

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O. A. No. 2136/1989

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DATE OF DECISION 15/4/91

Man Mohan Singh Applicant (s)

Mr SK Sawhney Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)  
General Manager, Northern Railway,  
Baroda House, New Delhi and another.

Mr ON Moolri Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. Maharaj Din, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *ys*
2. To be referred to the Reporter or not? *ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *ys*
4. To be circulated to all Benches of the Tribunal? *ys*

JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicant retired as a Senior Clerk from the Northern Railway on 30.11.88. He was in occupation of Railway Quarter No. C-12 B, Lajpat Nagar, New Delhi which was allotted to him. Admittedly he has not vacated the quarter on or after retirement. He has been Supdg. Engineer (Estate), Northern Railway (Resp. 2) issued the impugned notice dated 20.9.89 (Ann. A1) by the Divisional / which reads as follows:

"Sub: Unauthorised occupation of Railway quarter No.C-12/B at Lajpat Nagar by Shri Man Mohan Singh.

You are required to vacate the above Railway quarter No.C12/B on 31.7.89 according to the provisions of extant rules of allotment of residential accommodation on account of your having been transferred/gone on deputation/retired/resigned on 30.11.88 but you failed to do so. The tenancy of the said Railway quarter stands cancelled w.e.f. 1.8.89.

Please vacate the above mentioned Railway quarter within 10 days from the date of receipt/pasting of notice, failing which Eviction Proceedings under Public Premises Eviction Act, 1971 will be started against you. Damages charges/penal rent as noted below

are also recoverable from you w.e.f. 18.8.89.  
In addition to above, disciplinary action under  
D&AR will also be taken against you.

1. xxx xx xx xx  
2. Water charges:- Rs 25.50 per month.

3. Conservancy charges Rs 2/4 per month.

Damage will be recovered as plinth area Rs 15/- per S

Electric charges etc. be advised by Electric  
Foreman (P) Northern Railway North. mt.

Please also note that after expiry of this  
notice period Electric & Water supply will also  
be disconnected from the Railway premises in question,  
if the Railway premises is not vacated.

For every one month unauthorised retention of  
Railway quarter, one set of Post Retirement passes  
will be disallowed".

His grievance is that after his retirement, his  
Death-cu-retirement gratuity  
(DCRG) has been detained on the ground that he has not  
vacated the aforesaid government quarter and in addition to  
that, he is further threatened in terms of the impugned notice  
of various civil consequences.

2 In the circumstances the applicant in his application  
filed on 17.10.89 has prayed for the following reliefs.

"(i) Quash the illegal Notice dated 20.9.89 Annexure A1  
whereby the applicant is threatened of eviction  
from Railway Quarter.

(ii) Direct the Respondents to pay the applicant,  
the Gratuity amount due to him on his retirement  
on 30.11.88.

(iii) Direct the respondents to charge normal rent of the  
Railway Quarter upto the date of payment of gratuity.

(iv) Direct the respondents to pay penal interest at  
market rate for the period the payment of gratuity  
was illegally withheld.

(v) Grant <sup>any</sup> other relief that this Hon'ble Tribunal  
may deem fit.

(vi) Award costs of this Application."

3 On admission, the respondents were directed by  
an interim order not to evict the applicant till 7.11.89 and  
later on, this interim direction was continued till further  
orders.

4. As it was noted by the Bench which heard this case earlier that questions similar to the ones involved in this case had already been referred to a Larger Bench in OA 2573/89, this case was also directed to be put up to the Hon'ble Chairman for his directions.

5. On the Hon'ble Chairman's direction, this case was heard by a Larger Bench (L.B. for short) alongwith OA 2573/89. The issues posed in OA 2573/89 for consideration are as follows:

\* 1. Whether the Railway Administration can withhold the entire amount of gratuity so long as the retired Railway servant does not vacate the Railway quarter and whether passes can be withheld according to instructions contained in Railway Board's Letter dated 24th April, 1982, which are as follows:

"(ii) So far as the instructions contained in para 1(ii) of Board's letter under reference are concerned, it has been decided in consultation with FA/CAO that the entire amount of DCRG/SC to P.F. may be held back and 'No Claim' certificate is not to be issued till the Rly. accommodation is finally vacated by the concerned retired employee.

