CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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

O.A. NO.1110/1996

NEW DELHI, THIS 31st DAY OF March 1997

SHRI J.P. KAPOOR
S/o Sh. Maher Chand Kapoor
Ex. Station Master
Northern Railway
Delhi Sadar Bazar ..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 R.L. Dhawan)

ORDER

The applicant retired from the service of Railways on 28.2.1995. He had been allotted a railway quarter No.758/D, Sarai Phoose Railway Colony. Since his wife was suffering from a serious ailment, he submitted an application and obtained permission to retain the quarter for four months. He states that his wife's health did not make progress and she continued to be under treatment in the Institute of Nuclear Medicine and Allied Sciences, Timarpur, Delhi, and for that reason he sent a representation (A-4) seeking permission for further retention of the quarter for four months. However, no response was received by him. He was obliged to seek yet another extension upto 1.3.1994, but in this case also he received no reply. Ultimately the applicant vacated the quarter on 3.2.1994. Because he had

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not vacated the quarter, his gratuity amount was withheld and he was not issued his retirement passes. He submitted a representation on 16.1.95 pointing out the circumstances of his wife's serious illness and the fact that he had applied in time for retention of the quarter, but the respondents in reply stated that an amount of Rs.8031/- has been deducted as penal rent for the period 1.7.1993 to 3.2.94 from his gratuity. The applicant submits that neither the payment of gratuity nor commutation of pension has been made to him. According to him, there is a catina of judgements both of this Tribunal and of the Hon. Supreme Court in which it has been held that gratuity cannot be withheld merely because the claim for damages on account of unauthorised occupation is pending and even penal interest of 18% in such cases has been granted. The applicant now seeks a direction to respondents to make the payment of Rs.8031/- illegaly deducted from his gratuity along with 24% interest, from the date of retirement till the date of actual payment, and also have only the normal rent charged from 1.7.93 to 3.2.94. It is also prayed that the respondents be further directed to immediately release the post-retirement complimentary passes, at least from the date of vacation of the quarter.

2. The respondents in reply state that the DCRG admissible to the applicant was temporarily withheld for non-vacation of the quarter in terms of Rule 16(8) of the Pension Rules. ON vacation of the quarter and after recovery of railway dues in terms of Rule 15 of Pension Rules, payment of DCRG was arranged. Under Rule 1711 of Indian Railway Establishment Manual (IREM) Vol. II (1990 Edition), the respondents say, they are entitled to charge rent in excess of 10% of monthly emoluments for the

period of unauthorised occupation. Therefore, the temporary withholding of gratuity as well as deduction of damage rent is fully covered by the Pension Rules.

3. I have heard the ld. counsel on both sides. In the Supreme Court's orders in RAJPAL WAHI VS. UOI & ORS. SLP NO. 7688-91 OF 1988, it was held in similar circumstances that the petitioners were not entitled to payment of interest on the delayed payment of DCRG which was withheld on account of unauthorised occupation. Shri Bhandari, ld. counsel for the applicant, submits that in view of the Raj Pal Wahi case he will not press for interest on delayed payment, but he submitted that in a recent order of the Supreme Court delivered by a three-Judge Bench, it has been laid down that in such cases only the normal rent would be deducted. A copy of this order has been annexed with the O.A. at A-9. This is the case of HARI SINGH & ANR. VS. UOI & ORS. SLP NO.23317/95 filed against the judgement in order dated 10.7.95 of the Principal Bench of this Tribunal in OA No.1730/94. Order of the Supreme Court reads as follows:-

> "We do not find any ground to entertain this Special Leave Petition. However, we consider it appropriate that in case the petitioners vacate the railway quarter by December 31, 1995, the rent till that date would be recovered only at the normal rate instead of penal/market rate. We make it clear that this benefit would be available to the petitioners only if they vacate the railway quarter within the time specified in this order."

4. Shri Bhandari submits that while the SLP against the delayed payment was not entertained, the ratio laid down was that in case the petitioners vacate the railway quarter within the time specified, only normal rent would be charged. Shri Bhandari pointed out that the judgement in Raj Pal Wahi case was by a two-Judge Bench and now that a three-Judge Bench judgement is available, it is the ratio of the latter which would apply.

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5. The ld. counsel for respondents, Shri Dhawan, on the other hand submitted that the order of the Supreme Court in Hari Singh's case (Supra) is in limine and is in the facts of that case and hence not the law laid down by the Supreme Court under Article 141 of the Constitution. He cited the case of SUPREME COURT EMPLOYEES' WELFARE ASSOCIATION VS. UOI 1989 (4) SCC 187 and drew my attention to the following observations therein of the Hon. Supreme Court:-

> "..... It is now a well settled principle of law that when a special leave petition is dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney-General....." It therefore follows that when no reason is given, but a special leave petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution."

6. Shri Bhandari's argument is that the order of the Supreme Court in Hari Singh's case is a speaking order and lays down the law that in similar cases only normal rent will be charged. I am unable to agree with the ld. counsel. As held by the Supreme Court in PUNJAB LAND DEVELOPMENT & RECLAMATION CORPN. LTD., CHANDIGARH VS. THE PRESIDING OFFICER, LABOUR COURT, CHANDIGARH & ORS. JT 1990 (2) SC 489, to consider the ratio decidendi of a case, it is necessary to ascertain the principle upon which the case was decided. Similarly, the Apex Court held in PRAKASH A. SHAH VS. STATE OF GUJARAT & ORS. AIR 1986 SC 468 that a decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. It was also observed that a decision often takes its colour from the questions involved in the case in which it is rendered. The decision in Hari Singh's case (Supra) which has been rendered in limine clearly does not enunciate a principle. In fact, the SLP was dismissed but the

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Railways were directed to charge only normal rent if the petitioners vacated the premises within the time specified by the Court. If the direction were that only normal rent is to be charged whenever retired government servants retain the accommodation unauthorisedly after retirement, as the ld. counsel would have me understand, then the Supreme Court would undoubtedly have said so. Here the reference is clearly to the facts and circumstance of the case considering which, despite the dismissal of the SLP, some relief has been afforded to the petitioner. I am therefore unable to agree with the contention of the ld. counsel for the applicant that Hari Singh's case lays down a law for application to all similar cases including that of the present applicant.

7. The ld. counsel for the applicant also submits that damage rent has been charged for the first four months also for which sanction had been given by the respondents. I find from the reply statement of the respondents that damage rent has been charged only from 1.7.93 onwards. On the statement of respondents, no damage rent has been charged for the first four months, nor is there in the O.A. any allegation to that effect.

8. In the light of the above discussion and facts and circumstances of the case, I find no merit in the O.A. which is accordingly dismissed. No costs.

(R.K. AHOOJA)
MEMBER (A)

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