explanation in the matter. We, therefore, direct that respondent No. 4, Chairman, Railway Claims Tribunal will issue a speaking order in this matter explaining how the respondent will be justified in making recovery of this Rs. 20,000/- from the retirement dues of the applicant. This speaking order should also cite the bills etc. of the period during which such excess use was made. Only after such explanation through a speaking order the respondent will be justified in recovering Rs. 27,247/- from the pension/pension relief due to the applicant from the Railway Claims Tribunal. Unless the respondent decide to offer such explanation only Rs. 7,247/- can be recovered from the retirement dues from the Railway Claims Tribunal.

10. Regarding the applicant's challenge of Section 10(c) of the Railway Claims Tribunal Act we are satisfied with the explanation given by the respondent. Without going into the question whether the provision is inconsistent or consistent with the other provisions of the Act. We hold that this Tribunal does not have the jurisdiction to scrutinize the provision of an Act which is passed in

the Parliament as is vested with the Supreme Court or High Court. It is not a rule framed under a statute.

11. With the above directions the O.A. stands disposed of. No order as to costs.

3. In the writ application, petitioner has prayed the following reliefs:

(a) Issue a writ of Mandamus and/or writ in the nature thereof setting aside and/or cancelling and/or rescinding and/or modifying the impugned order commanding and/or directing and/or compelling the respondent and/or each of the respondent to pay to the petitioner the amount of the pension of his previous service which was deducted from his monthly salaries in the R.C.T. Kolkata and to pay him the leave salary and arrears of pension for the service in the R.C.T. without any deduction and to pay him compensation for not providing him Bungalow/ personal peon as per the order in para 8 of the impugned order forthwith; and to declare that Section 10(c) of the Railway Claims Tribunal Act being inconsistent with other provision of that Act and having being made to take away or abridge the rights conferred by Article 14 and 16 of the Constitution is in contravention of Article 13(2) of the Constitution and is void accordingly.

(b) issue a writ of certiorari and/or writ in respect of the nature thereof against the impugned order wherein there are errors on the face of record, commanding the respondent and/or each of them to transmit to this Hon"ble Court the records/Rules/circulars/orders relating to the impugned order for their examination and for quashing the same if found illegal void and contrary to law and far rendering conscionable justice to the parties;

(c) Issue writ of prohibition and/or writ in nature thereof prohibiting the Central Administrative Tribunal from acting going beyond its jurisdiction and commanding the respondent and/or each of them not to take any illegal benefit out of the impugned order which is subject to scrutiny in this writ petition;

(d) Issue any other writ and/or order and/or direction under Article 226 of the Constitution;

(e) Issue Rule NISI interims of prayers (a), (b), (c) and (d) above;

(f) Pass ad-interim order against the respondent No. 2 directing him to pay the dues to the petitioner forthwith interims of prayers at (a) above;

(g) Pass an order for costs of and incidental to this petition.

4. It is the grievance of the writ petitioner before us assailing the order of the learned Tribunal below that the learned Tribunal failed to appreciate the legal question so far as the petitioner's entitlement to enjoy the Pay Scale of Rs. 7300-100-7500-250-8000 per mensem in terms of Rule 3 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice-Chairman and Members) Rules, 1989 whereby there was no scope for deduction of pension amount as available to the petitioner for his erstwhile service in terms of Rule 3. It is the further contention that Rs. 20,000/- has been illegally

deducted on alleged misuse of mobile phone and others. The last contention is that the amount of Rs. 72,135/- which was declared as over payment of Dearness Pay justifying the deduction thereof by the learned Tribunal below does not conform to the reasoning.

5. In the writ application, in Prayer (a) save and except the prayer for release of pension for the service in the Railway Claims Tribunal without any deduction no other prayer has been made specifically to that effect that Tribunal's finding justifying the deduction of Rs. 72,135/- should be set aside and quashed. The petitioner in person is appearing. He was in judicial service and on seeking voluntary retirement joined as a member of the Railway Claims Tribunal. It is the contention of the writ petitioner that having regard to Rule 5 of the said Salaries and Allowances and Conditions of Service Rules as referred to, the petitioner is entitled to get full salary as a member of Railway Claims Tribunal without any deduction of pension amount as enjoyed by the petitioner for his erstwhile service in Higher Judicial Cadre in the State of West Bengal. It is the further contention of the petitioner that proviso of Rule 3 cannot control the main provision of Rule 3.