(iii) For every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallowed. A show-cause notice to this effect may be issued to the retired employee before disallowing the pass"

2. Whether it is open to the Tribunal to allow normal rent to be paid by the retiring Railway servant till such time as the DCRG is paid to him?

Or

Whether the rent or lease amount payable will be calculated on the basis as if the accommodation occupied was unauthorised and whether the Railways are liable to pay interest charges on delayed payment of DCRG withheld because of non-vacation of a Railway quarter by a retired Railway servant?

Or

Whether the two matters may not be linked and rent will be payable according to Rules and interest on delayed DCRG is to be allowed as per orders of the Tribunal in each case? "

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The L.B. has reached the following conclusions on these issues vide para 27 of its judgement, a copy of which is kept on record:

" (27) Summing up, our conclusions on the issues referred to the Full Bench are:

Issue No.1

- (i) Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible.
- (ii) Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted.

Issue No.2

- (i) A direction to pay normal rent for the railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order.
- (ii) The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per the applicable law, Rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.
- (iii) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it."

The matter has now come up before us for disposal in the light of the LB's judgement (LBJ, for short).

6. When the case was taken up for final hearing, the learned counsel for the applicant submitted that in the light of the LBJ, he does not press for the reliefs mentioned at serial numbers (i) and (iii) of para 8 of his application. Accordingly, prayers in regard to these reliefs are liable to be dismissed as not being pressed.

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7. That leaves only the questions relating to payment of DCRG and the claim of penal interest for the period of the <sup>alleged</sup> illegal detention of the DCRG. In regard to these issues, the LB has given its conclusions in para 27 of its judgement reproduced in para 5 supra vide Issue 1(i) and Issue 2(ii) & (iii). For the reasons to be stated shortly, we experience some difficulties in finally disposing of these two remaining issues on the basis of the LBJ.

8. The learned counsel for the applicant argues that the answers given in the LBJ are in his favour and, therefore, directions should be issued to the respondents to disburse the detained amount of DCRG in full to the applicant and also to pay him interest for the period of ~~de~~lay in making such payment.

9. On the contrary, the learned counsel for the respondents submits that the LBJ only concludes that the withholding of the entire amount of gratuity is impermissible (emphasis supplied). He contends that this only means that effect cannot be given to the Northern Railway's Circular dated 5.6.82 (Pension Circular, for short, as referred in the LBJ and reproduced in para 10 thereof) which authorised such holding back. The learned counsel argues that this means that an appropriate amount can be held back as authorised by the Railway Board's Circular dated 24.4.82, 1982 circular for short, as referred to in the LBJ reproduced in para 10 thereof. He asserts that the conclusion of the LBJ cannot be interpreted to mean that no portion of the DCRG, whatsoever, can be withheld. Therefore, effect can be given to the 1982 circular.

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10. The learned counsel for the applicant, however, submits that this argument of the respondents is not maintainable because the LBJ has held in para 13 of its judgement that the 1982 circular "appears to be infractive of Article 14 of the Constitution". This is reiterated more strongly in para 20 thereof, while dealing with the withholding of post-retirement railway passes and such withholding was held to be illegal after emphatically stating "Holding as we do, that the 1982 circular infracts Article 14 of the Constitution, etc". Therefore, no portion of the DCRG can be withheld. He however, submitted reluctantly, that, if at all any deduction is to be made from the DCRG, it should be in accordance with Rule 323 of the Pension Manual (Ann.A2) in terms of which the maximum amount of deduction can be only Rs. 1000/-.

