

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. NO.904/96

HON. SH. R.K. AHOOJA, MEMBER (A)

New Delhi, this 37th day of December, 1996

Raghunath Singh
s/o Shri Bhatoo Singh
r/o Quarter No.T-51-B, Type II
DCM Railway Colony
Kishen Ganj
Delhi - 110006

...Applicant

(By advocate - None)

Vs.

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

2. The Estate Officer
D.R.M. office
Bikaner

... Respondents

(By advocate Shri R.L. Dhawan)

ORDER

The applicant retired from the post of U.D.C.
in the office of respondents on 31.5.93. At that time,
he was in possession of a house No.T-51-B, Type II,
DCM Railway Colony, Kishen Ganj, Delhi-6, allotted to
him. At his request, he was allowed to retain the

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quarter for the maximum period of eight months upto 31.1.94. The applicant states that on 18.9.95, his daughter unfortunately sustained burn injuries and had to be admitted to Safdarjung Hospital. As a result of the resultant shock and trauma, he could not locate accommodation nor could he take steps to reply to the notice of the Estate Officer in proceedings under Public Premises (Eviction of Unauthorised Occupants) Act 1971. An order was passed by the Estate Officer on 8.12.95 directing the applicant to be disposed of from the premises in question. The applicant filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act before the court of District Judge, Delhi, where he gave a solemn undertaking to vacate the premises by 15.5.96. The applicant states that while he is duty bound to have vacated the premises on that date, he was unable to do so as the respondents have illegally withheld the gratuity payment and the two sets of railway passes not so far released to the applicant. Relying on a decision of the Supreme Court in R.Kapur Vs. Director of Inspection & Anr. 1994 (6) SCC 589, wherein it has been held that gratuity cannot be withheld on account of retention of government accommodation, the applicant has come before this Tribunal seeking a direction to respondents to release the gratuity with interest at 12% and also to release two sets of railway passes to the applicant.

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2. By way of interim relief, the applicant has also sought restraining the respondents from evicting him from the premises till the disposal of the OA. The same was however refused.

3. ~~I have heard the learned counsel for the respondents.~~
~~The learned counsel for the applicant submitted that~~
The Apex Court in State of Kerala & Ors. Vs. M. Padmanaban Nair 1985 (1) SCC 429 held that pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement but have become, under the decisions of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. Further more, in R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax & Anr. 1994 (6) SCC 589, the Supreme Court upheld the decision of this Tribunal that death-cum-retirement gratuity (DCRG) could not be withheld merely because the employee had not vacated the premises allotted during the course of his employment. ~~The learned counsel for the respondents argued that though he~~
The applicant had given an undertaking before the District Judge to vacate the allotted premises, he could not do so since the gratuity had not been released by the respondents and he was therefore also entitled to ancillary relief of retaining allotted premises till the respondents released his rightful dues.

4. In reply, the respondents have stated that the ratio of the aforesaid cases does not apply in the present case. In terms of rule 16'7' of the Railway Services Pension Rules 1993, the applicant is required to vacate immediately on retirement the allotted railway quarter. Under rule 16'8' of said rules, the full amount of DCRG admissible to him could be withheld till the vacation of such railway accommodation. The right of the respondents to retain the full amount of DCRG till the vacation of the railway quarter has been challenged before this Tribunal as well as before the Supreme Court. However, in SLP No.7688-91 of 1988, Raj Pal Wahi Vs. UOI & Ors., it has been held by Supreme Court that the delay in payment of DCRG on account of non-vacation of railway quarter was not a matter of administrative lapse and the retired employee was in these circumstances not entitled to get interest on the delayed payment. Therefore, the challenge to the withholding of railway passes till the vacation of the railway quarter was also rejected. Relying on these orders of the Supreme Court, the Tribunal also, in OA 685/94 in its order dated 26.9.94 rejected the prayer for release of gratuity pending vacation of the government quarter after retirement. The ld. counsel for the respondents submits that the decision in R. Kapur case and Padmanaban Nair case (Supra) is not applicable in the present case since there the pension rules of the Railways and the specific provision ~~was~~ had not been challenged by the applicant.

5. I have considered the matter carefully. In State of Kerala Vs. Padmanaban Nair 'Supra', the issue was delay in settlement of pension and gratuity claims for reasons of non-production of LPC and No Liability Certificate from the concerned departments. The justification of the respondents was that these certificates were not being produced by the retired government servant. The Supreme Court rejected this stand and held that a ~~duty~~ was cast on the respondents to grant to every retiring government employee the LPC, which in that case had been delayed by the concerned officer for which neither any justification nor explanation had been given. In R. Kapur 'Supra', the Estate Officer had passed an order for damages which, however, came to be reduced, but even that had not been cleared by the applicant. The final No Due Certificate could not be issued which in turn resulted in the withholding of the gratuity. When the matter came up before this Tribunal, it was held that the gratuity could not be withheld merely because the employee had not vacated the premises allotted during the course of his employment. The Tribunal allowed a rate of interest of 10% on the delayed payment which the Supreme Court enhanced to 18% since the right of gratuity was not dependent on the applicant vacating the official accommodation. In the present case, however, rule 16/81 of the Railway Pension Rules specifically provides that gratuity will not be released till such time that the railway quarter is vacated. This is based on the same provision

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existing in Railway Pension Circular of 1982 which, as has been mentioned above, also came up before the Supreme Court in Rajpal Wahi case (Supra) and the relief sought for by the applicant in that case was refused on the basis that he had not vacated the railway quarter. Both the decisions, Rajpal Wahi case and R. Kapur case, are by two-judge Benches of the Supreme Court, though the R. Kapur case having been pronounced on 29.9.94 is the latest order of the Supreme Court. However, in the present case, the applicant being a retired railway employee, the judgement of the Supreme Court in R. Kapur case is not, in my view, applicable.

6. Besides the legal position, there is another aspect of the matter I feel compelled to advert to. The applicant states that he retired in 1993 and was allowed to retain the accommodation upto 31.3.94 by the respondents. He states that four months later, his daughter suffered burn injuries which made it impossible for him to vacate the accommodation. Apart from the fact that this unfortunate incident happened much after the extended period of allotment expired, the annexure 'page 15 of the OA' purporting to be a copy of the attested certificate of Safdarjung Hospital, shows that the patient was the wife of one Shri Ashok Kumar and resident of some address elsewhere in Ghaziabad over which the address of the applicant's house is superimposed. The applicant has conveniently

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avoided to mention whether the daughter was residing with him or in her marital home. Further, the applicant states that he took up the question of release of gratuity only during the proceedings before the Estate Officer and now he comes and thinks that because of non-release of gratuity to him, he may be absolved of his undertaking made before the District Judge to vacate the allotted Railway quarter. If one were to conclude in this case that the release of gratuity has no connection with the retention of the allotted premises, equally non-release of gratuity has nothing to do with the retention of the quarter. A reading of the OA shows that what the applicant seeks through relief is the retention of the quarter and not so much the release of the gratuity.

In the circumstances, the OA is dismissed.

No order as to costs.

R.K. Ahuja
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MEMBER (A)

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