

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.562/1994

New Delhi, this 14th day of February, 1995

Hon'ble Mr. P.T.Thiruvengadam, Member(A)

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Shri A.N. Bandyapadyay
123/5, Railway Lane
New Delhi

.. Applicant

By Advocate Shri S.K. Sawhney

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House
New Delhi

2. Senior Civil Engineer (Const)
GC II, Northern Railway
Tilak Bridge, New Delhi

.. Respondents

By Advocate Shri Jagjit Singh

ORDER

The applicant retired as Office Superintendent on 31.1.92 while working in the Northern Railways. At the time of retirement, he was in possession of railway accommodation which was vacated by him on 17.11.91 as mentioned by the learned counsel for the applicant, at the time of final hearing. It is his case that DCRG has still not ~~yet~~ been released and post-retirement passes not being issued to him. This OA has been filed with the following prayers:

Direct the respondents to:

(i) release DCRG amounting to Rs.44,138/- which was payable to the applicant on his retirement on 31.1.92 without any deduction;

(ii) release the post retirement passes which were due to the applicant on his retirement on 31.1.92;

(iii) pay interest @ 12% per annum on DCRG amount which had become payable to the applicant on his retirement; and

(iv) not to evict the applicant from the railway quarter till he is paid his DCRG.



2. Prayer No.(iv) has become infructuous since as per the submission at the time of final hearing, the accommodation has already been vacated.

3. During the arguments, the learned counsel for the applicant insisted that recovery of rent other than normal rent is not in order as stipulated in the Public Premises (Eviction of Unauthorised Person) Act, 1977. Section 7.2 should have been followed and no show cause has been issued to the applicant for the recovery of penal rent. This issue had also been raised in OA 685/94 and was dealt with as under:

"Para 17 of Railway Board's letter dated 15.1.90 states that retention of quarter after expiry of the permissible period will be treated as unauthorised. During the period of unauthorised occupation the employee should be required to pay the damages rate of rent in respect of the railway quarter. Hence the instructions issued clearly laid down the consequences of unauthorised occupation and how rents other than normal rent would be attracted in such cases. The applicant was permitted to retain the accommodation till 31.1.92 and his further retention is unauthorised. The applicant is even now continuing to stay in the same railway accommodation.

"Calcutta Bench of this Tribunal in its order dated 16.9.93 reported in 1994(26)ATC 28 has held that no notice is required to be given before initiating recovery where the applicant was aware of the administrative instructions laying down consequences of unauthorised occupation. It has also been held that recourse to the PPE Act, 1977 is only an alternative procedure. While coming to the conclusion the Calcutta Bench relied on the orders passed by the Hon'ble Supreme Court in NDHC Vs. Kalu Ram reported in AIR 1976 SC 1637. In the circumstances, the relief that only normal rent should be recovered from gratuity for the period of possession of railway accommodation by the applicant after his retirement can not be granted."

On the same grounds as above, the objection regarding non-issue of notice has to be overruled.

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4. The learned counsel for the applicant then argued that interest should be paid on the withheld DCRG amount from the date of retirement. However, I note that in the case of Rai Pal Wahi Vs. UOI & Ors. dated 27.11.89 in SLP 7688-91/1988 the plea for grant of interest on the DCRG held back has not been allowed. The Apex Court had noted that the "only challenge was that the Railway Authorities were wrong in withholding the DCRG benefit".

5. The Hon'ble Supreme Court held that the petitioners therein were not entitled to get interest on the delayed payment of DCRG on the basis of the relevant Railway Board's circular. In these SLPs before the Hon'ble Supreme Court, specific attention had been drawn in the affidavit filed on behalf of the Railways that the DCRG was being held back temporarily as per the relevant Railway Board circular to meet the anticipated dues of the Railways which could be computed only when the employees ultimately vacate the quarter. The Hon'ble Supreme Court has observed that the delay in payment of gratuity occurred due to the relevant instructions and not on account of administrative lapse and accordingly, rejected the request for interest on delayed payment of DCRG which occurred due to unauthorised occupation of the railway accommodation.

6. The issue raised in this OA is a similar one and the grant of interest due to non-release of DCRG at the time of retirement because of non-vacation of quarters can not thus be ordered.

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7. The learned counsel for the applicant then referred to the orders of the Full Bench of this Tribunal in the case of Wazir Chand Vs. UOI & Ors. in OA 2573/89. As per these, the withholding of entire amount of gratuity of the retired Railway servant, so long as he does not vacate the railway quarter, is legally impermissible. Hence, it is the applicant's case that interest has to be allowed for the DCRG which was wrongly withheld. It has to be, however, noted that orders of the Hon'ble Supreme Court in the case of Raj Pal Wahi Vs. UOI and others referred to above had not been brought to the notice of the Full Bench. Also further instructions were issued by the Railway Board on 31.12.90 after the Full Bench decision on 25.10.90. These instructions permit the holding back of full DCRG in all cases where the accommodation is not vacated at the time of retirement. In any case, the specific issue of ineligibility of interest on withheld DCRG due to non-vacation of quarter by the applicant has been decided into by the Hon'ble Supreme Court in Raj Pal Wahi's case as referred to earlier.