11. This forceful argument is sought to be met by the respondents by a plea that, in an earlier case, the Hon'ble Supreme Court had already considered the 1982 circular and proceeded on the assumption that it is valid. This judgement could not be brought to the notice of the L.B. That judgement was delivered by the Hon'ble Supreme Court on 27.11.89 in Special Leave Petition No.7688-91/88 in Raj Pal Wahi and others Vs. the Union of India and Others arising out of appeals from the decisions of the New Bombay Bench of this Tribunal in O As 314, 345 and 498 an 9 of 1987. A copy of that judgement is kept on record. It was submitted by the learned counsel for the respondent that this judgement also concerns the same Railway Board's circular dated 24.4.82 (i.e. the 1982 circular) which has been considered by the L.B. That was a case where, though the DCRG was withheld after retirement, the petitioners had no grievance on that account, as the amount was since released. It appears

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from the judgement of the Hon'ble Supreme Court that the demand of the petitioners therein was that they were entitled to interest on the DCRG for the period for which it was withheld. In this regard, the Hon'ble Supreme Court has observed as under:

"Learned counsel for the petitioners submits that according to this Circular the Railway Authorities should give interest also on the amount of death-cum-retirement gratuity withheld by them. It is relevant to refer to the aforesaid Circular. The relevant portion of the Circular is noted herein below:

"The Government have had under consideration the question of raising the rate of interest payable to a Railway employee on delayed payment of gratuity where the delay occurs on account of administrative lapse or reasons beyond the control of the Government servant concerned. In partial modification of this Ministry's letter No.F(E)III.79/PNI/16, dated 3.9.79, the President is now pleased to decide that where the payment of DCRG has been delayed, the rate of interest will be as follows:

- (i) beyond 3 months and upto one year : 7 % per annum
- (ii) beyond one year : 10% per annum

There is no dispute that the petitioners stayed in the Railway Quarters after their retirement from service and as such under the extant rules, penal rent was charged on these petitioners which they have paid. In order to impress upon them to vacate the Railway Quarters, the Railway Authorities issued orders on the basis of the Railway Circular dated 24th April, 1982, purporting to withhold the payment of death-cum-retirement gratuity as well as the Railway passes during the period of such occupation of Quarters by them. The delay that was occurred is on account of the withholding of the gratuity of the death-cum-retirement gratuity on the basis of the aforesaid Railway Circular. In such circumstances, we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse."

12. The learned counsel for the respondents submits that two conclusions necessarily follow from this decision.

(i) The Railway Board Circular dated 24.4.82 is valid and this conclusion overrules the LBJ which holds that this circular is vitiated by the vice of discrimination under Article 14.

(ii) No interest is payable for the delay occasioned in the payment of DCRG as a result of withholding it and paying it to the official in this case only after the house is vacated, as this is being done in pursuance of a valid instruction i.e. the 1982 circular.

13. The learned counsel for the applicant meets this contention by pointing out that the LB has actually relied upon a later judgement of the Hon'ble Supreme Court in Union of India & Others Vs. Shiv Charan in civil appeal No.2002 of 1990, delivered on 23.4.90 by a larger bench of 3 Hon'ble Judges. The following extracts from para 22 of the LBJ are relevant in this connection:

"Shiv Charan, applicant had retired from railway service in August, 1986. He had not been paid the gratuity amounting to more than Rs. 20,000/-. The Railway Administration had not only withheld the entire amount of DCRG, but also the Railway passes on account of unauthorised retention of the house by Shri Shiv Charan. The Union of India preferred an appeal against the judgement and order of the Tribunal. Supreme Court granted SLP and allowed the appeal. The following pertinent observations were made in paragraph 2 of the judgement:-

"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".

The above extracted observations unmistakably show that the Apex Court treated the two matters viz. the payment of rent including penal rent etc. and the claim for compensation for the delayed payment of gratuity as distinct and separate."

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It is, therefore, contended that the applicant is entitled to receive penal interest, even if the 1982 circular is treated as valid.

