

Central Administrative Tribunal
Principal Bench

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O.A. No. 1180/95

New Delhi, this the 9th day of January, 1996

Hon'ble Shri B.K.Singh, Member (A)

Shri P.N.Vaid,
s/o Late Shri G.S.Vaid,
Aged 64 years,
(Retired) Senior Accounts Officer,
Railway Electrification, KOTA.

R/o 3/32, Rattan Nagar,
Rohtak Road,
New Delhi- 110 005.
(By Shri R.P.Oberoi, Advocate)

...Applicant

Versus

1. Union of India
(Through the Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi).
2. Dy. Chief Project Manager,
Railway Electrification,
Baroda.
3. General Manager,
Railway Electrification,
Allahabad.
4. Financial Advisor &
Chief Accounts Officer,
N.F.Railway, Maligaon,
Guwahati (Assam) Pin- 781 011.
5. Financial Advisor &
Chief Accounts Officer,
Railway Electrification,
Allahabad.
6. Senior Accounts Officer,
Railway Electrification,
Baroda.

...Respondents.

(By Shri H.K.Gangwani, Advocate)

O R D E R

By Hon'ble Shri B.K. Singh, Member (A):

This O.A. No. 1180/95 is directed against the
impugned order dated 23.6.1994 (Annexure - I) enclosed
with the O.A.

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The grievance of the applicant pertains to the non-release of D.C.R.G. and also non-payment of arrears on account of treatment of suspension period as on duty and the grant of arrears of increments due to him during this period consequent to the period being treated as on duty.

The admitted facts of this case are that the applicant was in occupation of railway quarter and retired from service under the Railways on attaining the age of superannuation w.e.f. 30.4.1989 in the scale of Rs. 3000-4500/- with admissible allowances thereon. On 16.3.1989 respondent no. 2 issued a letter bearing No. GR/RE/FA/381/PNV dated 16.3.1989 regarding the final settlement and pension due to the applicant. A copy of the same has been enclosed with the O.A. as Annexure-III. The said letter at Annexure-III authorised payment of provident fund, group insurance, leave encashment by Railway Electrification Organization and alongwith it the record of qualifying service, L.P.C. etc. and pensionary benefits due were all enclosed. In para 4 of that letter it was further submitted that D.C.R.G. will be kept in deposit till such time the officer vacated the railway bungalow No. RE/V/7 at Mathura. The Deputy F.A. & C.A.O. (R.E., Kota) vide his letter dated 9.5.1989 addressed to the Audit Officer, Railway Electrification, Mathura certified

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in reply to a query from the letter that arrears of rent of Bungalow No. 7 at Mathura, penal rent and over payment due to wrong fixation had been completely recovered upto 30.4.1989. The above mentioned letter dated 9.5.1989 is enclosed with the O.A. as Annexure-IV. Details of salary payable and recoveries made for the period ending 30.4.1989 were shown in the I.P.C. On 9.10.1990, the applicant wrote to A.E.M., Central Railway, Mathura Junction to arrange taking over possession of the bungalow No. 7/RE Officers Colony, Mathura. He mentioned in that letter that he had vacated the bungalow on 29.9.1990 and had informed the concerned officials who had not taken over the physical possession of the bungalow inspite of his requests. A copy of the letter is enclosed with the O.A. as Annexure-V. On instructions from A.E.(Assistant Engineer), Mathura the concerned officials took over the possession of the house of the applicant. on 29.11.1990 certifying that the house had been vacated on 29.9.1990, the copies of these certificates of taking over possession are enclosed as Annexure-VII & VIII with the O.A. A copy of the certificate was issued by I.O.W. to Assistant Engineer, Mathura and to the applicant.

The applicant wrote to Secretary, Ministry of Railways also regarding withholding of a sum of Rs. 70,125/- by the Railway Administration inspite of the fact that he had vacated the bungalow on 29.9.1990.

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Vide Annexure-II of the paper book, he alleged harassment on account of non-release of D.C.R.G. and difference between full pay and allowances admissible for the period 15.4.1987 to 18.2.1988 and the subsistence allowance paid to him. He further claimed arrears of increments for the period from 1.1.1988 to 18.2.1988 and leave salary for the proportionate credit of leave for the period of suspension from 15.4.1987 to 18.2.1988. He worked out the total amount as 21,500/- and the break-up of this amount has been given at page 8 of the O.A.

Reliefs prayed for in the O.A. are as follows:-

- (a) Impugned orders No. RE/ERC/AC/ALM/PNV dated 23.6.1994(Annexure-I) issued by the respondent no. 6 and also order dated 16.3.89 (Annexure-III) issued by respondent No. 2 be quashed.
- (b) The respondents be directed to pay to the applicant immediately an amount of Rs.70,125/- due to him on account of D.C.R.G., Rs.16,000/- (approx.) towards difference between full pay and allowances and subsistence allowance between the period 15.4.1987 to 18.2.1988 and Rs. 5500/- on account of leave salary for the proportionate credit of leave on full and half pay for ten months of suspension period and arrears on account of increments for two months - Jan. 88 & Feb. 88 -Total Rs.91,625/-
&
- (c) The respondents be directed to pay to the applicant interest @ 18% per annum (compound) on the amounts referred to in item II from the date the same fell due till the date of actual payment amounting to Rs. 1,91,627/- approximately.

