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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXXXX No.

Decided on: 24/11/

Shri Amar Nath Dhupar ... Applicant (s)

(By Shri S.K. Sawhney Advocate)

Versus

U.O.I. & Another ... Respondent (s)

(By Shri R.L. Dhawan Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 403 of 1995

New Delhi this the 24th day of November, 1995

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Amar Nath Dhupar
R/o 201/D1 Railway Colony,
Paharganj,
New Delhi.

..Applicant

By Advocate Shri S.K. Sawhney

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
DRM Office,
Chelmsford Road,
New Delhi.

..Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant, who was working as a Head Clerk in the Personnel Branch of the Northern Railway Divisional Office, is aggrieved that the respondents have illegally withheld the DCRG dues and also have not released the post-retirement passes due to him on his retirement from service with effect from 31.5.1991. He has, therefore, filed this application and has prayed that the respondents should be directed to release his DCRG dues with interest at the rate of 18% with effect from 1.6.1991 and also to release the post-retirement passes.

2. The applicant's case is that he had retired from service after serving the Railways for more than 33 years and during service, he was in occupation of the Railway quarter allotted to him. He avers that he could not vacate the Railway accommodation due to non-availability of funds as a major portion of his retirement benefits have been illegally withheld by the respondents in violation of the extant rules and principles laid down by the Hon'ble Supreme Court in various cases including the case of Shri Shiv Charan Vs. Union of India, 1962 (19) ATC page 129. The applicant alleges that the respondents had proceeded against him before the Estate Officer of the Northern Railway, who, by his order dated 24.10.84, directed the payment of damages under the extant instructions of the Railway Board. The applicant alleges that the aforesaid order had been given without taking any cogent evidence and did not discuss the point raised by the applicant in the representation to the Estate Officer. He further alleges that by awarding these damages, the respondents have violated Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'PPEA, 1971') and Rule 8 of the Rules thereunder inasmuch as no evidence was given in regard to the prevailing rent for the similarly situated premises. He further alleges that the act of the respondents in withholding the DCRG was also in breach of Rule 2308 of the Railway Establishment Code Volume.II. The withholding of passes was also in breach of statutory rules according to the applicant. On these grounds, the applicant has sought relief from the Tribunal as

aforesaid.

3. The respondents in their reply have contended by way of preliminary objection that the applicant has no cause of action and the application is also not maintainable under Sections 20 and 21 of the Administrative Tribunal Act. The respondents contend that the Railway Quarter which was in possession of the applicant was required to be vacated by him immediately on his retirement in terms of Rule 16(7) of the Railway Service (Pension) Rules, 1993. He was, however, permitted to retain the aforesaid quarter for a period of 4 months on payment of normal rent and for the next four months from 1.10.1991 to 31.1.92 on payment of special licence fee, i.e., double the normal rent or double the flat rate of licence fee/rent. Despite this extension of time which was granted to him, the applicant failed to vacate the premises on 31.1.1992 and had remained in unauthorised occupation of the quarter. It was on this ground that the payment of gratuity of the applicant was withheld in terms of Rule 16(8) of the Railway Services (Pension) Rules, 1993 and for the period of unauthorised occupation, damage rent of Rs.1224/per month was recoverable from him in terms of the order passed by the Estate Officer of the Northern Railway. The respondents further contend that by the same order, the applicant was also required to vacate the premises within 15 days from the date of publication of that order, failing which, it was notified that the applicant would be liable to be evicted from the said premises. The respondents further aver that due to acute shortage of Railway quarters for eligible

and staff officer / Railway administration had necessarily to enforce the Railway Board's instructions on the subject. As an additional measure to enforce earlier eviction of the quarters after retirement, the Railways have also decided that one set of post-retirement complimentary passes should be withheld for each month of unauthorised occupation of the Railway Quarter. It is submitted on behalf of the respondents that the applicant was fully aware of his date of retirement and when he would have to vacate the premises in accordance with the Railway Board's instructions. The Railway Board's instructions are statutory in character and in enforcing these instructions, the respondents have not acted in an arbitrary manner. They have also averred that Hon'ble Supreme Court have upheld the right of the Railway Administration to withhold gratuity for non-vacation of the Railway Quarter and have also rejected the claim of the employee on the grant of interest on the DCRG for the period it was withheld. In view of this, the respondents contend that this application is totally misconceived and is liable to be rejected. They also contend that the withholding of the DCRG was in terms of the departmental rules and there was no administrative lapse in the payment of DCRG and, therefore, on this ground, the applicant would not be entitled to interest on the DCRG, as laid down by the Hon'ble Supreme Court in the case of Rajpal Wahi Vs. Union of India in SLP 768891/1988 which case, the right of the Railway Administration to withhold the gratuity for nonvacation of the RAilway quarter was also

upheld.