14. We have to first consider the plea of the respondents that the LB's decision that the 1982 circular is infractive of Article 14 of the Constitution cannot be maintained in the light of the Hon'ble Supreme Court's judgement in Raj Pal Wahi's case (supra). We are not persuaded to accept that either of two conclusions referred to in para 12 necessarily follow from that judgement, as contended by the respondents. A perusal of that judgement shows that the issue whether the Railway Board's circular dated 24.4.82 suffers from the vice of discrimination and is therefore, ultravires of Article 14, was neither raised by the petitioners therein nor considered suo motu by the Hon'ble Supreme Court. It was taken for granted that this circular did not suffer from such a vice as there was no allegation to that effect. That does not lead to the conclusion that the judgement imprints the 1982 circular with the Supreme Court's stamp of validity. Similarly, on the question of interest also, no question was raised that only an appropriate amount of DCRG should have been retained and the retention of any amount in excess of the appropriate amount was illegal and such retention should render the respondents liable to payment of interest. The Court only considered the question of retention of DCRG in general terms. The judgement in Shiv Charan's case clarifies this matter, as this issue was specially raised therein. For these reasons, the judgement of the Apex Court in Rajpal Wahi's case cannot be relied upon by the respondents to press their claim that the 1982 circular is constitutionally

valid, because this issue was neither raised nor decided in that judgement. Therefore, the effect of the decision in the LBJ that the 1982 circular is infractive of Article 14 of the Constitution has to be considered.

15. We have considered this matter carefully because it raises certain issues affecting the final disposal of this application to which a reference is being made in the subsequent paras.

16. Before we come to the main point, we are obliged to point out to an inadvertent mistake in the issues referred to the LB as extracted in para 2 of the LBJ. The first issue referred reads as follows:-

"1. Whether the Railway Administration can withhold the entire amount of gratuity so long as the retired Railway servant does not vacate the Railway quarter and whether passes can be withheld according to instructions contained in Railway Board's letter dated 24th April, 1982 which are as follows:

"(ii) So far as the instructions contained in para 1(ii) of Board's letter under reference are concerned, it has been decided in consultation with FA/CAO that the entire amount of DCRG/SC to PF may be held back and 'No Claim' certificate is not to be issued till the Rly. accommodation is finally vacated by the concerned retired employee.

(iii) For every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallowed. A show-cause notice to this effect may be issued to the retired employee before disallowing the pass". "

As indicated earlier, the Railway Board's circular dated 24.4.82 as well as the subsequent Northern Railway circular dated 4.6.82 (i.e. 1982 circular and pension circular respectively) have been reproduced in extenso in para 10 of that judgement. It will be seen that instructions (ii) and (iii) quoted in issue No.1 in the aforesaid extract

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are attributed to the 1982 circular. As a matter of fact, instruction (iii) alone is a part of the 1982 circular dated 24.4.82 and instruction (ii) of the above extract is really an extract from the pension circular dated 4.6.82. Therefore, the first issue should really have been as follows:

"(1) When a railway employee does not vacate his quarter on his retirement,

- (i) can the Railway Administration withhold the entire amount of DCRG till he vacates the quarter, as authorized in the Northern Railway's circular letter dated 4.6.82; and
- (ii) can the Railway Administration disallow one set of post retirement passes for every one month of unauthorized retention of Railway quarter, as authorised by step (iii) outlined in the Railway Board's letter dated 20.4.82."

17. Therefore, when the LBJ concludes that withholding of the entire amount of gratuity is not permissible, it really has to be read in the context of the question as it ought to have been referred correctly as stated above. In other words, the judgement should be read to only mean that the Pension circular of the Northern Railway is not a good authority for such action.

18. Indeed, the LB makes this clear in para 11 of its judgement as follows:

"The instructions contained in para 2 of the Pension Circular are clearly inconsistent with those contained in clause (ii) of the opening para of 1982 circular, in so far as these provides for withholding the entire amount of DCRG. These instructions are also not based on correct interpretation of clause (ii) of the opening para of 1982 circular. Since 1982 circular permits only an appropriate 'hold-back' from the DCRG and that too, as permissible under the Rules in force, the withholding of entire DCRG is not permissible in terms of this circular".