8. The other aspect to be borne in mind is that the applicant has not paid the penal rent and adjustment is to be made from DCRG. From equity point of view, if there is to be consideration with regard to interest on gratuity, there has to be a similar consideration with regard to the delayed payment of penal rent. In any case, in view of the orders passed in the Raj Pal Wahi's case, the question of grant of interest on DCRG does not arise.

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9. The learned counsel for the applicant then referred to the orders passed by the Hon'ble Supreme Court in UOI & Ors. Vs. Shiv Charan SLP(C) 881/1990 decided on 23.4.90 reported in 1991-19-ATC-129, which read as under:

"1. Special leave granted.


2. This is an appeal from the judgement and order of CAT, Principal Bench, New Delhi dated 16.8.89. Having considered the facts and circumstances of this case and having heard counsel for both the parties, we are of the opinion that the appropriate order would be to allow this appeal and to direct that the possession of the railway quarter now in possession and in occupation of the respondent should be handed over by the respondent and taken possession of by the applicants or their representatives on or about 23.5.90 and the entire amount due and owing to the respondent, less the amount mentioned hereinafter, will be handed over by the officer taking possession then and there.

3. Rent for the period overstayed may be deducted from the payment to be made as aforesaid. The appellants will be entitled to make claim in accordance with law to which they are entitled to for any excess or penal rent, and the respondent will be at liberty to make any claim for compensation in the appropriate forum which he claims to be entitled to.

4. The civil appeal is disposed of accordingly. No costs.

5. SLP(Civil) No.11732/1989 is taken on board and is disposed of on the aforesaid terms."

10. I note that even the above order allowed the department to claim the penal rent in accordance with law and the claim of compensation by the employees has to be made in the appropriate forum. It is the stand of the department that as per instructions issued by them which have a statutory force, penal rent can be recovered from the gratuity which is held back at the time of the retirement of the employee.



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11. It was then argued that as per rule 2308 of the Railway Establishment Code, DCRG can be withheld only when a departmental enquiry or disciplinary proceeding is pending against the employee. I have already observed that in the case under discussion DCRG was not sought to be withheld permanently but was held back temporarily to meet the anticipated dues of the Railways which could be computed only when the employee ultimately vacates the quarter. Railway Service (Pension) Rules 1993, which is a self-contained compilation codifying all the pension rules applicable to the railway servants, contain Rule 16(18), which reflects the contents of Railway Board's circular dated 31.12.90, authorising to hold back the gratuity pending vacation of the railway accommodation.

12. Reliance was placed then on order passed by this Tribunal in OA 2136/89 dated 29.9.92. This order reads as under:

"After hearing the learned counsel for both the sides and having regard to the fact that the interim order regarding eviction has been vacated long back, we consider it appropriate to dispose of this application with only a direction to the respondents to pay the petitioner the amount of entire gratuity to which he is entitled to, if the same has not already been paid. The said amount of entire gratuity will be paid within a period of three months. If the entire amount of gratuity is not paid within three months from this date, the respondents shall pay the same with an interest at the rate of twelve per cent per annum from the date of expiry of three months till the date they are paid. In regard to other reliefs, the parties shall work out their rights in accordance with rules and we express no opinion in regard to the same."

13. It was argued that the release of gratuity and realising penal rent should be delinked as per the above order. However, I note that in the later order in OA

717/92 with CCP 352/92 in OA 1309/90 dated 26.8.93 of the Bench of this Tribunal, adjustment of rent including penal rent from gratuity amount had been held to be in order. This is a case where contempt petition had been filed against the orders of the Tribunal in the relevant OA to the effect that gratuity due to the petitioner on his retirement should be paid within 30 days from the date of receipt of the copy of the order. The very same order mentioned that the respondents were to recover in accordance with law the amount claimed by them as licence fee/damages/penal rent for alleged unauthorised occupation of the quarter by the applicant after his retirement from service.

14. In the background of this order when the CCP was filed, payment of balance gratuity after deducting for the rent including penal rent was held to be acceptable. In other words, recovery/deduction from gratuity for rent including penal rent, was found to be as per law. In the face of this, later order by a Divisional Bench accepting as legal the recovery of penal rent from gratuity held back, I do not see any reason for taking a different view.

15. Reference was also made to the orders of their Lordships of the Hon'ble Supreme Court in R. Kapur Vs. Director of Inspection (Painting and Publication), Income-Tax & Anr. where interest on gratuity has been allowed. But I note that it has been observed that there was unjustified culpable delay on the part of the respondents and having regard to "these circumstances".

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interest awarded already by the Tribunal was enhanced. This citation is not of direct relevance to the present OA.

16. In the circumstances, the only direction to be given is that the respondents should pay any balance gratuity left after deducting the rent due as per law within two months from the date of receipt of this order. Any delay in payment should result in interest @ 12% to be paid to the applicant beyond this date. However, if the respondents find no DCRC is due to the applicant, they should advise the position to the applicant within two months from the date of receipt of this order. No costs.

P. T. Thiruvengadam

(P.T.Thiruvengadam)
Member(A)

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