

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1076/96
T.A. No.

198

DATE OF DECISION 06/6/97

(17)

Arvind Singh Applicant (s)

Sri H. C. Wazirwani Advocate for the Applicant (s)

Versus

U O T Officers Respondent (s)

Sri R. L. Dhamani Advocate for the Respondent (s)

CORAM : ~~See~~

The Hon'ble Mr. R. K. Ahuja, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

(R. K. Ahuja)
Member (A)

Central Administrative Tribunal, Principal Bench

O.A.No.1074/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 6th day of June, 1997

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Ajitender Sinha
Retd. Rates Inspector
40/223, Chittaranjan Park
New Delhi - 110 019. Applicant

(By Shri H.K.Gangwani, Advocate)

Vs.

Union of India - through

1. General Manager
Northern Railway
Baroda House
New Delhi.
2. Divl. Supdtt. Engineer(Estates)
Office of the Divl. Rly. Manager
Northern Railway
State Entry Road
New Delhi. Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicant is aggrieved by the decision of the respondents, vide impugned order dated 4.12.1995, withholding one set of his post-retirement complimentary passes on account of unauthorised retention of railway quarter and also denial of interest on delayed payment of DCRG on the same account.

2. The applicant states that after he retired from service on 31.1.1989, he was permitted to continue in the same quarter for a period of four months due to illness of his wife. Thereafter, he again requested for extension of quarter for further four months for the same reason which was also granted. Since the health of his wife continued to be precarious he sought further extension beyond 30.9.1989 but on receiving no response from the respondents, ultimately the railway

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accommodation was vacated by him on 1.8.1991. He submits that the respondents illegally withheld the DCRG for about four years on account of non-vacation of the quarter. This is contrary to the law laid-down by the Supreme Court as well as this Tribunal. The Supreme Court has held in R.Kapoor's case that the applicant is entitled to the payment of interest at the rate of 18% from the date it fell due till the date of actual payment. He alleges that the respondents also have not released railway complimentary passes for the last seven years.

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3. The respondents in their reply have stated that in terms of Railway Board Instructions No.E(G)81-QR1-51 dated 24.4.1982 (Annexure-R1) and No.E(G)90-QR3-6 dated 31.12.1990 (Annexure-R2) one set of post retirement complimentary passes is to be withheld for each month of unauthorised occupation of railway quarter and gratuity in full is to be withheld for non-vacation of railway quarter. The applicant remained in unauthorised occupation of railway quarter for 22 months and hence 22 post retirement passes are to be withheld in his case. They also submit that the application is barred by limitation since the cause of action arose in 1991, when 22 post retirement passes were withheld for unauthorised occupation of railway quarter from 1.10.1989 to 31.7.1991. The applicant slept over for more than four years and as per the decision of the Supreme Court in Rattam Chandra Samanta Vs. Union of India , JT 1993(3) SC 418, delay deprives the person of the remedy available in law and a person who has lost his remedy by lapse of time loses his right as well.

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4. I have heard the counsel on both sides. In so far as the question of payment of interest on delayed payment of DCRG due to non-vacation of Government quarter is concerned, the matter is settled in the ratio of Supreme Court's orders in Civil Writ Petition No.7688/91 of 1988, Raj Pal Wahi & Others Vs. Union of India & Others. In that case it was held that the Petitioners were not entitled to get interest on the delayed payment of Death cum Retirement Gratuity (DCRG) as the delay in payment occurred due to the order passed on the basis of the Circular of Railway Board and not on account of administrative lapse. This position has been reiterated by the Supreme Court in Union of India Vs. Shri Ujagar Lal, JT 1996(10) SC 42. It was held in that case that in view of the Administrative Circular not to pay gratuity till vacation of quarter ~~and~~ delay in payment of gratuity was not due to administrative lapse and the railway employee was not entitled to any interest on the delay in payment of gratuity.

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5. The learned counsel for the applicant did not press with the prayer of the applicant for grant of interest but insists for grant of retirement passes as per the decision given in the Raj Pal Wahi's (supra) case. He pointed out that in R.P.Wahi's case the Supreme Court in conclusion directed as follows:

"The Special Leave Petition is thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order".

6. The learned counsel for the applicant has submitted that the respondents must release, in the ratio of R.P.Wahi's, the post retirement railway passes at least from the date of vacation of the quarter by the applicant. On the other hand, the respondents are

insisting that they will withhold one set of passes for every month of overstay in railway accomodation. On that reasoning, the learned counsel for the applicant has argued that the applicant would not be entitled to any complimentary passes for the next 11 years. He argued that the applicant could not be punished three times over for the same offence, i.e., overstay by imposing the damage rent, withholding the gratuity and cancelling the post retirement railway passes, virtually for all time to come. The learned counsel for the applicant also cited the judgment of this Tribunal in Brajendra Dey Vs. Union of India and Others, SLR 1991(8) Vol.78 Page 354 wherein it was held that disallowing post-retirement complimentary passes for unauthorised retention of railway quarter without a show-cause notice was impérmissible. It was pointed out that in the present case, admittedly, no show-cause notice was issued.

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7. On the other hand, there is some weight in the arguments of the learned counsel for the applicant that withholding of passes for the duration that the applicant unauthorisedly retained the government accommodation is one thing but withholding such passes after the vacation of the accommodation is illegal and unwarranted. In Raj Pal Wahi's (supra) case also the Supreme Court has directed the release of the said passes after the vacation of the quarter. ~~though~~ nothing was said about whether the applicant was entitled to the complimentary passes which were due for the period that he was in unauthorised occupation of the quarter. This being so, the applicant can rely on the ratio of Raj Pal Wahi's (supra) case only to the extent of his entitlement of passes after the vacation of the quarter. However, when the respondents

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seek to impose a cut on future passes at the rate of one set of passes one month overstay in the Government accommodation, then it distinctly acquires the garb of penalty/punishment and in terms of Brajendra Dey's case (Supra) such penalty should not be imposed without giving a show cause notice. Thus, while withholding of the gratuity and of the complimentary passes during the period that the accommodation is kept by the applicant unauthorisedly is not a matter of administrative lapse, withholding of the gratuity as well as complimentary passes after the vacation is certainly so, unless in respect of the complimentary passes the action is taken after giving due opportunity to show-cause. As such an opportunity has not been given in the present case, patently, the passes to which, under the rules, the applicant was entitled after the vacation, could not be withheld. *released.*

8. In the light of the above discussion, I therefore, partly allow this application. The applicant is not entitled to payment of any interest on the delayed payment of DCRG due to non-vacation of the quarter. He is also not entitled to the passes which were due to him during the period he was in unauthorised occupation of the railway quarter. However, the applicant is entitled to receive his complimentary passes which fell due after the vacation of the railway quarter, unless these are withheld after giving due opportunity to him to show-cause.

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9. OA is disposed of with a direction that the respondents will issue complimentary passes prospectively for the period due to him after the vacation of the quarter by the applicant. There shall be no order as to costs.

~~Rao~~
(R.K. ADOJA)
MEMBER(A)

/rao/