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19. Yet, this reasoning is demolished and rendered ineffective because, immediately thereafter, the LB states in para 12 that there are many other reasons why the Railway Administration cannot withhold the entire amount of DCRG so long as the employee does not vacate the railway quarter and the reason which heads this list is that the 1982 circular itself is infractive of Article 14 of the Constitution. That being so, the finding given in para 11 of the LBJ as extracted in para 18 supra seems to be of no consequence.

20. Therefore, the conclusion reached in para 27 of the LBJ seems to be rested on the other reasons, on the basis of which the LB has come to the same conclusion and these are stated in paras 14 and 15 of the LBJ and are briefly as follows:

(i) Both the instructions of the Railways and judge made law require that DCRG be paid immediately on retirement, thereby implying that it cannot be held back till the official quarters is vacated.

(ii) Rule 2308 Vol.II of the Railway Establishment Code provides for retention of DCRG in certain circumstances, which does not include unauthorised retention of house after retirement. Save such circumstances, payment of pension and DCRG is automatic.

(iii) Even after retirement, the General Manager can permit the quarter to be retained for 8 months and such retention will not <sup>be</sup> unauthorised. Even so, DCRG is payable after retirement or at any rate, within 3 months of retirement and cannot be held back till house is vacated.

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(iv) If there was a need for such a provision (i.e. to hold back the DCRG), it should have been provided for independently like Rule 2308 of the Railway Establishment Code.

In other words, it appears to us that the question referred to the LB could, perhaps, have been disposed of without considering whether the 1982 circular is infractive of Article 14 and answering it affirmatively.

21. We may see the context in which this declaration was given. The LBJ was delivered in three connected cases, viz. OA 2573/89 (Wazir Chand's case), OA 2136/89 (the present case) and OA 1617/88 (MP Singh Bali's case). In the light of the directions contained in the LBJ, all these three cases were listed before us for hearing on 22.2.91 and we had an opportunity to see the reliefs asked for. We notice that in none of these three cases has the applicant prayed for a declaration that the 1982 circular is infractive of Article 14 and that it does not give any valid authority to retain any portion of the DCRG till the quarters are vacated. Such a question was also not referred to the LB by the Bench which heard the OA 2573/89 in the first instance, in which the issues were first settled and referred to the Hon'ble Chairman for making a reference to a Larger Bench.

22. It is, therefore, clear from the LBJ that the conclusion therein that the 1982 circular is infractive of Article 14 of the Constitution has been reached by the LB suo motu. From the questions referred to the LB, it can also be seen that the 1982 circular was relevant only in regard to withholding of passes and not in respect of DCRG. In the reference made in connection with passes there is no suggestion that the Bench had any

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doubt about the constitutional validity of the circular. The LB J also does not indicate whether the respondents therein had been given an opportunity to address the LB on this issue as they do not appear to have raised any contentions to the contrary. We will examine later the issue whether the declaration about the validity of the 1982 circular was necessary in the context of disallowing passes. For the present, it is sufficient to note that, as stated in para 20 supra, <sup>& perhaps,</sup> ~~that~~ such a declaration was not needed to dispose of the question raised regarding withholding of DCRG.

23. The main ground for holding that the 1982 circular is tainted by the vice of discrimination and is thus violative of Article 14 is, that the concluding para of that circular provides that it applies only to the officers/staff occupying certain Railway Establishments as referred to therein, but does not apply to officers and staff occupying houses owned by the Directorate of Estates. The LB held that this para thus classifies the Railway employees into two separate classes and it was held that this classification is not found on any intelligible differentia and at any rate, even if such differentia exist, they do not have a reasonable nexus to the objects sought to be achieved by that circular.

