

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2164 of 1996 decided on 21. 4. 1998 .

✓ Name of Applicant ----- Aksham Chand

By Advocate : Shri G. D. Bhamdani -----

Versus

Name of respondent/s Union of India

By Advocate : Shri P. S. Mahendru -----

Corum:

Hon'ble Mr. N. Sahu, Member (Adminv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Adminv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2164 of 1996

New Delhi, this the 21st day of April, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

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Aksham Chand, S/o Shri Karam Singh,
Retd. Shunter/ Driver, N.Rly, Delhi
Sarai Rohilla, Quarter No.116A, DCM Loco
Shed Colony, Delhi Kishanganj, Delhi. -APPLICANT

(By Advocate Shri G.D.Bhandari)

Versus

1. Union of India through the General
Manager, Northern Railway, Baroda
House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner -RESPONDENTS

(By Advocate Shri P.S.Mahendru)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant seeks a direction for payment of his gratuity and commutation of pension with 18% interest per annum. The respondents have withheld his retirement benefits on the ground that he did not vacate the Railway accommodation.

2. The admitted facts are that the applicant was promoted as a Goods Driver on 22.4.1991 and transferred to Rewari subject to fulfilment of prescribed condition of a special medical examination. He was declared unfit "for medical category A-1 to B-2 and fit for C-1 to C-2". He was offered the post of Shunter but he refused. On the recommendation of a Committee he was offered the post

of Head Clerk. He also refused the same. He was retired from service on 24.11.1994. His normal date of superannuation was 30.11.1994, his date of birth being 7.11.1936.

3. The stand of the respondents is that until he vacates the quarter in his unauthorised occupation Government dues to be recovered cannot be calculated and hence DCRG cannot be released to him. For this purpose the respondents have cited P.S.No.8045 and 9461 (Annexures R-4 and R-5). It is also submitted that as per Railway Board's letter dated 4.6.1983 one set of post retirement complimentary pass is liable to be disallowed for every month of unauthorised retention by a retired railway employee. It is also urged that under the existing instructions dated 26.5.1984 (Annexure-R-7) a show cause notice is required to be issued to the retired railway employee only on the receipt of a requisition for issue of post retirement complimentary passes.

4. The learned counsel for the applicant strongly relied on a decision of a Full Bench of this Court in the case of Wazir Chand Vs. Union of India & others. (Full Bench Judgments of CAT [1989-1991] page 287). The two points decided in this Full Bench decision are as under -

"Issue No.1 :

- (i) Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible.

- (ii) Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted.

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Issue No.2:

- (i) A direction to pay normal rent for the railway quarter retained by a retired servant in a case where DCRG has not been paid to him would not be legally in order.

- (ii) The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant."

5. The learned counsel for the applicant cited an order dated 23.4.1990 of the Hon'ble Supreme Court in the case of Union of India & others Vs. Shiv Charan (Annexure-A-14). In this order their Lordships had on the facts of the case directed a simultaneous exchange of the quarter and payment of retirement dues on a prescribed date. The learned counsel for the applicant submits that this procedure laid down in Shri Charan's case may be made applicable to the applicant's case.

6. Another Supreme Court decision was also cited in F.R.Jesuratnam Vs. Union of India & others Civil Appeal No.2827 of 1986 decided on 30.9.1986 (Annexure-A-12) wherein gratuity was directed to be paid forthwith. In a similar order dealing with railway rules in Mandev Singh Kapoor Vs. Union of India, O.A. No.2719 of 1990 decided on 26.8.1991 this Court held that the respondents shall pay the

amount of gratuity due to the applicant within a period of three months along with the release of post retirement passes. As far as the payment of interest is concerned, the claim was rejected in view of the decision of the Hon'ble Supreme Court in the case of Raj Pal Wahi & others Vs. Union of India & others, SLP No.7689-91 of 1988 decided on 27.11.1989. The direction was also to deduct rent for the quarter from the gratuity payment and make a claim in accordance with law for any excess or penal rent.

7. I have heard the counsel appearing on both sides. The respondents have remitted to the applicant his provident fund contribution, group insurance, and provisional pension. According to the respondents the whole of the gratuity of the applicant can be withheld for non-vacation of the railway quarter under the provisions of Railway Services (Pension) Rules, 1993. For this purpose reliance is placed on Railway administration PS No.8045 and 9461. According to the respondents the decision of the Hon'ble Supreme Court in Rajpal Wahi's case (supra) also supports their claim for withholding entire gratuity for non-vacation of the railway quarter. In the instructions cited above, it is clearly stipulated that in cases of unauthorised retention of Railway quarters the practice of withholding entire DCRG till vacation of railway accommodation would be resorted to and the 'no claim certificate' should not be given unless the employee

after retirement has vacated the railway quarter and cleared all the arrears of rent, electricity and other charges.