4. The learned counsel for the applicant strenuously argued that the Railway Board's instructions dated 31.5.1991 annexed as Annexure R-5 are not in accordance with the Rule 8 of the P.P.E.A.(Rules),1971, according to which, the Railways were required to give cogent evidence and required to pass order under Section 7 of the P.P.E.A. before imposing damage rent, as prescribed in the aforesaid circular. He contended that the rates for damage rent have been decided without taking into account the prevailing rents as required under the aforesaid rules and, therefore, the act of the respondents has to be declared as illegal. He also contends that under Section 7 of the aforesaid Act, the respondents are required to pass an order, which in this case has not been passed and, therefore, the action of the respondents is in clear violation of the aforesaid Act and the Rules. On the question of entitlement of interest on the delayed payment of gratuity, the learned counsel for the applicant has also relied on the decision in R. Kapur Vs. Director of Inspection, 1994(6) SCC 519 in which the Apex Court has gone along with the Tribunal's conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation was pending since right to gratuity is ^{not} dependent upon vacating the accommodation and, therefore, held that the interest at the rate of 18% per annum could be justified in that case. The learned counsel for the applicant, therefore, prays that his prayer is also similar inasmuch as that the respondents have illegally withheld his gratuity on

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the ground of his not vacating the Government accommodation and, therefore, argued that the prayer for 18% interest on the DCRG from the date of his retirement to the date of payment is very much justified.

5. The learned counsel for the respondents strongly relied on the Rule 16(8) of the Railway Servant (Pension) Rules, 1993 framed under Article 309 of the Constitution. Under this rule, the learned counsel argued that it was permissible for the respondents to withhold the full amount of retirement gratuity, death gratuity, as the case may be in cases where Railway accommodation was not vacated by the Railway servant after superannuation or after cessation of service such as voluntary retirement or death. Secondly, the learned counsel for the respondents stated that the said quarter was vacated by the applicant ultimately on 10.03.95 and, therefore, the gratuity could not be released till that date in terms of the aforesaid Rule. The learned counsel for the respondents relied on the instructions of 31.5.91 on payment of interest on the delayed payment of gratuity which is payable only when it is clearly established that the payment of DCRG was delayed on account of administrative lapse or beyond the control of the Railway servant concerned. The learned counsel argued that normally the gratuity becomes due immediately on retirement. With the specific provision under Rule 16(8) of the Pension Rules, the payment of gratuity shall be withheld in case where Railway accommodation is not vacated and

shall become immediately payable on such vacation and the rules prescribe that the amount of gratuity withheld shall remain in cash to facilitate immediate relief on the vacation of the quarter. The learned counsel strongly relied on the decision in Som Lata Vs. U.O.I., SLJ 1993(2) CAT 565 to buttress the point that the respondents have a right to get the amount of damage rent set off against the dues which are liable to be paid to the deceased employee and that following the decision of the Apex Court in Raj Pal Wahi (Supra) it was held that the applicant could not claim interest on the delayed payment of DCRG amount as withholding was on account of the non-vacation Railway quarter occupied by the applicant. The learned counsel also relied on the decision in State of Haryana VS. K.N. Dutt, 1995(1) SLJ 407, which also upheld the right of the competent authority to recover Government dues from gratuity. It was also pleaded on behalf of the respondents that the assessment of damage rent has been done in accordance with the act and rules and there was no illegality about it. Strong reliance was placed on the decision of the Tribunal in A.N. Bandyapadyay Vs. U.O.I. in O.A. No. 562 of 1994 decided on 14.2.1995.

6. In rebutting the arguments of the learned counsel for the respondents, the learned counsel for the applicant submitted that the decision in the above case in a Single Bench cannot overrule the Full Bench judgment of the Tribunal in Wazir Chand Vs. Union of India which was decided on 25.10.90. The learned counsel also argued that in the Raj Pal Wahi's case, the Apex Court mainly dealt with the question of

grant of payment of interest but had not ruled on the vires of the Railway Ministry's instructions dated 24.4.1982. The learned counsel argued that the aforesaid view was also supported by the Division Bench in their referral order in O.A. No. 2136 of 1989 by which they sought further clarification of the judgment of the Larger Bench which heard O.A. No. 2537 of 1989. The learned counsel submitted that in para 14 of the referral order, the learned Bench observed as follows:-

" We have to first consider the plea of the respondents that the LB's decision that the 1982 circular is infractive of Article 14 of the Constitution cannot be maintained in the light of the Hon'ble Supreme Court's judgment in Raj Pal Wahi's case (supra). We are not persuaded to accept that either of two conclusions referred to in para 12 necessarily follow from that judgment, as contended by the respondents. A perusal of the judgment shows that the issue whether the Railway Board's circular dated 24.4.82 suffers from the vice of discrimination and is, therefore, ultra vires of Article 14, was neither raised by the petitioners therein nor considered suo motu by the Hon'ble Supreme Court. It was taken for granted that this circular did not suffer from such a vice as there was no allegation to that effect. That does not lead to the conclusion that the judgment imprint the 1982 circular with the Supreme Court's stamp of validity. Similarly, on the question of interest also, no question was raised that only an appropriate amount of DCRG should have been retained and the retention of any amount in excess of the appropriate amount was illegal and such retention should render the respondents liable to payment of interest. The Court only considered the question of retention of DCRG in general terms. The judgment in Shiv Charan's case clarifies this matter, as this issue was specially raised therein. For these reasons, the judgment of the Apex Court in Rajpal Wahi's case cannot be relied upon by the respondents to press their claim that the 1982 circular is constitutionally valid, because this issue was neither raised nor decided in that judgment. Therefore, the effect of the decision in the LBJ that the 1982 circular is infractive of Article 14 of the Constitution has to be considered."