24. With great respect, we feel that the classification adopted in that circular can be considered from another angle. The purpose of the circular, as indicated in the subject heading, is to list the steps to be taken for the vacation of railway quarters, unauthorisedly retained by retired railway servants. Obviously, such directions could have been issued by the Railway Board only in respect of quarters owned by the Railways, because the responsibility of allotting these quarters and getting

them vacated rests squarely with the subordinate Railway authorities. For obvious reasons, the Railway Board could not have issued such directions to the Directorate of Estates, as it has no concern with the residential quarters belonging to that Directorate, it being the responsibility of another Ministry. The classification in the aforesaid 1982 circular is therefore, perhaps, not of the officers into two categories, but of the buildings into two categories. One category refers to residential buildings whose ownership rests with the Railways and the other refers to buildings whose ownership rests with the Directorate of Estates i.e. under the Ministry of Urban Development, even if some of them are tenanted <sup>by</sup> ~~by~~ railway employees. Viewed in this light, the classification adopted in the 1982 circular could have been upheld. This was not considered in the LBJ.

25. That apart, it would appear that the question whether similar directions have also been issued by the Directorate of Estates as in the 1982 circular and that therefore, there was no such discrimination at all was also, apparently, not considered.

26. It is not clear if the Respondents similarly submitted that the issues raised by us in paras 24 and 25 be considered by the LBJ in this context.

27. The 1982 circular has necessarily to be considered by the LBJ while considering the question of withholding the passes for, the only authority for this action is that circular. It is only necessary to add that, in the present case, the applicant does not seem to have a grievance in this regard even though the impugned Ann.1 notice threatens disallowance of passes, vide the reliefs claimed by him. This issue has been considered by the LBJ

in para 20 of its judgement. After referring to its earlier declaration that this circular is violative of Article 14 of the Constitution, the LBJ points out that, even otherwise, passes can be withheld on this ground only after establishing that the employee is in unauthorised occupation of the quarter, for which purpose, a show cause notice has first to be issued. That procedure, admittedly not having been followed, the impugned action could have been quashed on this only ground. It could, perhaps, also have been held, as has been held by the Supreme Court in Shiv Charan's case supra, that withholding of passes can have no connection with unauthorised retention of quarters and cannot be resorted to as a step to secure vacation, as they are two separate matters. If the employee had misused the passes in some way or other, withholding of passes will have a nexus with his conduct, and not otherwise. In other words, though the 1982 circular is attracted only in the context of this question, perhaps, even this question could have been answered without making a declaration about the circular being infractive of Article 14 of the Constitution.

28. Therefore, the issue before us is whether the pronouncement of the LBJ about the validity of the 1982 circular, made in such circumstance, is binding on us when we now have to dispose of this application finally on the basis of that judgement. It is necessary to remind ourselves that if that pronouncement is held to be binding, some consequences necessarily follow, which are not reflected in para 27 of the LBJ. For, the



conclusion at Sl.No. (i) under Issue No. 1 should then have been that it is not only not permissible to withhold the entire amount of gratuity of a retired railway servant under the 'Pension Circular' so long as he does not vacate the railway quarter, but that it is also not permissible to withhold any portion thereof in accordance with the '1982 Circular', as well. Simultaneously, the conclusion at Sl.No. (iii) under Issue No.2 should also <sup>& add:</sup> be that as there is no law, whatsoever, permitting the withholding of the gratuity of a retired railway servant, either fully or in part, so long as he does not vacate the railway quarter, the respondents would be liable to pay interest for the period for which such gratuity was wrongfully withheld. Therefore, this issue is very important for a proper decision of this case.

