

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.983/94

New Delhi this the 19th day of May, 1995.

Shri Prem Prakash,
S/o Late Shri Mangal Dass
Divisional Superintending Engineer,
D.R.M. Office, Northern Railway,
State Entry Road,
New Delhi.

R/o Flat No.H-82, Sector-25,
Jal Vayu Vihar, NOIDA,
Pin Code 201301Applicant

(By :Applicant in Person.)

VERSUS

UNION OF INDIA, THROUGH

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Divisional Superintending Engincer (E)
Northern Railway,
D.R.M. Office,
State Entry Road,
New Delhi.
3. The Senior Personnel Officer,
Northern Railway,
Divisional Railway Manager Office,
State Entry Road,
New Delhi.Respondents

(By Advocate : Shri Shyam Moorjani)

Judgement

(Hon'ble Shri B.K. Singh, Member (A))

This O.A.No.983 of 1994 has been filed against breach of statutory rules as contained in Clause (b) Group 'C', Schedule IV Rule 8(2) of Statutory Railway Servants (Pass) Rules,1986 framed under proviso to Article 309 of the Constitution and non-compliance of the judgement and Order dated 14.08.92 in O.A.306 of 1992 resulting in protracted litigation causing loss

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to the applicant and Railways and against payment of only Rs.6.579/- as DCRG after adjusting damage rent, water and electricity charges and that details of these recoveries were not communicated to the applicant and further that the release of packing allowance of Rs.2054/- was abnormally delayed and sanctioned only in June,1993 with no interest paid to the applicant for delayed payments.

2. The relief sought are;

- (i) The respondents may kindly be ordered/directed to pay the balance of Death-cum-Retirement Gratuity amounting to Rs.49501/- plus compound interest @ 10% at the current market rate.
- (ii) Compound interest on Rs.2054/- pertaining to packing allowance paid very late in 1993, after retirement from service on 31.03.1990 may be allowed.
- (iii) Post retirement settlement complimentary 1st Class Passes for the year 1991, onward may be issued as per Clause (B) Group-C, rule 8 of the Railway Servants (Pass) Rules First edition 1986.
- (iv) Cost of the proceeding with compensation for causing mental agony, harassment, heavy financial loss, loss of health by

blood pressure may also be awarded as this Hon'ble Court deems fit.

(v) Responsibility for causing inordinate delay, non-payment of dues and defying the lawful orders may be fixed as also ordered vide Railway Board's orders No.F(E)11179 PNI/15 dated 3.9.1979 for taking disciplinary action against the person at fault, as the respondents have not even acted upon the judgement of O.A.No.306/92 of this Hon'ble Court in letter and spirit.

3. In the previous O.A. No.306/92 the relief claimed was that the amount of DCRG should be paid to the applicant with 18% interest without any deduction from the same and against illegal deduction under Section 190 of the Indian Railways Act be stayed and the order issued under notice dt 7.10.1991 be cancelled. It was further prayed that the notice issued under Section 138 of the Indian Railways Act by Senior Divisional Engineer (Estate), Northern Railway dt 24.01.91 Annexure A-1, notice under Section 190 dt 7.01.92 Annexure A-2, should be quashed and set-aside.

4. Since the applicant vacated the Railway quarter on 28.02.92 . The prayer for stay of notice under Section 138 and 190 at Annexure A-1 and A-2 became infructuous and there was no scope



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for adjudication on the legality or otherwise and the eviction notices etc. The applicant had cited case of Shri B.S. Maine in the previous O.A. also and cited the same exemplar in the present O.A. also along with that of Vimal Prasad Jain. The Hon'ble Member (Judical) Mr S.P. Sharma was pleased to discuss the decision of the Division Bench in O.A.No.306/92 comprising Hon'ble Shri P.K. Kartha, Vice Chairman (J) and Hon'ble Shri B.C. Mathur, Vice Chairman (A); where the question of unauthorised occupation vis-a-vis interest liability on railways for delayed payments were involved and the Division Bench decided the issue by denying the recoveries of damage rent and the Hon'ble Bench denied payment of interest to Shri B.S. Maine on delayed payments made to him. The operative para of the judgement passed by the Hon'ble Member is extracted below;

"However, in view of the decision of Union of India Vs Shiv Charan, reported in 1992(19)ATC 129, the applicant is entitled to the DCRG amount along with interest and the respondents may recover the damages for unauthorised occupation of the residence. In view of this fact, since the applicant was given permission only to retain the premises upto 30.11.1990 after his retirement and he retired on 31.3.1990, so his occupation after November,1990 has become unauthorised."

In view of the above facts, the application is disposed of with the following directions :-

(a) The respondents are directed to pay the DCRG amount, if not already paid less the amount of rent due against the applicant for unauthorised occupation till the date of vacation, i.e., February,1992.



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(b) The respondents shall also pay interest to the applicant @ 12% p.a. on the DCRG amount commencing six months after the retirement of the applicant, i.e. 1st July, 1990 till the date of payment.