6. Having regard to the submissions, we have to interpret Rule 3 and Rule 5. Rule 3 and Rule 5 reads such:

3. Pay. - The Chairman shall receive a pay of rupees nine thousand per mensem; a Vice-Chairman shall receive pay of rupees eight thousand per mensem and a Member shall receive the pay in the scale of rupees 7300-100-7500-250-8000 per mensem:

Provided that in the case of appointment as Chairman, Vice-Chairman or Member, a person who has retired as a Judge of High Court, or who has retired from service under the Central Government or a State Government and who is in receipt of, or has received or has become entitled to, receive any retirement benefits, by way of pension, gratuity, employer's contribution to a Contributory Provident Fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension or gratuity or equivalent of employer's contribution to the Contributory Provident Fund or any other form of retirement benefits, if any, drawn or to be drawn by him.

5. Retirement from parent service on appointment as Members. - (1) The Chairman, a Vice-Chairman or a Member who, on the date of his appointment to the Tribunal, was in the service under the Central Government or a State Government shall seek retirement from such service before his appointment to the Tribunal and in the case of a sitting Judge of a High Court who is appointed as Chairman, his service in the Tribunal shall be treated as actual service within the meaning of Sub-clause (i) of Clause (b) of para 11 of Part D of the Second Schedule to the Constitution of India.

(2) Subject to the provisions of Rule 3, the Chairman, a Vice-Chairman or Member shall be entitled to receive pension and gratuity in accordance with the

retirement rules applicable to him prior to such retirement:

Provided that he shall not be allowed to carry forward his earned leave but shall be entitled to receive cash equivalent to leave salary, if any due, in accordance with the rules applicable to him prior to his retirement.

7. On a bare reading of the provision it appears that under Rule 3 pay scale has been fixed to the Scale of Rs. 7300-8000 per mensem in respect of a member of Claims Tribunal, but by proviso certain categories of the appointee who are retirees from earlier service recognised by the Claims Tribunal suffered an embargo of enjoyment of full salary and, as such, a provision made for deduction of pension as available to them from the said pay scale, being a pension amount for erstwhile service. It is a settled legal provision of law that a proviso can clarify the main provision. Rule 3 is the provision for fixation of pay packet and it has no connection with Rule 5. Rule 5(2) only provides entitlement of pension in accordance with the retirement rules applicable prior to such retirement. The conjoint reading of Rule 3 and Rule 5 provides an answer that for fixation of pay the pension as available by the petitioner should be deducted. The proviso and its effect is the controlling field here.

The interpretation of proviso practically a complex problem. It depends on different determinants namely, the reflection of statutory provisions, the purpose and object of the statute, the remedial measures by proviso as intended to be achieved etc. Different judgments in this field interpreting "proviso" may be referred to.

8. In the case *Abdul Jabar Butt Vs. State of Jammu and Kashmir*, while considering the Section 8(1) and its proviso of the Jammu and Kashmir Preventive Detention Act, the Court held "in the first place it is a fundamental rule of construction that a proviso must be considered in relation to the principle matter to which it stand as a proviso. Therefore, the proviso in question has to be constructed harmoniously with the provision of Sub-section (1) to which it is a proviso and the direction not to communicate the grounds should be issued as soon as may be.

9. In the case *Corporation of City of Toronto v. A.G. for Canada* (1946) AC 32, however, the Court held:

The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. The territory of a proviso. therefore, is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment

clearly says unless the words of the proviso are such that it has that as its necessary effect.

10. The Craies on statutory interpretation, 5th Edition page 201-202 speaks to the effect:

The effect of an excepting or qualifying proviso, according to ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it: and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect.