29. It could, perhaps, be argued that, in the aforesaid circumstances, this conclusion is to be treated only as an obiter dicta of the LBJ, particularly when it is not incorporated in para 27 of its judgement. In our view, this will not be in keeping with judicial propriety for two reasons. Firstly, this is one of the three cases in which questions were raised for consideration by a Larger Bench and a judgement has been handed down for disposal of the application. Therefore, we are obliged to read the judgement in its entirety and not be guided exclusively by para 27 where the conclusions are set out. In so doing, if we encounter any practical difficulty, we cannot opine that only the operative portion of the LBJ is binding on us and not the other portions which give rise to the difficulties. Secondly, the Tribunal is one entity though it functions through several territorial Benches. When one Bench of the Tribunal finds it difficult to accept an earlier decision rendered

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by another Bench as good law, it can refer the matter to the Hon'ble Chairman who can have the issue decided by a Larger Bench under the provisions of section 5(4)(d) of the Administrative Tribunals Act. Therefore, if a Bench like ours finds some difficulties in giving effect to the conclusions arrived at by the LB or feels that there are some ambiguities in its conclusions, the proper course would be to refer the matter again to the Hon'ble Chairman of the CAT for taking similar action in accordance with law.

30. Before doing so, we would like to examine two more issues on which also further light has to be thrown. The first is the reluctant admission of the counsel of the applicant that, in the circumstances of this case, the respondents are entitled at best to deduct only Rs 1000/- in terms of Rule 323 of the Pension Manual, a copy of which is kept on record. This issue was, no doubt, raised before the LB but this was not gone into in depth, in view of its earlier finding that the entire amount of DCRG cannot be withheld and that the 1982 circular is infractive of Article 14. In the circumstances, we would like to consider this plea of the applicant.

31. A close reading of rule 323 indicates that it deals with situations at the time of retirement of an employee where--

- (a) losses have been caused to government by the employee;
- (b) the employee owes other government dues such as over payment on account of pay and allowances or admitted and obvious dues such as House rent, etc; and  
the employee
- (c) owes other non-government dues.

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32. We are of the view that Rule 323 relates to three kinds of dues which had arisen during an official's service career before retirement and which had already become due or overdue in the past and which ought to have been recovered prior to retirement but have not been so recovered. Rule 323 indicates the steps which can be taken to recover these dues at the time of retirement. We are concerned with dues relating to house rent, which have been dealt with in Rule 323 (iii)(b). For the recovery of past house rent dues, the government servant can be asked to furnish a surety failing which action can be taken under Rule 323 (iii)(a) i.e. a suitable cash deposit may be taken from him or alternatively such portion of the DCRG as may be considered sufficient may be held over till the outstanding rent dues are assessed and adjusted. (emphasis ours). In this regard a further instruction is given in Rule 323 (iv) which is reproduced below:

"323(iv) - In all cases referred to in (a) and (b) of sub-para (i) it is desirable that the amounts which the retiring Railway servants are asked to deposit or those which are withheld from the gratuity payable to them are not disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods. To that end the following principles should be observed by all the concerned authorities:

- (a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus 25 per cent thereof. In cases where it is not possible to estimate the approximate amount recoverable from the retired Railway servant, the deposit to be taken or the portion of gratuity to be withheld should be limited to 10 per cent of the amount of death-cum-retirement gratuity or Rs.1,000// whichever is less.
- (b) Efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant concerned. In any case, it should be presumed that there is no claim against a Railway servant if none is made after his retirement within the period indicated below:

15 months, if commercial debits are involved

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and, 6 months, if commercial debits are not involved.

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The amount of gratuity to be withheld should thus not exceed the estimated amount of outstanding dues plus 25% thereof. It is only when such an estimate cannot be made that it should be limited to 10% of the gratuity or Rs.1000/-, whichever is less. Therefore, if the estimated arrears is taken into account, one can visualise a situation where a much larger amount of gratuity could be legitimately withheld, even under rule 323 and this may be equal even to the entire amount of gratuity, if it is based on a proper estimate. Though it is held that the Pension Manual of which Rule 323 is a part, is only a compilation of executive instructions, they can be enforced so long as they have not been held to be invalid.

