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OA-2378/99

MA-2828/99.

31-7-2001.

44-45

Present: Sh. S.K. Sawhney, learned Counsel
for the Applicant.

Sh. R.L. Dharwan, learned Counsel
for the Respondents.

Bench: Hon'ble Mr. Govindan S. Tambe, MCA.
Hon'ble Mr. Shankar Raju, M.C.J.

Arguments heard and order
Reserved.

B.O.

Bhargava

31.7.2001

C.O.

C.IV

8/8/2001

The order pronounced today
in Court IV order enclosed

For
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C.IV

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2378/99

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New Delhi this the 24 day of July, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sh. Pitambar Dutt Sharma,
S/o Shri Tulsidas Sharma,
Retired Gurad Grade 'A',
Northern Railway,
Delhi, R/o Railway quarter No.7/1,
Railway Colony, Kishanganj,
Delhi.

...Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Supdtg. Engineer (Estate),
Northern Railway,
DRM Office,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
DRM Office,
New Delhi.

...Respondents

(By Advocate Shri R.L. Dhawan)

ORDER

By Mr. Shanker Raju, Member (J):

The applicant in this OA has challenged the order passed by the respondents on 10.11.98, whereby his gratuity has been withheld and recovery of penal rent from 17.1.95 to 31.3.96 has been ordered against the applicant. The applicant has sought directions to release the DCRG of the applicant alongwith interest at 12% per annum from 17.5.94 to the date of payment as well as to direct the respondents to charge normal rent for the railway quarter for the period from 17.1.95 to 31.1.96.

2. The applicant retired from service on 16.5.94 and

had not vacated the Railway quarter in expectation that the same would be allotted to his son on compassionate grounds.

The quarter was regularised in the name of his son w.e.f.

11.4.96. The applicant has contended that the order is without jurisdiction as the Estate Officer is appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Reliance has been placed on the decision of the Apex Court in B.S. Vadera v. Union of India & Others, AIR 1969 SC 118. The matter has been referred to a Larger Bench by order dated 5.9.2000 on the following reference:

"Whether the Rules made under the proviso to Article 309 of the Constitution and the instructions contained in the Railway Establishment Manual and the Circulars and instructions issued by the Railway Board for the recovery of rent or damages from an unauthorised occupant or other allottees will have any effect under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 came into force?

3. Consequent upon the decision of the Full Bench dated 25.5.2001 it is held that as the allotment of Railway accommodation is not a condition of service the judgement in B.S. Vadera (supra) would be of no assistance to the applicant and the reference is covered by CAT (Full Bench) Allahabad Bench ruling in Ram Poojan v. Union of India, reported in Kalra's Administrative Tribunals Full Bench Judgments 1996-94 page 244.

4. As regards the grievance of the applicant for non-issuance of retirement passes in the order of reference being a multiple relief claimed the same has not been gone into.

5. In view of the decision of the Full Bench the grievance of the applicant regarding recovery on account of unauthorised occupation does not survive and is not legally sustainable. As such the recovery order against the applicant is legal and valid in accordance with the rules 15 and 16 of the Railway Services (Pension) Rules. AS

6. The only issue which remains to be decided in this OA is entitlement of the applicant for interest on DCRG. The learned counsel of the applicant by drawing our attention to an order passed by the respondents on 26.10.98 stated that as the Government accommodation has been regularised in the name of the applicant's son w.e.f. 1.4.69 he cannot be said to be in unauthorised occupation of the same after that date and withholding of the gratuity would not be legal and justified. The learned counsel of the respondents has stated that till today the DCRG is yet to be released to the applicant after deducting the due amount as recovery of unauthorised occupation. The learned counsel of the applicant has placed reliance on the decision of the Apex Court in Union of India v. Shiv Charan 1992 (1) ATC 129 wherein the respondent who was in possession of Railway quarter has been directed to hand over the possession and the amount due should be handed over to him minus the amount due to the petitioner. In this conspectus it is stated that the gratuity has nothing to do with the recovery on account of unauthorised occupation. The learned counsel of the applicant stated that the applicant is legally entitled for interest @ 12% on his gratuity w.e.f. 1.4.96 till it is paid to him.

