

(4)

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 488/1995.

New Delhi, this the 19th day of July, 1995.

Hon'ble Shri J.P. Sharma, Member (Judicial)

Shri B.S.Layal,
s/o Late Shri S.S.Layal,
Retired I.C.W.
Northern Railway,
Panjabi Bagh,
New Delhi r/o
J-4/29B, Khirki Extension,
Malviya Nagar, New Delhi.

Applicant.

(By Shri SK. Sawhney, Advocate)

Versus

Union of India through:

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
DRM Office,
New Delhi.
3. Divisional Supdtg. Engineer (Estates),
Northern Railway,
D.R.M. Office,
New Delhi.

Respondents

(By Shri K.K. Patel, Advocate)

ORDER

By Hon'ble Shri J.P. Sharma, Member (J):

The applicant retired as I.C.W. on 31.1.1987. The applicant was allotted the government premises No. 4/2, Railway Colony, Lohi Road, New Delhi and he did not vacate even four months after his retirement and continued to

occupy the same in an unauthorised manner and vacated the same on 03/6/1993 when the Railway Magistrate issued a warrant of eviction under section 190 of the Railway Act dated 25.5.1993. The respondents, therefore, withheld the payment of D.C.R.G. The applicant filed this application for releasing of D.C.R.G. of the applicant alongwith interest @ 18% per annum on the amount of D.C.R.G. from 1.2.1987 to the date of payment alongwith post retirement passes.

On notice the respondents contested the application. The applicant applied for releasing of D.C.R.G. on 30/6/1993. The respondents stated that the applicant never applied for release of the D.C.R.G. earlier and he retained the railway quarter in an unauthorised manner and the quarter was got vacated only after drawing proceedings under Section 190 of Indian Railway Act when the Spl. Railway Magistrate issued an order of eviction. The applicant, therefore, cannot claim the said amount without paying the penal rate of rent and the rent assessed against the applicant is Rs. 79,000/- (Rupees Seventy nine thousand only) and a recovery to be done approximately of about Rs. 50,000/- (Rupees fifty thousand only). The respondents have referred to the case of RajPal Wahi V/s UOI decided by Hon'ble Supreme Court where the claim for interest was disallowed when the allotted premises were retained by the allottee after retirement.

The applicant has filed the rejoinder and stated that since there was no order under section 7 of the Public Premises (E&U) Act, 1971 so respondents cannot claim penal rent.

The facts are further reiterated in the rejoinder.

Heard the learned counsel Shri SK. Sawhney for the applicant and Shri K.K. Patel for the respondents. Infact, the retention of the allotted quarter by an officer of the rank of I.O.W. as the applicant has been, after his retirement is totally unjustified. Hence, the retention of quarter No. 4/2, Railway Colony, Nodhi Road, New Delhi by the applicant after his retirement from service on 31.1.1987 is unjustified and unauthorised. The respondents have proceeded for eviction of the applicant and thereafter the possession was delivered to the respondents on 3.6.1993 as such the applicant has retained the quarter in an unauthorised manner for a period of six years. However, the issue of eviction of retiree from the allotted quarter after retirement cannot be joined with the payment of D.C.R.G. D.C.R.G. is payable to a retiree after his retirement from service. The respondents were free to initiate proceedings for eviction if the retiree became an unauthorised occupant of the premises. The respondents themselves have defaulted in not pursuing the matter for such a long time. Therefore, the applicant cannot be denied the amount of D.C.R.G. which he has earned, for putting a longer years of service with the respondents and cannot be said to be a charity or bounty. The respondents are also prepared to pay the D.C.R.G. but since the applicant did not vacate the premises, the same was not paid and it appears that the applicant made the request for payment of the D.C.R.G. on 30/6/1993 after vacation of the allotted quarter. The

only representation filed by the petitioner which is annexed with the O.A. as annexure A-2 dated 30/6/1993 has no reference of earlier representation/made by the applicant for payment of D.C.R.G.

The case of the respondents is that under certain circulars of the Railway Board, the D.C.R.G. could not be released in favour of the applicant. The contention of the applicant's counsel is that no penal rent can be charged from the applicant cannot be accepted. Allotment to the applicant has been in accordance with certain instructions which also lay down the maximum period for retaining the quarter by a retiree after retirement. In the event of not vacating, the penal rent will be charged. The contention of the applicant's counsel is that the penal rent can be levied on the applicant after proceedings are drawn under rule 7 of the Public Premises (Eq) Act, 1971.

Infact the applicant's counsel has placed reliance on the case of Wazir Chand v/s UOI of Full Bench decision reported in 10 ATC page 60 (1991). In that case the full bench decided that if the retiree has unauthorisedly retained the railway accommodation, railway administration cannot withhold the entire amount of gratuity so long the retired railway servant does not vacate the railway quarter allotted to him. Similarly, regarding railway passes, it is stated that railway administration cannot withhold or

disallow one set of post retirement passes for retention for every month of railway quarter after the retirement of the employee.