33. In short, even in respect of dues incurred prior to retirement but not yet recovered, there is an unchallenged authority in Rule 323 to withhold an appropriate amount and the possibility--though remote--of such appropriate amount being equal to the entire gratuity amount cannot be ruled out. The 1982 circular only applies the same principle to dues of house rent arising out of not vacating the Government quarter on retirement.

34. The other small point relates to the construction placed on the phrase "as permissible under the extant rules" occurring in step (ii) of the 1982 circular referred to in the following extract from para 11 of the LBJ:

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"Since 1982 circular permits only an appropriate hold back from the DCRG and that too as permissible under the Rules in force, the withholding of entire DCRG is not permissible in terms of this Circular."

This observation seems to suggest that this phrase is meant to qualify the appropriate hold back from the DCRG. We are of the view that as the appropriate hold back is authorised by this very circular, which itself is the rule in this behalf, as admitted earlier in the LBJ, no other rule is needed for such authorization. Therefore, the phrase "as permissible under the extant rules" qualifies the extent of rent to be recovered i.e. whether it is normal rent, penal rent or damages for which the hold back is necessary.

35. For the aforesaid reasons we feel that though it should be possible to issue certain final directions in this case which has been pending for some time now, it has to be referred to the Hon'ble Chairman of Central Administrative Tribunal for appropriate directions in respect of certain other matters.

36. The applicant does not now pray for the relief at Sl.No. (i) and the relief at Sl.No. (iii) of para 8 of the application. Therefore, we dismiss this application in so far as it concerns these two reliefs, as not pressed. The eviction of an employee from his quarter, allegedly occupied by him unauthorizedly, is an independent matter and has no connection with the issue whether, after retirement, his DCRG has been paid or not. In this view of the matter, as well as the submission made by the learned counsel for the applicant regarding the prayer at Sl.No. (i) <sup>and (iii)</sup> in para 8 of the application, the interim order directing that the applicant shall not be evicted from government quarters No.C 12/B, Lajpat Nagar, New Delhi and

which now remains in force until further orders, is hereby vacated with immediate effect. The respondents are at liberty to take such steps in accordance with law, as may be advised, for the eviction of the applicant from the said accommodation.

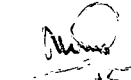
37. The reliefs sought in para 8(ii) and (iv) can be properly considered only after we receive further clarification of the judgement of the LB in respect of the following issues:


- (i) Does the declaration that the '1982 Circular' dated 20.4.82 of the Railway Board is infractive of Article 14 of the Constitution, as stated in para 12, 13 and 20 of the judgement of the Larger Bench, form part of the conclusions reached in para 27 by the LB on the issues referred to it, though this declaration is neither made a part of such conclusion, nor is it rendered in answer to any specific issue referred to that Bench about its validity?
  - (ii) If the question at (i) is answered in the affirmative, do the conclusions set out in Sl. No. (i) under Issue No.1 and in Sl.No.(iii) under Issue No.2 in para 27 of the judgement of the Larger Bench require to be modified as indicated in para 28 supra?
  - (iii) If the issue at (i) is answered in the negative, does the conclusion set out at Sl.No. (i) under Issue No.1 in para 27 of the judgement of the Larger Bench mean that while it is legally impermissible to withhold the entire amount of gratuity of a retired railway servant, as provided in the Pension Circular dated 4.6.82, so long as he does not vacate the railway quarter, an appropriate
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amount from the DCRG could be held back  
as stated in the 1982 circular dated 24.4.82?

- (iv) Does the declaration that the 1982 circular of the Railway Board dated 24.4.82 is infractive of Article 14 of the Constitution require re-consideration in the light of the observations made by us in paras 17 to 27 supra?

38. The Registry is directed to issue copies of this judgement on the parties and thereafter place this case before the Hon'ble Chairman, Central Administrative Tribunal for necessary directions.

  
(Maharaj Din)  
Judicial Member

  
(N.V. Krishnan)  
Administrative Member