11. In the case *Rhonda Urban Council v. Taff Vale Railway Company* reported in (1909) ACT 253, the Court held as follows:

It is true that the section is framed as a proviso upon preceding sections. But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before.

It has been observed thereto further

The law with regard to a proviso is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as saving clauses in which cases they will not be construed as controlled by the section.

12. In the case *T. Devadasan Vs. The Union of India (UOI) and Another*, wherein it was the stand of the petitioner that the carry forward rule relating to the vacancy for Scheduled Castes & Tribes not filled in one year, would swell the reservation to SC/ST to 65% causing deprivation of his right under Article 16(1) of the Constitution of India. The respondent justified the carry forward rule under Article 16(4) of the Constitution of India. Rejecting the contention of the respondent. The Court observed:

This Court has already held that Clause (4) of Article 16 is by way of a proviso or an exception to Clause (1). A proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. To hold that unlimited reservation of appointments could be made under Clause (4) would in effect destroy the guarantee contained in Clause (1) or at best make it illusory.

13. But the said view of the majority in *Devadasan* (supra) was overruled by the majority in *State of Kerala and Another Vs. N.M. Thomas and Others*, which subsequently got approval by a majority of nine Judges Bench in *Indira Sawhney v. Union of India* reported in 1992 (supple) 3 SCC 217 by holding that Clause 4 of Article 16 was not an exception to Clause 1 of Article 16.

14. In the case *Commissioner of Income Tax Kerala and Coimbatore Vs. Krishna*

Warriar, proviso (b) to 1 Section 4(3) (i) of the Income Tax Act, 1922 on point of tax exemption considered by the Apex Court. The view as follows:

It is not an inflexible rule of construction that a proviso in a statute should always be read as a Limitation upon the effect of the main section. Generally the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso: but the clear language of the substantive provision as well as the proviso may establish that the proviso is not a qualifying clause of the main provision but is in itself a substantive provision. In the words of Maxwell:

"The true principle is that the sound view" of the enacting clause, the saving clause and the proviso taken and construed together it to prevail."

If business is property and is held under trust wholly or partly for religious or charitable purposes, it falls squarely under the substantive part or Clause (I) and in that event Clause (b) of the proviso cannot be attracted, as under that clause of the proviso, the business mentioned therein is not held under trust but one carried on behalf of a religious or charitable institution.

15. In the case Dwarka Prasad Vs. Dwarka Das Saraf, which was a case under UP (Temporary) Control of Rent & Eviction Act, 1947, the Court while dealing with the meaning of proviso to find out meaning of word "accommodation" in the matter of lease of a building with its equipment for a cinema business, Court held:

Though many functions have been assigned for provisos one has to be selective having regard to the text and context of the statute. If on a fair construction the principle provisions is clear, the proviso cannot expand or limit it. Sometimes the proviso is engrafted by an apprehensive draftsman to remove possible doubts to make matters plain to light up ambiguous edges. A proviso must be limited to the subject-matter of the enacting clause. It is not a separate or independent enactment. Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context. A proviso ordinarily is but a proviso although the golden rule is to read the whole section inclusive of the proviso in such a manner that they mutually throw light on each other and result in a harmonious construction.

16. The said view echoed in the cases AIR 1981 1127 (SC) , in the case The State of Karnataka Vs. Krishnappa, , M/s. Hyderabad Asbestos Cement Products and Another Vs. Union of India and Others,

17. In the case Babulal Nagar v. Shree Synthetic Ltd. 1984 suppl SCC 216 the Court held "a proviso does not cut down the ambit of the main provision but it cannot be interpreted to denude the main provision of any efficacy and reduce it to a paper provision". With that view to avoid miscarriage justice both main provision and proviso interpreted accordingly.

18. Having regard to the different decisions aforesaid, meaning of proviso, may

be summarized under the following categories: - (Quoted from book "Interpretation of Statutes" by Vepa P. Sarathi 4th Edition, reprint copy of year 2006, Page 374).