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8. The relevant rules dealing with recovery and adjustment of railway dues are to be found in Rules 15 and 16 of the Railway Services (Pension) Rules, 1993. It authorises the Government to ascertain and assess the outstanding dues till the date of retirement and adjust this amount against retirement gratuity. Railway or Government dues include dues pertaining to Railway or Government accommodation including arrears of licence fees. Detailed provisions are made as to how the dues are to be ascertained and recovered. Rule 16 ibid deals with adjustment and recovery of dues pertaining to Government accommodation. Rule 16(1) states that the Directorate of Estates shall issue the "no demand certificate" after scrutinising from his record eight months before the date of retirement of the allottee, if any licence fee was recoverable from him. If no intimation in regard to recovery of outstanding licence fee is received by the Head of the Office, it shall be presumed that no licence fee was recoverable from the allottee. After that the Head of the Office shall ensure that the licence fee is recovered every month from the pay of the allottee upto his retirement including the amount of four months rent of the quarter which the employee can retain after retirement. Under Rule 16(8) it is stated that the railway servant shall vacate the railway accommodation immediately after his retirement. This

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is to be read to mean after the permissible period of retention of accommodation. In this case it is presumed that the regular licence fee was recovered till the permissible period after the date of superannuation. Thereafter the applicant continued to stay in the accommodation in an unauthorised manner and exposed himself to the liability of paying penal rent and damages which are clearly recoverable from the gratuity. Ruled 16(8) and 16(9) of Railway Services (Pension) Rules, 1993 are extracted hereunder :

"(8) A railway servant shall vacate the railway accommodation immediately after his retirement..

(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."

In view of the these 1993 Pension Rules, which govern the applicant's case, the earlier Court decisions relied upon by the applicant viz. Wazir Chand's case (supra) etc. are no longer good law.

9. On a careful consideration of the rival submissions, I direct the respondents to compute the gratuity payable and deduct from this all the rent including penal rent as per provisions of law and hand over the same to the applicant on any date to be fixed in consultation with the applicant within six

weeks from the date of receipt of a copy of this order. The applicant shall convey the date of vacation and handing over of vacant possession of the Railway accommodation to the respondents within this period. On the date of handing over possession of the quarter the respondents shall be ready with the applicant's cheque and hand over the same to the applicant simultaneously with the vacation of the quarter. With regard to commutation of pension, the respondents shall proceed to quantify the amount after complying with all the rules of commutation of pension within this period. With regard to release of post retirement passes, the Full Bench decision in the case of Wazir Chand (supra) still holds the field. The post retirement passes have nothing to do with the applicant's retaining the quarter. I direct the respondents to release the post retirement passes for the unexpired period provided the applicant sends a requisition for the same.

10. With regard to interest on DCRG that still remains payable, I rely on an unreported decision of the Hon'ble Supreme Court in the case of Raj Pal Wahi (supra) in which their Lordships held that when the delay in the payment of gratuity was on the basis of the circular dated 24.4.1988 of the Railway Board, the applicants are not entitled to payment of interest as the delay in payment occurred due to the order passed on the basis of the said circular and not on account of any administrative lapse. This Apex decision was followed by a Division Bench of this Court in Som Lata Vs. Union of India, (1993) 24

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ATC 680. The facts and issue in this Division Bench decision are also similar to the facts in this O.A. I, therefore, hold that no interest is payable on the net DCRG to be released to the applicant.

11. Under what authority of law, did the respondents withhold commuted value of pension? P.S.No.8045 dated 4.6.1982 and P.S. No.9461 dated 10.12.1987 only authorize withholding of entire DCRG and special contribution to P.F. To similar effect is Rule 16(9) ibid. There is no legal or moral justification for withholding commuted value of pension. The reply of the respondents at para 4.19 of the counter is unfortunately vague. When did the applicant submit the pension papers? When were they returned to him? No details are furnished. The applicant had a bye-pass heart surgery and the respondents knew that he was retired on medical decategorization. Whatever be the amount that has to be commuted in such a case under the rules, could have been done, say, within a period of three months from the date of retirement. This has not been done. The delay is unconscionable. A direction has already been issued to settle this within six weeks from the date of receipt of a copy of this order. Interest at 12% on whatever be the commuted value of pension legally determined as payable shall be paid from 1.2.1995 till the date of payment and the cheque shall include the interest amount also.

[Handwritten signature]

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12. If within the period of six weeks the applicant does not cooperate and hand over possession of the quarter, the respondents shall be free to pursue eviction proceedings against him.

13. The O.A. is disposed of as above. No costs.

N. Sahu
(N. Sahu) 21 4 78
Member (Admnv)

rkv.