

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.
~~TAX NO.~~

2573/89

199

DATE OF DECISION 28.2.1991Wazir Chand

Petitioner

Mr. A.K. Behra

Advocate for the Petitioner(s)

Versus

Government of India & others

Respondent

Mr. D.N. Moolri

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. Maharaj Din, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✕
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✕
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✕

ORDER

(N.V. Krishna, Admve. Member)

The applicant retired from the Railways on 31.3.89 as a Chargeman. While in service he was allotted Railway quarter No. 218-A. On retirement, he sought permission to retain the quarter till 30.11.89 which was granted. His grievance is that he is treated to be in unauthorised possession of the said quarters with effect from 1.12.89 vide Annexure-A1 letter dated 14.12.89 of the third respondent, Chief Works Manager, Northern Railway, Ambala, though his retirement benefits like Death-cum-Retirement Gratuity (DCRG) amounting to Rs. 30,000 and insurance money have not yet been paid to him.

2. When the case came up for hearing on an earlier occasion, it was referred to a Larger Bench on 16.1.90 on the

following issues;

"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 24.4.82 which are as follows:

"(ii) So far as the instructions contained in para (ii) of the 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 least amount payable will be calculated on the basis of 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

that 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?"

(46)

The Larger Bench has rendered a decision in this case as well as two connected cases on 25.10.90 after considering the issues referred to above.

3. The issues referred to the Larger Bench have been answered as follows:

"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."

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The Larger Bench has remitted this application and the connected cases for being decided in the light of the findings given above.

4. The case was fixed for final hearing today at the request of the counsel of both sides, yet, counsel for applicant was absent. Hence the case was heard on merits ex-parte.

5. In the present case the three important reliefs sought by the applicant are as follows:

- "(i) quash the impugned order annexed as Annexure-A1;
- (ii) direct the respondents to treat the applicant to be in authorised possession of quarter No.218-A as long as the gratuity and other amounts due to the applicant are not paid to him;
- (iii) direct respondents to pay the costs of the legal proceedings."

It may be noticed that the reliefs sought are quite different from the issues considered and decided by the Larger Bench.

6. The question for consideration in this case is whether an employee can hold on to a railway quarter allotted to him even after his retirement and after the expiry of the term of allotment of that house to him, merely on the ground that the DCRG and other amounts due to him on retirement have not been paid or, whether, despite such non-payment, the employees can be declared to be in unauthorised occupation of the quarter with effect from the date from which the authorised allotment of that quarter expires?

7. Admittedly, permission was granted to the applicant to occupy the house only till 30.11.89. The question

is whether with effect from 1.12.89 he can be considered to be in unauthorised occupation as alleged in the Annexure-A1 letter of the respondent or the applicant has a right to be treated as an authorized occupant of the quarter until his retirement dues like DCRG are paid to him.

8. This is not a specific issue referred to the Larger Bench. However, there are certain observations in the judgement of the Larger Bench which throw a light on this issue indirectly. In para 23 of the judgement it has been held that merely because the retirement dues, particularly the DCRG, has not been paid to a retired railway employee, it cannot be held that he will be liable to pay only the normal rent for the railway quarter occupied by / him until such DCRG was paid. Normal rent is payable only for authorized allotment. Thus, it can be inferred that though DCRG has not been paid the retention of a government quarter will be treated as unauthorized, if there is no allotment permitting continued occupation. The argument of the applicant that until gratuity was paid it would be difficult to secure alternate accommodation after vacating the government accommodation was also not found acceptable. Further, in para 25 it has been held, on the basis of the judgement of the Supreme Court in the case of M.Padmanabhan Nair Vs. State of Kerala (AIR 1985 SC 356), that any culpable delay in settlement of disbursement of the pension and gratuity must be visited with the penalty of interest at the market rate till the actual payment. The default

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of the respondents in paying the DCRG on time cannot be set off by unauthorisedly occupying the allotted government accommodation after the allotment order has lapsed.

9. In this view of the matter we hold that the respondents were perfectly authorised in issuing the Annexure-A1 order dated 14.12.89 informing the applicant that after the expiry of the proper sanction for continued occupation, i.e. 30.11.89, the applicant's possession of the quarter No.218-A was unauthorised with effect from 1.12.89. The respondents had also the valid authority to inform him, that if he failed to vacate the quarter thereafter, eviction proceedings would be taken and rent at the rate of Rs. 15 per Sq. Metre of the plinth area would be recovered.

10. In this view of the matter, the prayer to quash the impugned order at Annexure-A1 and to direct the respondents to treat the applicant to be in authorised occupation of this quarter cannot be granted and the application has to be dismissed in respect of these prayers.

11. However, the Annexure-1 notice adds that apart from initiating eviction proceedings and recovering penal rent, one set of complimentary passes for each month of unauthorised occupation will be debited as extant rules. In so far as disallowing one set of post retirement pass for every month of unauthorised occupation of railway quarter is concerned, the Larger Bench has rendered a decision that this is a totally

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unauthorised and unwarranted direction. Accordingly the last sentence of para 2 of the Annexure-1 notice is liable to be quashed.

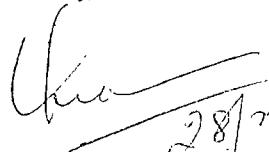
12. It may be noticed that the applicant has not made any claim for payment of DCRG. This has to be the subject matter of a separate application as it is not connected with the main prayer for which this application had been filed.

13. Therefore, we dismiss the prayers made in this application. We quash the sentence "Apart from this, one set of complimentary passes per month will be debited as per extant rules" from the second para of the impugned Annexure -A1 order dated 14.12.1989.

14. The applicant is at liberty to seek payment of the DCRG from the respondents in accordance with law.

15. The application is disposed of as above. There will be no order as to costs.


(MAHARAJ DIN)
MEMBER(J)


28/1/91
(N.V. KRISHNAN)
MEMBER(A)