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held to be a repeal of the section as the proviso speaks the later intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to the interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of the section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

19. Travelling down the lanes of different judgments as already referred to and the different propositions for interpreting the proviso as discussed, the present case could be answered.

20. On application of the settled legal position of law as discussed regarding the effect, purpose and concept of a proviso, we are not finding any illegality in the finding of the learned Tribunal below rejecting the prayer of writ petitioner claiming full salary without any deduction of pension as received by him for the service rendered as a cadre of Higher Judicial Service in the State of West Bengal. So far as the deduction of Rs. 20,000/- on account of illegal use of mobile phone as alleged, it appears that the learned Tribunal has considered that point and accordingly directed the respondent No. 4, Chairman, Railway Claims Tribunal to pass a speaking order explaining the justification of recovery. The learned Tribunal passed the following orders:

....We therefore direct the respondent No. 4, Chairman, Railway Claim Tribunal will issue a speaking order in this matter explaining how the respondent will be

justified in making recovery of this Rs. 20,000/- from the retirement dues of the applicant. This speaking order should also cite the bills etc. of the period during which such excess use was made. Only after such explanation through a speaking order the respondent will be justified in recovering Rs. 27,247/- from the pension/ pension relief due to the applicant from the Railway Claims Tribunal. Unless the respondent decide to offer such explanation only Rs. 7,247/- can be recovered from the retirement dues from the Railway Claims Tribunal....

21. Since the learned Tribunal has already kept the, matter open to decide the issue, the petitioner cannot urge that point further here. It is the contention of the petitioner that no speaking order passed justifying the recovery of Rs. 20,000/- from the retirement dues. If that be so, the petitioner is at liberty to agitate the matter before the learned Tribunal below but the same cannot be considered as an issue in this writ application straightway. So far as the justification of views as expressed by the learned Tribunal below regarding recovery of Rs. 72,135/- by identifying the amount as over payment of Dearness Pay, we are of the view that the learned Tribunal did not discuss the point in details and did not assign any reason for the conclusion reached that the Railway Authorities was justified in recovering the said amount. It appears from the original application that the present writ petitioner took the said point. Again in the writ application the same point has been urged claiming, inter alia, that the Railway Authorities had no power to make recovery of over payment, if any, at all while the petitioner was working in the cadre of Higher Judicial Service.

22. In the affidavit-in-opposition there is no positive answer about the contention of the writ petitioner as made in paragraph 13 to that effect save and except the general denial by the Railway Authorities in paragraph 12 that all allegations are denied.

23. Nobody appears today on behalf of the Railway Administration to oppose this writ application.

24. Since the learned Tribunal below did not assign any reason to reach the finding that the Railway Authorities were justified in recovering over payment of Dearness Pay of Rs. 72,135/-, that finding is not legally sustainable applying the principle of speaking order doctrine. The speaking order doctrine mandates assigning the reason which is the heart and soul of the decision.

25. Having regard to such findings of the learned Tribunal, we are of the view that Tribunal's order is not legally sustainable in view of the basic principle of law that every order passed by any administrative body or any quasi judicial body and/or even by the judicial body must disclose the reason, so that the person concerned who is affected thereby may approach the higher forum and/or higher Court assailing the decision thereof. In the case *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*, the Court held that "reason t be give by the appellate or revisional authority even when affirming the impuged decision". Reliance was placed in that

case, the case of Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), and The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, . In that case the Court explained and discussed the contra decision passed in the case S.N. Mukherjee v. Union of India, reported in (1990) 4 SCC 94 by explaining the said decision "that in case of affirmation, no reason separately required to be given as held in S.N. Mukherjee (supra)", should be read as an observation meaning thereby that order of affirmation need not contain any elaborate reasoning as contained in original order, but it cannot be understood to mean that even brief reason need not be given in order of affirmance. The Court further explained in that case the earlier case State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, by observing that "since in the case Prabhu Dayal Grover (supra), it was observed that for affirmative order there was no necessity of giving any reason that observation of Prabhu Dayal Grover (supra) should be read as that the Appellate Authority should disclose briefly application of mind as without any reason said ingredient cannot be satisfied". It has been further held "at least brief reason should be given so that one can know that the Appellate Authority has applied his mind.

