

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 999/95
T.A. No.

199

DATE OF DECISION

Shri P.K. Aggarwal

Petitioner

Shri R.N. Patel

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors

Respondent

Shri K.N. Patel

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. Adige, Member (1)

The Hon'ble Mr. Lakshmi Swaminathan, Member (2)

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (2)

(2)

Central Administrative Tribunal
Principal Bench

O.A. 999/95

New Delhi this the 28th day of February, 97

Hon'ble Shri S.R. Adige, Member(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Prem Kumar Aggarwal,
R/o Railway Qr. 34/18,
Railway Colony, Delhi Kishanganj,
Delhi-7.

... Applicant.

By Advocate Shri R.K. Relan.

Versus

Union of India

through -

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divnl. Supdtg Enginner/Estate,
D.R.M. Office,
N. Rly; Ex Chelmsford Road,
New Delhi.

... Respondents.

By Advocate Shri K.K. Patel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who has retired on superannuation from the services of the respondents on 30.4.1994, has filed this application claiming the following reliefs:

- (1) To direct the respondents to release the withheld amount of DCRG after recovering normal rent as well as leave encashment with interest @ 18% for delaying the payment of gratuity from 30.4.1994 till the date of payment;
- (2) To quash the impugned order dated 15.2.1995 and to release the withheld complimentary post retirement passes forthwith.

(18)

2. The brief facts of the case are that the applicant had been allotted Railway Quarter No. 34/18, Railway Colony, Delhi Kishanganj, Delhi while in service. As per the relevant rules, he was entitled to retain the quarter for four months after his retirement, i.e. upto the end of August, 94 which was granted to him by the respondents' letter dated 11.5.1994. The applicant sought further extension of stay in the quarter beyond four months which was recommended by the Senior Divisional Medical Officer and he was allowed to retain the quarter from 1.9.1994 to 31.12.1994. It is not disputed that the applicant did not vacate the quarter on the due date, i.e. 31.12.1994. The respondents, therefore, issued a notice to him to vacate the quarter within seven days from the date of issue of the same failing which, it was directed, damage charges as well as water and other charges will be recovered. Finally, the applicant admits that he was evicted from the quarter by the competent authority on 15.6.1995. The applicant has, however, submitted that prior to his vacation, he had submitted another representation seeking permission to retain the quarter on health grounds for a further period of four months from 1.1.1995 to 30.4.1995 as a special case, which was not agreed to by the respondents.

3. The learned counsel for the applicant has submitted that on the date when the applicant retired from service on 30.4.1994, the respondents ought to have paid all his retirement benefits, including the gratuity which they have failed to do. Referring to Rule 16(5) of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'the 1993 Rules'), he submits that at the most ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information from the Directorate of Estates regarding the house allotted to him and any amount of gratuity withheld beyond this ^{date 15/6/95} was, therefore, entirely illegal. He, therefore, submits that the applicant is entitled to be paid the DCRG amount

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with 18% interest. He relies on the Full Bench Judgement in Wazir Chand Vs. Union of India & Ors. (O.A. 2573 of 1989) (Full Bench Judgements of C.A.T. (1989-1991) (Vol.II) 289) and Union of India Vs. Wing Commander Hingorani (SLJ 1987 (3) 154).

4. The respondents have filed their reply and we have also heard Shri K.K. Patel, learned counsel for the respondents. The respondents have submitted that the applicant had continued occupying the Railway quarter beyond the period allowed by the competent authority, i.e. ^{upto} 31.12.1994. For this, they had taken action under the rules and he had been evicted from the Railway quarter on 15.6.1995.

5. Shri K.K. Patel, learned counsel for the respondents, has referred to Rule 16(9) of the 1993 Rules under which the respondents may withhold the entire amount of retirement gratuity till the Railway accommodation is ~~vacated~~ vacated. The respondents have also submitted that the applicant has been evicted in accordance with the rules after issuing him a show cause notice and affording him reasonable opportunity of hearing and there is, therefore, no illegality in their action. The learned counsel has submitted that the DCRG due to the applicant has been released in December, 1995 after the applicant vacated the quarter on 15.6.1995.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties. Rule 16(8) of the 1993 Rules provides that a railway servant shall vacate the railway accommodation immediately after his retirement. In this case, the ^{given to} respondents have ~~consented~~ consented to the applicant for retaining the Railway quarter which had been allotted to him while in service upto 31.12.1994, even though he had retired from service on 30.4.1994. The impugned show cause notice issued to him dated 15.2.1995 intimating to him that he would also be liable for damage charges for unauthorised occupation of the quarter beyond the period of 31.12.1994 is, therefore, in order and so also the subsequent eviction order under which admittedly he vacated the quarter on 15.6.1995.

7. Rule 16(9) of the 1993 Rules provides as follows:

"(9) 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 of 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".

7. Having regard to the facts and the provisions of Rule 16(9) of the 1993 Rules, therefore, the claim of the applicant for payment of DCRG with 18% interest for delay from 30.4.1994 is rejected, as admittedly he had himself not vacated the quarter even after the concession period was allowed upto 31.12.1994. However, in terms of Rule 16(9) of the 1993 Rules, the respondents ought to have released the amount withheld with them immediately on the vacation of the Railway Quarter i.e. 15.6.1995 which they have also failed to do.

8. Having regard to the judgement of the Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another (JT 1994 (6) SC 354) (copy of the judgement placed in the paper book) and the provisions of Rule 16(9) of the 1993 Rules, in the facts of this case we direct that the respondents shall pay interest from 1.7.1995 @ 18% per annum, i.e. two weeks from the date of vacation of the quarter till the date of actual payment of the DCRG and other retirement benefits in December, 1995. The respondents are also directed to release the withheld complementary post retirement passes in accordance with the rules and instructions, if not already done. The respondents shall comply with these directions expeditiously and in any case within a period of two months from the date of receipt of a copy of this order.

9. As regards the other claims of the applicant, we find no merit and the same is accordingly dismissed.

10. The O.A. is partly allowed, as above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Adige
(S.R. Adige)
Member(A)