

Central Adminisrative Tribunal
Principal Bench

O.A.No.2466/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 2nd day of May, 2003

Shri Brij Mohan Sharma
s/o Shri H.L.Sharma
F-53, Jai Vihar
Nongloi - Najafgarh Road
Delhi.

.. Applicant

(By Advocate: Sh. P.S.Mahendru)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Bikaner. .. Respondents

(By Advocate: Sh. R.L.Dhawan)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, a retired Railway servant, impugns respondents' order dated 29.7.2002 whereby penal rent for unauthorised occupation has been adjusted against the gratuity and moreover, post-retirement privilege passes have been withheld. He has sought quashment of the impugned order with direction to respondents to pay interest on delayed payment of retiral benefits and to issue post retirement privilege passes.

2. Applicant, who was working as Chief Goods Clerk, was allotted a Railway quarter No.141-A, Loco Shed, Kishan Ganj, Delhi, on attaining the age of superannuation, on retirement on 31.12.1997, further retention of Railway quarter for a period of six months upto 30.6.1998 was allowed. Another request, on illness of the wife of applicant, was made to

13

respondents to retain the quarter till October, 1998. As retiral dues were not paid to him till February, 1999, applicant preferred OA 485/99 wherein by an order dated 3.12.1999, on the assurance of respondents' counsel to ensure payment within fortnight, OA was accordingly disposed of.

3. As the Gratuity was not paid, immediately, applicant seeks interest, however, he vacated the Railway quarter on 4.7.2001.

4. By an order dated 29.7.2002, towards rent and other charges amounting to Rs.1,14,446/- was adjusted against the amount of gratuity of Rs.1,10,006/- and applicant was directed to deposit a balance sum of Rs.4,440/-.

5. Applicant ~~is~~ a retired Railway servant, is entitled to two sets of Railway passes which are not issued to him.

6. Shri P.S.Mahendru, learned counsel for applicant, contended that whereas he had vacated the Railway accommodation, recovery cannot be made of the arrears of penal rent and damages without resorting to proceedings under Public Premisses (Eviction of Unauthorised Occupants) Act, 1971.

7. By referring to a decision of the Apex Court in Union of India v. Madan Mohan Prasad, JT 2002 (Suppl.1) SC 65, it is contended that only normal

- 3 -

17

house rent includes electricity and water charges which is admissible, can be deducted out of gratuity and rest of it is to be paid.

8. Shri P.S.Mahendru, learned counsel further contended that respondents are liable to pay interest on delayed payment of retiral benefits, and in so far as the passes are concerned, as per respondents' own instructions, dated 4.6.1982 before withholding post retirement passes a show cause notice is mandatory, which has not been complied with in the present case.

9. On the other hand, Shri R.L.Dhawan, learned counsel appearing on behalf of respondents, vehemently opposed the contentions of applicant and by referring to Railway Servants (Pension) Rules, 1993, which are statutory in nature, framed under Article 309 of the Constitution of India and by referring to Rule 15(3), it is contended that Railway dues as per Rule 15(3)(a) *ibid* includes dues pertaining to the Railway accommodation including arrears of licence fee. Moreover, by referring to Rule 16(8) of the Rules *ibid*, it is contended that when a Railway accommodation is not vacated after superannuation, the full amount of gratuity can be withheld and arrears would be adjusted towards the amount of penal rent and damages.

10. However, referring to decision of Full Bench of this Court, in *Ram Poojan v. Union of India & Others*, ATFBJ 1994-96 Page 244, it is contended that if a Railway servant, on retirement, does not vacate the accommodation, after the expiry of permissible

period, it is not necessary to issue any specific order cancelling the accommodation and for this unauthorised occupation, penal/damage rent can be levied and can be recovered from the retiral benefits of applicant, as per para 1711 of IREM (Vol.II).

11. Further, relying upon a decision of Apex Court in Union of India v. Ujagar Lal, JT 1996(10) SC 42, it is contended that full amount of gratuity, under Rule 16(8) of the Railway Pension Rules ibid, can be withheld for non-vacation of Railway quarter, and as the delay of any payment of gratuity was due to administrative lapse, no interest is admissible and payable to the Government servant.

12. Shri R.L.Dhawan further contended that in so far as withholding of post retirement passes is considered, the same is to be done as per Pension Circular dated 4.6.1982 and for every month of unauthorised retention, one set of post retirement passes can be withheld. Further, relying on Railway Board's letter No.100/2001 issued on 1.6.2001, it is contended that withholding of gratuity and one set of passes of every month is in accordance with rules. He further places reliance on a decision of a Co-ordinate Bench in OA No.2534/97, dated 6.10.1998, M.A.Qureshi v. Union of India to contend that similar claim was rejected, which applies to applicant and stated that declaration has been given by the applicant on 6.12.1997 where it is clearly stated that in case of occupation of accommodation beyond the permissible

-5-

16

period, he is liable to pay the arrears, withholding of DCRG and passes which amounts to a show cause notice.

13. I have carefully considered the rival contentions of the parties and perused the material on record.

14. The Apex Court in Wazir Chand v. Union of India, 2001(6) SCC 596 held that as retired Government servant unauthorisedly retaining the occupation of Government quarter, even after superannuation, is liable to pay penal rent in accordance with rules prescribed and are to be adjusted against the DCRG dues.

15. The ruling cited by Shri P.S. Mahendru, learned counsel for applicant, in so far as Madan Mohan's case supra, the same applies to Railway Pension Rules 1950, and moreover, as the dues were not admitted, normal rent was allowed, and as the present case is not covered by those rules and rather covered by Rules 15 and 16 of the Railway Pension Rules, 1993, applicant's gratuity can be withheld and adjusted towards the arrears of unauthorised occupation of Railway accommodation. This is in consonance with the decision of Full Bench in Ram Poojan's case supra. However, in Ujagar Lal's case supra as the delay in payment of gratuity has not been found to be on account of any administrative lapse but admittedly on retention of Railway accommodation, beyond the permissible period allowed by the Rules and instructions, applicant is not entitled for any

6
12

interest on the gratuity. The arrears of penal rent/damages and other charges are rightly adjusted towards his payable gratuity.

16. In so far as withholding of passes are concerned, as per respondents' own instructions issued on 1.6.2001, it is incumbent upon them to issue a show-cause notice before disallowing the passes.

17. The contention of Shri R.L.Dhawan that declaration given by applicant on 6.12.1987 which operates as a show cause notice, cannot be countenanced. As no show cause notice was issued to applicant before withholding of his post-retirement passes, cannot be justified under the rules.

18. In view of the above, OA is partly allowed. Although the action of respondents to adjust the arrears on account of unauthorised occupation of Railway quarter is legally sustainable, and the applicant is not entitled for any interest on the delayed payment, in so far as the post retiral privilege passes are concerned, in absence of any show cause notice to applicant, action of the respondents in withholding the passes is not legally sustainable. Accordingly, respondents are directed to release forthwith the post-retirement privilege passes to applicant. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/