In the present case, thus, the non payment of D.C.R.G. cannot be linked with unauthorised occupation of the railway quarter by the applicant after retirement. However, regarding the payment of interest the Hon'ble Supreme Court considered a matter in the case of Rajpal Wahi & Others V/s UOI and others S.L.P. No. 7688-91/88 decided on 27th November, 1989. it was held in that case "In such circumstances we are unable to hold that the petitioners are entitled to get interest on the delayed payment of D.C.R.G. as the delay in payment occurred due to the orders passed on the basis of the said circular of the Railway Board and not on account of administrative lapse. Therefore, we are unable to accept the submission advanced on behalf of the petitioners and so we reject the same". In that case also retiree Rajpal Wahi has retained the railway quarter as in the present case, the petitioner has retained the railway quarter for six years. The interest, therefore, cannot be granted to the petitioner in that event.

The next question is regarding the calculation of penal rate of rent. It is undisputed that the applicant was in unauthorised occupation of the railway quarter after his retirement from service w.e.f. 31.1.1987. He is of the rank of I.O.W. and it cannot be said that he was unaware of the rules on the point. Thus, he is liable to pay the penal rate of rent. The contention of the applicant's

counsel is that penal rate of rent can be charged only after drawing proceedings under the Public Premises (EQU) Act, 1971. It appears in this case that the proceedings were drawn under the said Act but since the order of eviction was passed by the Railway Magistrate under the provision of Section 190 of the Railway Act on 4.5.1993 so the proceedings drawn against the applicant before the Estate Officer, Northern Railway were withdrawn. However, this will ~~not help in release of penal rent from the petitioner under~~ ^{with} ~~rules. Merely because the proceedings have been withdrawn,~~ it cannot be said that the damages rate of rent cannot be charged from the applicant. The question is that in what manner the damage rate of rent can be charged. The contention of the applicant's counsel is that when there is a Public Premises (EQU) Act, 1971, so, under that provision under rule 7, the proceedings could have been drawn and were also drawn but these have been withdrawn and now the department cannot levy the damages under administrative instructions. In this connection, the learned counsel for the applicant has also referred to the decision of Madan Mohan V/s UOI reported in 1993 Vol. II SLJ CAT P.56, but that case is distinguished on the point as in that case no proceedings were drawn for eviction. In the present case, the eviction has already been ordered under section 190 of the Railway Act by the Special Railway Magistrate. Thus, that case does not help the case of the applicant though in that case it was

directed that the proceedings under Public Premises (E&U) Act, 1971 were withdrawn. It is open to the respondents to draw those proceedings even now as the application moved by the Railways before the Estate Officer under Public Premises (E&U) Act, 1971 though under sections 4 & 7 has been withdrawn but no final decision was arrived at. Respondents, therefore, may initiate the proceedings under the aforesaid Act because in this case no rule has been cited by the respondents nor they have filed the manner of calculation as to how the sum was calculated. The respondents have calculated the damages to the tune of Rs. 79,000/- but under what provisions the damages have been directed is not shown. However, the chart of that calculation has been given as Annexure - II which is re-produced below:

| <u>DUE DATES</u> | <u>: Rs. 42,900/-</u> |
|--|-----------------------|
| 1/2/1987 to 31/3/1989 | : 26 months |
| 1/2/1987 to 30/6/1987 = $5 \times 5 \times 30 = 150 + 29.50 = 750$ | = 779.50 |
| 1/7/1987 to 31/3/1989 = $5 \times 21 \times 55 = 5775$ | = 5804.50 |
| 1/4/89 to 31/5/1991 = $26 \times 987 = 25662 + 780$ | = 26650.00 |
| 1/6/1991 to 3/6/1993 = $24 \times 1974 = 47376 + 720$ | = 48091.00 |
| <u>Rs. 79,000.00</u> | |

Recovery to be done approximately Rs. 50,000/-"

In view of the facts and circumstances the application is disposed of as follows:-

- i) The respondents, for recovery of penal rate of rent or damages as per rules, may initiate proceedings or revive the earlier proceedings closed/withdrawn before the

11

- 8 -

Estate Officer by the order dated 12.7.1993 and the Estate Officer shall proceed according to law.

- ii) The applicant shall put an appearance before the Estate Officer as and when asked for;
- iii) The respondents shall pay the amount of D.C.R.G. to the applicant after deducting the rent due to him; and also release the post retirement passes under rules;
- iv) The relief for interest prayed for by the applicant is disallowed in view of Rajpal Nahi's case. Cost on parties.

J. P. SHARMA

(J. P. SHARMA)
MEMBER (J)

/nka/