

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 313/89

DECIDED ON : 23.3.93

Surinder Kumar ... Applicant
Vs.
Union of India & Ors. ... Respondents

COURT : THE HON'BLE SHRI J. P. SHARMA, MEMBER (J)

Shri B. S. Mainee, Counsel for the Applicant

Shri D. S. Mahendru, Proxy Counsel for Shri
P. S. Mahendru, Counsel for Respondents

JUDGMENT

The applicant was serving as Air Conditioning Coach Incharge, Northern Railway and retired from the railway service on superannuation w.e.f. 30.9.1986. He was allotted railway quarter No. 225/2, Delhi Kishanganj, Delhi. The applicant did not vacate railway quarter ad the proceedings were drawn against him under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as amended in 1980 and on 31.1.1989 on the application filed by the Union of India against the applicant, the Estates Officer, Northern Railway passed the order of eviction from the said quarter and also ordered for recovery of damages under Section 7(2) of the aforesaid Act upto 31.1.1979 Rs. 14,378.50 and onwards at the rate of Rs.400/- per month till vacation of the quarter. It was further directed that from 30.4.1989, the applicant shall be liable to pay a simple interest at the rate of 12% per annum. A copy of the judgment has been filed as Annexure R-1 to the supplementary counter filed by the respondents. On the basis of the aforesaid judgment the Estates Officer issued the order in form-G under sub-section (2) and (2) (a)

of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was also issued for vacation of the premises. Both the notices have been enclosed as Annexures A-1 and A-2 and have been assailed in this application under section 19 of the Administrative Tribunals Act, 1985, filed on 13.2.1989.

2. The applicant in this application has prayed for the grant of the reliefs to quash the aforesaid impugned order of eviction and damages (Annexures A-1 and A-2) and further a direction to the respondents to pay the amount of gratuity to the applicant recovering only the normal rent and electricity charges for the period of retention of the railway quarter. A prayer has also been made for the grant of interest on the amount of gratuity and also to issue the post-retirement complimentary passes which have been illegally withheld.

3. The respondents in their counter have opposed grant of the relief prayed for and stated that the application is misconceived and not maintainable under law. It is said that the present application is barred under section 10 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is further stated that the application is barred by limitation and by principles of estoppel. It is stated that because of the non-vacation of the quarter the gratuity has not been paid and for every month of unauthorised retention of railway quarter, one set of post-retirement passes should be disallowed. The applicant has filed rejoinder to the reply of the respondents reiterating the same facts which are averred in the application. A supplementary counter has also been filed on 6.7.1990 but there is no order for filing such a supplementary counter on record.

4. When this application was filed, it was admitted on 15.2.1989 and the respondents by an interim direction were directed not to dispossess the applicant from the railway quarter for a period of 14 days. That interim direction continued and was made absolute vide order dated 24.4.1989 as no reply has been filed by the respondents.

5. I have heard the learned counsel for the applicant Shri B. S. Mainee and the proxy counsel for the respondents Shri D. S. Mahendru appearing for Shri P. S. Mahendru. The applicant was retired w.e.f. 30.9.1986. The applicant has no right to retain the railway quarter after his retirement except for a concessional period of four months and with the permission of the respondents for another period of four months. There is nothing on record to show that the applicant has ever obtained a permission to retain the said railway quarter. The lame excuse shown in the application for retention of the railway quarter is only on account of non-payment of retirement benefits. The law stands now well settled by virtue of the decision of the Full Bench in the case of Wazir Chand vs. Union of India : 1991 (1) AJ 60 as well as in the case of Union of India vs. Shiv Charan : SLP (C) No. 881/90. In the case of Wazir Chand (supra) it has been held that the retiree from the railways is entitled to his gratuity and it cannot be linked with the retention of the railway quarter. The respondents are also at liberty to realise penal rent for unauthorised occupation and retention of the railway quarter after the prescribed period of retirement. The Hon'ble Supreme Court also in the case of Shiv Charan (supra) laid down that the gratuity has to be paid to the retiree less the rent etc. and the railway administration is entitled to recover damages for use and occupation for unauthorised retention of the railway quarter under the relevant

law. In the facts and circumstances of this case, it is evident that the Union of India has filed proceedings under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the same has been decided vide judgment dated 31.1.1989, a copy of which is attached with the counter as Annexure R-1. During the course of the arguments the learned counsel could not show as to how the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act before the Estates Officer, Northern Railway are faulted or are vitiated. By virtue of non-vacation of the railway quarter the authorities have every right to proceed against the applicant in the competent forum. In the application the legality of the conclusion arrived at by the Estates Officer ^{not} has/been challenged. What is averred and argued also during the course of oral arguments is that the gratuity was retained, so the applicant has retained the railway quarter. There is no authorisation in that regard under the relevant rules. The learned counsel for the applicant also could not cite any circular/direction/rule under which a retiree can retain the allotted railway quarter after his retirement. The contract of employment ceases the moment the employee retires from service and as a condition of service he is given the government accommodation at subsidised rates only on nominal licence fee. By no stretch of imagination or under common law the retiree can claim the retention of the said accommodation after he has retired from service. The notices issued to the applicant (Annexures A-1 and A-2), therefore, cannot be said to be in any way irregular or illegal.

6. The learned counsel for the respondents argued that challenge in this application is only to the aforesaid notices dated 3.2.1989 by which the applicant was directed to pay the

damages amounting to Rs.14,378.50 upto 31.1.1989 and if not paid, after three months with interest at the rate of 12% per annum till the date of payment. He has been further levied with damages at the rate of Rs.1400/- per month till the vacation of the quarter. The above rates have been arrived at by the Estates Officer as per extant rules and the prevalent rates of rent. Thus, the present application according to the respondents is misconceived and does not warrant any consideration. There is some substance in the contention of the learned counsel for the respondents but at the same time, the respondents have also not released the DCRG and they withheld the post-retirement passes. In the aforesaid judgment the Full Bench of the Tribunal as well as the Supreme Court held that the gratuity of the retiree should be released and cannot be linked with the retention of the railway quarter in an unauthorised manner. Similarly, regarding withholding of the post-retirement passes the Full Bench has also decided that the same could not be withheld for non-vacation of the railway quarter.

7. Having considered the rival contentions of the parties, the present application is disposed of in the following manner :-

- (1) The application is dismissed with regard to the reliefs of quashing the order of eviction and damages (Annexures A-1 and A-2) and the respondents shall be free to proceed for recovering the same as per extant rules and the judgment of the Estates Officer, Northern Railway is upheld. The stay granted to the applicant is vacated.

(2) Respondents are, however, directed to release the gratuity of the applicant less the rent etc. for the period of retention of the railway quarter till the vacation and if the balance is there, then the same be paid to the applicant within a period of three months. The applicant, however, shall not be entitled to any interest because of retention in unauthorised manner of the railway quarter in view of the decision of the Hon'ble Supreme Court in the case of Raj Pal Wahi & Ors. (supra).

In the circumstances, parties are left to bear their own costs.

J. P. Sharma 23.3.90
(J. P. Sharma)
Member (J)