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On notice, the respondents filed their reply contesting the applicant and grant of reliefs prayed for.

Heard the learned counsel for the parties and perused the record of the case. It is admitted that a Memorandum containing articles of charges for initiating the disciplinary enquiry against him under rule 9 of the Railway Servants(D&A) Rules, 1968 was served by the Railway Board on the applicant vide their Memo No. E(O)1-86-PUL2/40 dated 13.5.1986. He was also placed under suspension vide orders dated 6.4.1987. After conclusion of the enquiry and after examining the report of the Enquiry Officer and the written submissions made by the applicant, the Railway Board vide their order dated 30.3.1993 communicated their displeasure(Ann XI) to him for the alleged lapse on his part. Another memorandum containing charges was also served on him for holding a disciplinary enquiry under rule 9 of the Railway Servants(D&A) Rules, 1968 vide Railway Board's letter dated 18.6.1986. After conclusion of the enquiry held against the applicant and also taking into account the reports submitted by Enquiry Officer and the representation made by the applicant the aforesaid case was closed & Govt's displeasure to was communicated the applicant/as per railway Board's memo dated 6.7.1993, copy of which is enclosed with the O.A. as Annexure -XII. The period of suspension was treated as on duty vide letter No.E(O)1-86-PUL2/40 dated 3.1.1994. The various claims have been referred to in para 1 of the representation dated 4.4.1994 (Annexure-II) of the paper book.

Sanction for the retention of the bungalow at Mathura Jn. by the applicant for two months from 1.9.1988 to 31.10.1988 was granted by the competent authority.

The request of the application for retention of bungalow for/further period was recommended by the Deputy Chief Project Manager, Railway Electrification, Mathura and it was certified that the bungalow was not required for allotment to any other employee either of Electrification Project or of the open line. After retirement of the applicant request for retention of the bungalow for a period of four months on payment of normal licence fee w.e.f. 1.5.1989 to 31.8.1989 was made and the said request was duly forwarded to the General Manager, Railway Electrification, Allahabad. The General Manager, Railway Electrification, Allahabad also recommended his request to Railway Board certifying non-requirement of the bungalow for railway purposes. This was done with due financial concurrence. Inspite of various recommendations made by the concerned authorities as referred to, the eviction proceedings under Public Premises (Eviction of unauthorised Occupants) Act, 1971 were initiated by the Estate Officer, Central Railway, Jhansi. The said Estate Officer vide his order dated 24th Jan., 1990 decided the case against the applicant assessing damages for unauthorised occupation from 1.11.1988 to 14.9.90

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since he had been transferred during that period and he could retain the accommodation only for two months and he stayed much beyond the permissible limit so an amount of Rs. 52,020.05 was assessed as damage rent, from 1.11.1988 to 14.9.1990 and further damage rent from 15.9.1990 to 29.9.1990 (the date on which the bungalow was vacated by the applicant) as Rs. 2,975.42 p.m.

The applicant filed an appeal against the orders of the Estate Officer before the District Judge, Mathura in November, 1990 (Misc. Civil Appeal No. MCA/139/91).

It was admitted by both the parties that the said appeal is still pending. In the light of what has been stated above, this Tribunal cannot pass any order regarding the validity of the eviction proceedings launched and damage rent charged. It was clearly admitted before the Tribunal that the respondents have taken recourse to Section 7 of the P.P.E. Act, 1971 for assessing the damage rent and the applicant has taken recourse to Section 9 for filing an appeal before the designated court of District Judge, Mathura and the same is pending. This Tribunal, therefore, is in no position to pass any orders about the proceedings concluded by the Estate Officer under Section 7 of the P.P.E. Act, 1971 in regard to the assessment of damage rent etc. Two simultaneous proceedings ought not to have been initiated. The learned counsel for the applicant, at this stage, stated that he will not like the Tribunal to adjudicate upon the assessment of damage rent etc. but he would

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certainly like to press the relief for release of the balance amount of gratuity, payment of the difference of pay minus subsistence allowance and arrears of increments due to him from 1.1.1988 to the date of retirement.