26. Right to information and right to be informed about a reason of any decision is within the domain of Article 19(1) read with Article 21 of the Constitution of India as expressed by the Apex Court in the case Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, . It has been held in the case The Manager, Government Branch Press and Another Vs. D.B. Belliappa, that administration is under a general duty to act fairly and fairness founded on reason is the essence of right and equality. Lord Denning MR in the case Breen v. Amalgamated Engineering Union Limited, reported in (1971) 2 QB 175 even held "it is one of fundamental of good administration to assign a reason in the decision". In the case M.P. Industries Limited, Justice Subbarao held while considering the principle of reasoned decision that justice not only should be done but it should be felt to have been done, where reason is a must. Absence of any reason is nothing but non-application of mind, is the view expressed in the case Shanti Prasad Agarwalla and others Vs. Union of India and others, . In the case Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others, wherein in para 17 the Court held "reason is heart bit of every conclusion. It introduces clarity and without the same it becomes lifeless". In the case State of West Bengal and Another Vs. Alpana Roy and Others, on considering the cases, namely, Breen (supra), Amalgamated Engineering Union Limited (supra) and Alexander Machinery (Dudly)Ltd. v. Crabtree, reported in 1974 ICR 120 (NIRC), in para 8 the Court held "reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the unscrutable face of sphinx, it can, by its silence render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reason at least sufficient to

indicate an application of mind to the matter before the Court". In *Alexander Machinery (Dudly) Ltd. (supra)* the Court held "failure to give reasons amounts to denial of justice. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at". The same view reiterated in the case *Jagtamba Devi Vs. Hem Ram and Others*, , wherein in para 10, the decision of *Breen (supra)* and *Alexander Machinery (Dudly) Ltd. (supra)* was quoted. Non-speaking order violates the principle of natural justice is the view expressed by the Constitution Bench in the case *S.N. Mukherjee Vs. Union of India*, by holding that quasi-judicial and administrative body if fails to pass any speaking order it breaches the principle of natural justice. Speaking order principle is applicable to a judicial action also as held in *Smt. Swaran Lata Ghosh Vs. H.K. Banerjee and Others*, .

27. Having regard to the aforesaid findings and observations, we are of the view that the petitioner's prayer so far as the claim of full pay without deduction of pension amount during service tenure as a member of Railway Claims Tribunal, as prayed for in Prayer (a), is not legally sustainable and the finding of the learned Tribunal below to that effect is right and proper and we are not interfering with the said finding in this writ application.

28. So far as the deduction of Rs. 20,000/- on alleged excess use of mobile phone and hired vehicle since the learned Tribunal has already referred the matter back for decision, we are not deciding the same here and if the same has already been decided as per the finding of the learned Tribunal below, against the petitioner he shall be at liberty to agitate the matter by filing a fresh original application before the learned Tribunal below.

29. So far as the finding by justifying the recovery of over payment of Dearness Pay amounting to Rs. 72,135/-, we are of the view that as no reason assigned by the learned Tribunal below it goes to the root of the matter applying the principle of speaking order doctrine which vitiates the order itself, As such, the finding to that effect by the learned Tribunal, namely, "we hold otherwise that the respondent are justified in recovering the over payment of Dearness Pay of Rs. 72,135/- from the retrial dues of the applicant, the applicant's contention that the respondent have no right to adjust the amount as over payment was made by the previous employer is not acceptable" stands set aside and quashed. That point is sent back on remand for decision by the learned Tribunal below on hearing the writ petitioner and the respondent and the learned Tribunal is directed to pass a reasoned decision on that issue.

30. The writ application is partly allowed to that extent and so far as the other prayers of the writ application, the same stand dismissed.

Let xerox certified copy of this order, if applied for, be given to the parties expeditiously.

Mrinal Kanti Sinha, J.-I agree.