7. On the other hand, strongly rebutting the contentions of the applicant it is stated that the applicant remained in unauthorised occupation of the accommodation till 26.10.98 and by referring to Rule 16 (8) of the Pension Rules it is contended that a Railway servant shall vacate the Railway accommodation immediately after his retirement and in case the same is not done retirement gratuity etc. shall be withheld by the respondents and shall be released on vacation of such Railway accommodation and as the applicant was in unauthorised occupation of the Railway quarter he is required to pay penal rent. The gratuity shall be paid after deducting the same. Placing reliance on the decision of the Apex Court in Union of India v. Ulagar Lal, JT 1996 (10) SC 42 it is stated that as withholding of gratuity was on account of the circular of the Railway Board and not on account of any administrative lapse they are not at fault. The learned counsel of the respondents has also placed reliance on the decision of Apex Court in Rai Pal Wahi & Ors. v. Union of India & Ors., SLP No.7688-91 of 1988 as well as on a decision of this Tribunal in OA-2497/97 decided on 20.1.99 in Bishambar Dass & Ors. where the similar claim was rejected. It is also stated that the gratuity is payable to retired Railway servant after three months of his retirement.

8. We have carefully considered the rival contentions of the parties and perused the material on record. No doubt the gratuity of a Railway servant can be withheld for the purposes of effective recovery on account of unauthorised occupation of a Railway quarter and also the Railway servant has to immediately vacate the

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accommodation after retirement and he is only entitled for the admissible period as envisaged under the Rules. As per the circular of 1989 of the Government regarding interest on delayed payment of gratuity to a retired Government servant this has been held that as if the delay has occurred on account of administrative lapses or for reasons beyond the control of the Government servant. For first three months and upto one year the interest would be 7% per annum and beyond one year it would be 10%. We find from the facts of the present case that the applicant retired from Railway on 16.5.94 and had been allowed the admissible period of 8 months in accordance with the rules, but after 17.1.95 he remained in possession of the Railway accommodation as an unauthorised occupant on the hope of getting the same regularised on compassionate grounds in the name of his son who was also a Railway servant. Ultimately by an order 26.10.98 the said Railway accommodation has been regularised in the name of his son by the respondents w.e.f. 1.6.96. As the Railway accommodation has been regularised in the name of the son of the applicant from the actual date of appointment, i.e. 1.6.96 he cannot be said to be an unauthorised occupant from that date and his gratuity cannot be withheld on that account. The delay in payment of the gratuity which is till now is yet to be paid is not on account of the fault of the applicant but for the recovery due which could have been released by the respondents. It is an administrative lapse of the respondents that had resulted in withholding the gratuity. The respondents could ^h have regularised the accommodation from a prospective date. The applicant being the father ^h of Sh. Mukesh in whose favour the same has been regularised cannot be treated as unauthorised occupant

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for which the gratuity could be withheld. The ratio cited by the learned counsel of the respondents will not apply to the facts and circumstances of the present case, where, admittedly on account of unauthorised occupation of the Government accommodation and in view of the circular the gratuity was withheld. In the instant case the gratuity has not been withheld on account of circular because after 1.6.96 the applicant ceased to be an unauthorised occupant. Rule 16 (9) ibid also envisages withholding of gratuity and it is also stated that the same would be released immediately after vacation of the Railway accommodation. In this view of the matter we are of the confirmed view that withholding of the gratuity of the applicant till today is not legally tenable and the applicant is legally entitled for the interest on the same as contained in the circular of the Government.

9. Having regard to the discussion made above and the reasons recorded, we partly allow this OA and direct the respondents to pay to the applicant his DCRG after deducting the amount as recovery of unauthorised occupation of the Railway accommodation. The applicant shall also be entitled for an interest at the rate of 10% per annum from 1.6.96 till the actual date of payment of the DCRG. The aforesaid directions shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San..'

(Govindan S. Tampi)
Member (A)