The learned counsel for the respondents argued that the damage rent has been rightly assessed by the Estate Officer. It was further clarified that the penal rent at the rate of Rs. 430/- shown in the last pay certificate (LPC) was less than the damage rate of rent actually prescribed by the Railway Board vide their letter No. F(X)1-86/11/- dated 1.4.1989 and 31.5.1991 which has to be at the rate of Rs. 16 per sq.m. of the plinth area of the railway accommodation at Mathura Jn. occupied by the applicant unauthorisedly. Copy of the Railway Board's letter dated 1.4.1989 and 31.5.1991 have been enclosed as Annexure R-I & R-II enclosed with the reply. He further argued that the applicant on one hand has stated that he wrote a letter dated 9.10.1990 requesting Assistant Engineer, Central Railway, Mathura to take over the railway bungalow No. 7/RE from the possession whereas of the applicant, /the Assistant Engineer, Central Railway, Mathura on the other hand, had directed him to hand over the said bungalow to IOW, Central Railway, Mathura on 12.10.1990 vide Annexure A-VII. It was pointed out that the charge of electric fittings had already been taken over by the E.F., Central Railway, Mathura Jn. on 29.9.1990 but the

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applicant did not indicate this fact in his letter dated 9.10.1990 marked as Annexure V enclosed with the O.A. He pointed out that the inherent contradiction in para 3 of Annexure-V wherein it has been mentioned "It is requested that you may please arrange for taking over the possession of the above said bungalow (excluding electrical fittings and fixtures) at the earliest". This is dated 9.10.1990. Therefore, the learned counsel for the respondents argued that the sanctity of Annexure-VII said to have been issued by the Electrical Foreman (M) Mathura on 29.11.1990 cannot be relied upon. This being so, the vacation of the quarter on 29.9.1990 becomes untenable. He highlighted the fact that the amount of Govt. dues amounting to Rs. 73,207.68 was due for recovery and the amount of D.C.R.G. comes to Rs. 70,125/- and as such nothing is due for payment to the applicant on account of D.C.R.G. which falls short by Rs. 3,082.68 which is yet to be recovered from the applicant. Therefore, the applicant was advised to deposit in cash the same vide Annexure-I enclosed with the O.A. To this the learned counsel for the applicant stated that the amount of Rs. 70,125/- does not include the amounts due to the applicant on account of difference between the admissible pay and allowances due to him minus subsistence allowance paid to him during the suspension period and as such he

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claims that this amount has to be calculated and added to L.C.H.S. amount. Similarly, he is also entitled to arrears of increments which fell due to him as a result of the entire period of suspension having been treated as on duty. Over and above the learned counsel for the applicant claimed an interest of 18% per annum as the delay in release of the amounts due to the applicant has been on account of the lapse of the Railway administration. He further stated that the applicant would be willing to pay the amount of damage rent assessed by the Estate Officer after the District Judge, Mathura passes the final orders in regard to the assessment made by the Estate Officer.

After hearing the learned counsel for the parties, it is clear that if a railway quarter is not vacated by a railway servant on superannuation as per the railway servants (Pension) Rules, 1993 vide para 16(8) the full amount of retirement gratuity shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on vacation of such railway accommodation. True the case of the applicant was recommended for retention of the accommodation on transfer but the same was not accepted and he continued to occupy the quarter beyond the permissible limit without any sanction of the

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competent authority hence he will be ipsofacto deemed to be in unauthorised occupation and as such liable for payment of damage rent assessed under Section 7 of the P.P.E. Act, 1971. Since this matter is pending before the District Judge, Mathura, the Tribunal will refrain from passing any order regarding the damages assessed. However, the applicant is entitled to the payment of the difference between the pay and allowances due to him for the period he was under suspension and the subsistence allowance given to him. Since the departmental proceedings were closed only in 1993 and the Board's memorandum communicating displeasure was issued on 6.7.1993 the sanction orders regarding difference of pay & allowances minus subsistence allowance could not have been passed before that date. By allowing a grace period of six months, the applicant would be entitled to such payments by 1.2.94 and also arrears of increments, if any due to him. The respondents are directed to calculate such amounts due to the applicant and club all these amounts and see whether the amounts of D.C.R.S., leave encashment, the difference of salary minus subsistence allowance drawn by him and the arrears of increment exceeds the total damage rent assessed at Rs. 73,207.68. If it exceeds, the excess

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amount be paid to him with a simple interest of 12% from 15.2.1994 till the date of actual payment. The respondents are also directed to reconcile the amounts claimed by the applicant at pages 15-16 of the O.A. with the amounts due. This order should be implemented within a period of three months from the date of receipt of a certified copy of this order. The matter regarding the assessment of damage rent etc. is a matter before the District Judge, Mathura and, therefore, this Tribunal is confining itself only to the payments due to the applicant as a result of difference of the salary minus subsistence allowance, leave encashment and arrears of increments, if any due to him, from 1.1.1988 to 18.2.1988 @ Rs. 125/- per month plus allowances admissible thereon. This is the corollary of the suspension period having been treated as on duty.

The O.A. is disposed of in the light of the aforesaid directions but without any orders as to costs.

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(B.K. SINGH)
Member (A)

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