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It was further submitted that the above reference was made to the Chairman. It was further submitted that the Railway Board's/instructions dated 31.12.90 was nothing but a reproduction of the pension Circular which the Full Bench in Wazir Chand's case held, cannot override the 1982 circular.

7. I have heard the learned counsel for the parties and have carefully perused the records and also the various decisions relied by the counsel for the parties.

8. It is first necessary to dispose of the objections taken by the learned counsel for the applicant that the procedure prescribed in Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, had not been followed by the respondents inasmuch as, the damage rent had not been properly assessed as the respondents had not ascertained the rent that would have been realized by a private person. The learned counsel, however, could not show how the order of the respondents in fixing the damage rent had not taken into account the aforesaid provision. It is seen that the order for payment of damages with effect from 1.2.92 till the date of eviction of the applicant was made under the powers vested under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, stipulates that in assessing the damages, the respondents shall take into consideration various items as mentioned in the

aforesaid rules as inputs. The applicant has not shown how the determination of the damage rent has been made illegally. There is nothing to show that the respondents had not taken into account the inputs provided under Rule 8 before the determination of the damage rent. In my view, therefore, the contention of the learned counsel for the applicant is not tenable.

9. In regard to the contention of the learned counsel for the applicant that the Single bench decision in Bandyapadyay case (Supra) cannot overrule the Full Bench in Wazir Chand's case (Supra). I find that the 1982 Circular/Instructions dated 24.4.82 which provided for appropriate holding back of amount from DCRG special contribution to discourage retention of unauthorised Railway quarter was modified by the respondents by their circular NO.E(G)/90/GR36 dated 31.12.90 and by incorporation of Rule 16(8) of the Railway Service (Pension) Rules, 1993. These Railway Service (Pension) Rules, 1993 are statutory in nature and embodied the existing rules which superseded all other rules and orders on the subject. Rule 16(8) of the aforesaid rules are reproduced below:-

(8) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement, or death, the full amount of the retirement gratuity, death gratuity or special contribution to the Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on the vacation of such railway accommodation".

In regard to the point raised by the learned counsel for the applicant that the aforesaid rules came into force only in 1993 and, therefore, cannot be relied

upon in this case, I find from the order passed by this Tribunal in O.A. No. 1766 of 1993 - Kedar Nath Vs. U.O.I., it was pointed out that in the SLP before the Supreme Court in Rajpal Wahi's case (Supra), specific attention of the Apex Court was drawn in the affidavit filed on behalf of the Railways that the DCRG was being held temporarily as per the Railway Board's aforesaid circular dated 31.12.90 to meet the anticipated dues of the Railways, and the dues could be computed only when the employees ultimately vacates the quarter. The same provisions of the circular have been incorporated as statutory rules as per Rule 16(8) of the Railway Services (Pension) Rules, 1993 which has not been challenged in this O.A. The vires of this rule was also not before the Apex Court in R. Kapur's case (Supra).

10. In the light of the observations of the Apex Court in Rajpal Wahi's case (Supra) and also in the light of the Railway Board's circular of 31.12.90 and the specific rule, i.e., Rule 16(8) of the Railway Services (Pension) Rules, 1993, it cannot be said that the delay in payment of death-cum-retirement gratuity was on account of any administrative lapse. The withholding of DCRG was in accordance with the Railway Ministry Circular dated 31.12.90 and the Rule 16(8) of the Railway Services (Pension) Rules, 1993. and, therefore, the relief claimed for the interest at the rate of 18% cannot be sustained. Regarding the observation of the Learned Division Bench in their referral order in O.A. No. 2136 of 1989 I find that the matter had not been referred to the Larger Bench and the matter was

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disposed of by the Tribunal vide their order dated 29.09.1992 directing the respondents to pay the entire gratuity to which the applicant was entitled if the same had not been paid and no opinion was expressed in regard to the other reliefs. In view of this, the prayer for interest at 18% on DORG amount from 1.6.1991 is rejected.

11. As regards the prayer for release of post-retirement ~~passes~~ due to the applicant, the respondents have averred that the passes were withheld as per the Railway Board's instructions dated 24.4.82.; however, I find that in disposing of the matter in regard to the question of post-retirement passes, which also came up before the Hon'ble Supreme Court in Raj Pal Wahi's case (Supra), their Lordships held as follows:

".....In such circumstances we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cumretirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse. Therefore, we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same. The Special Leave Petition thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

In the light of the above, I consider it appropriate to direct the respondents to issue the passes prospectively from the date of issue of this order.

12. In the light of the discussion above, the application is disposed of with no order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

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