(c) The respondents are free to claim market rate of rent from the applicant for use and occupation of the premises allotted to him when his possession became unauthorised w.e.f. 30.11.1990 and the respondents can take action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or as advised under the extant Rules.

(d) The respondents are directed to comply with the above directions within a period of three months from the date of communication of this judgement."

5. Thus the matter regarding DCRG cannot be agitated again in the present O.A. Since this is barred by principles of resjudicata as has been held by the Hon'ble Supreme Court in case of Daryao Singh Vs State of U.P.; AIR 1961 S.C. 1457. The essential ingredients of resjudicata are that issues akin to those already decided by a Court of concurrent jurisdiction is barred, or evidence conclusive between the same parties, upon the same or akin issues or alleged issues which could have been raised in the previous O.A., were not raised, cannot be raised between the same parties in another O.A. and in another Coordinate Bench. As has been observed by Hals Bery;

"The doctrine of resjudicata is not a technical doctrine applicable only to records, it is a fundamental doctrine of courts that there must be an end to litigation."

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6. Hals Bery adds that the doctrine applies equally in all courts, and it is immaterial where the former proceedings were taken, provided only that it was a Court of competent jurisdiction, or what form the proceedings took provided it was really for the same cause or grievance. The res judicata is a rule of law of universal applicability provided in every well-regulated system of jurisprudence. It is based on two grounds, embodying in various maxims of the common law: the one public policy and necessity which makes it to the interests of the state that there will be an end to litigation and the other, the hardship on the individual that he should be vexed twice for the same cause.

(1b)

7. If there is any grievance regarding non-compliance of the directions of the Tribunal contained in the judgement and order in O.A. No. 306 decided on 14.08.92 the proper course would have been to file a CCP and not a fresh O.A. since the matter regarding payment of DCRG has already been adjudicated upon by a Court of competent jurisdiction. There are two more matters which have now been the issues which could have been as well been raised in the previous O.A. and these relate to the issue of railway passes and delayed payment of packing allowance and interest on delayed payment. In case of Rajpal Wahi and Others Vs Union of India

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& Others; the question of denial of railway passes was also raised and the Hon'ble Supreme Court observed as follows;

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"The respondents, however, will issue the passes prospectively from the date of this order."

Q. It is not understood why the denial of passes for 1991, 1992 was not raised when the previous O.A. was filed. The denial of these passes for 1991, 1992, 1993 and 1994 have been raised now, and no rules have been quoted as to how these passes will be released retrospectively and utilized prospectively and that may be the reason why the Hon'ble Supreme Court in Rajpal Wahi's case issued directions to issue the passes prospectively from the date of their order. I would not go into the question of the legality of the issue of these passes retrospectively but in view of the categorical statement of the learned counsel for the respondents Shri Shyam Moorjani at the Bar that the applicant will get all the passes due to him and for this he should approach the concerned authorities immediately, and there is no need for protracted litigation in this regard. During the course of the arguments the question of delayed release of packing allowance of Rs.2054/- was raised. This issue of packing allowance could have been raised in the previous O.A. but unfortunately it has not been raised. There is no doubt that there has been an abnormal

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delay in release of the packing allowances and if an Officer is required to vacate the quarter and shift his belongings to some other place, the packing allowance etc have to be released promptly. This has not been done. Therefore, the applicant is entitled to the payment of interest at current market rates of 12 per cent from the date he retired to the date this amount was released to him. He would be eligible 12% interest at the current market rate on the DCRG amount of Rs.6,579/- from the date of vacation of the quarter till the date of payment, after adjustment of the rent as per Circular of the Railway Board. He would be eligible for the payment of interest at the current market rate at 12% on the amount after allowing concessional 8 months period, 4 months on payment of normal licence fee, and another 4 months on double the rent. The period beyond this will be treated as unauthorised occupation and the damage rent as already charged and recovered from the applicant, which he received under protest cannot be ordered to be refunded. The railway should consider the question of 12 per cent interest from the date he vacated the quarter when it fell due to the date he actually received payment.

9. Thus this O.A. is disposed of with the following directions ;

(i) The respondents will immediately issue the passes admissible to him as per rules.



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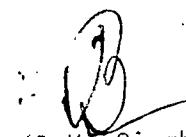
(ii) He should be allowed 12 percent interest on the DCRG of Rs.6,579/- from the date he vacated the quarter to the date the payment was made to him after adjusting the damage rent.

(iii) He should be paid 12 per cent interest on the delayed payment of package allowance of Rs.2,054/- at the current market rate of 12% after taking out 8 months to the date actual payment was made to him, since the applicant had been allowed to stay in the quarter by paying normal licence fee for 4 months and double the licence fee for another 4 months.

(iv) The details of the recoveries from the DCRG in the form of damage rent, electricity/water charges should be furnished to the applicant.

(v) These directions should be complied within a period of 2 months from the date of receipt of a certified copy of this order.

10. Under the circumstances, there will be no order as to costs.


(B.K. Singh)
Member (A)