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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * * *

O.A. NO.1101/1989

DATE OF DECISION 4.6.91

SHRI HARBANS LAL

.....APPLICANT

VS.

UNION OF INDIA & ANOTHER

.....RESPONDENTS

CORAM

SHRI B.N. JAYASIMHA, HON'BLE VICE CHAIRMAN

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

FOR THE APPLICANT

.....SHRI S.K. SAWHNEY

FOR THE RESPONDENTS

.....SHRI S.N. SIKKA

1. Whether Reporters of local papers may be allowed to see the Judgement? Yh
2. To be referred to the Reporter or not? Yh

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant retired as Driver from Northern Railway, New Delhi on being declared medically unfit for the post of Driver Grade-A and as per rules, his son, Naresh Chand was given compassionate appointment as Ticket Collector by the order dated 30.1.1987. The applicant at the time of his retirement was

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occupying the Railway quarter No.9/4 Kishan Ganj, Delhi and after his retirement, he did not vacate the Railway quarter. The applicant applied for the regularisation of the said quarter in the name of his son who got appointment as Ticket Collector by the order dated 30.1.1987 and was posted at Nizamuddin Railway Station w.e.f. 15.3.1988. The quarter in the name of the son was regularised w.e.f. 15.3.1988.

2. The grievance of the applicant is that by the impugned order dated 14.2.1989 (Annexure_A 1), the respondents have demanded penal rent. In this impugned letter, from 6.3.1987 to 5.5.1987 normal rent was charged; from 6.5.1987 to 5.9.1987 twice the standard rent or 10% of the pay, whichever is more and from 6.9.1987 to 14.3.1988 five times of the standard rent or 10% of the pay, whichever is more. Besides this, a charge has also been on account of the consumption of water at the rate of 25.50 Rs. per month and cleanliness charges at the rate of 4 Rs. per month. Earlier to this, the applicant had made a representation on 10.1.1989 in which the applicant has requested that the recovery of penal (outsider) rent from the settlement dues is

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not logical and just and the normal rent may be recovered from 6.5.1987 to 14.3.1988 and the difference of over-charged rent may please be refunded to the applicant as early as possible.

3. The applicant in this Original Application has claimed the following reliefs :-

- (i) Quash the illegal order dated 14.2.89 Annexure-A1.
- (ii) Direct the respondents to charge normal rent of the quarter from 5.3.87 to 15.3.88 when it was regularised in the name of son of the applicant and refund the amount of Rs.8634.20 illegally deducted as penal rent.
- (iii) Direct the respondents to pay 18% interest on the delayed payment of gratuity which became due on 5.3.87.
- (iv) Direct the respondents to issue passes which have been illegally withheld.

4. The application is opposed by the respondents governed by that applicant is the Railway Board's letter No. EG (81) DRI dated 24.4.1982 and the instructions contained in para (II) which are as follows :-

"So far as instructions contained in para (II) of the Board's letter under reference are concerned, it has been decided in consultation with the 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 Railway condition is finally vacated by the railway concerned retired employees and quarter

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of his arrears of rent, electricity and other charges.

(II) Settlement dues of the employees should be finalised with an appropriate hold back amount from DCRG/SC special contribution to PF as the case may be for rent recoveries as permissible under the extent rules. For every one month of unauthorised retention of quarters, one set of post retirement passes should be disallowed."

It is further stated that in terms of Rule 323 (Para 1 Sub Para (b)) of Pension Manual, a suitable cash deposit can be taken from the Railway servant and such a portion of Death-cum-Retirement-Gratuity can be withheld till the outstanding dues are assessed and paid by the concerned employee. It is said that the amount of gratuity payable to the applicant was Rs.53,708 out of which the applicant has been paid Rs.45,073.80 and a sum of Rs.8,634.20 has been withheld on account of outstanding dues to be assessed and adjusted towards the rent to be paid by the applicant for the period from 6.3.1987 to 14.3.1988. Further it is stated that in view of the Railway Board's letter dated 24.4.1982, for every month of unauthorised detention of Railway quarter, one set of post retirement passes can be withheld.

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5. We have heard the learned counsel of the parties at length and have gone through the record of the case. The learned counsel for the applicant referred to the authority of Wazir Chand Versus Union of India decided by the Full Bench of the Central Administrative Tribunal, Principal Bench, New Delhi on 25.10.1990 in O.A. No.2573/1989 wherein the Full Bench answered the two issues referred to in the following manner :-

ISSUE NO.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 F.A./C.A.O. 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."

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ISSUE NO.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?

These issues have been answered by the Full Bench in the following manner :-

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) Dis-allowing 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.

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- (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.

6. In the aforesaid judgement, the Full Bench has also quoted the judgement of Hon'ble Supreme Court granting the S.L.P. in Shri Shiv Charan Versus Union of India and the paragraph-2 of the judgement is reproduced below :-

"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."

7. From perusal of the above, the Full Bench decision is clear that the payment of rent including penal

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rent etc. and the claim for compensation for the delayed payment of gratuity are to be treated as two matters, distinct and separate.

8. The learned counsel for the respondents, however, pointed out that the present case is not covered by the judgement of Wazir Chand (SUPRA) and also referred to unreported judgement of the Hon'ble Supreme Court passed in S.L.P. No.7688-91/89 arising from the judgement dated 2.2.1988 of the Central Administrative Tribunal, New Bombay Bench in O.A. No.314 etc. of 1987-Shri Raj Pal Wahi & Ors. Versus Union of India & Ors. Raj Pal Wah was not granted the relief of interest by the Central Administrative Tribunal, New Bombay Bench on the withheld passes amount of D.C.R.G. as well as the withheld passes because he remained in unauthorised occupation of the allotted railway premises after his retirement. The Hon'ble Supreme Court decided the S.L.P. on 27.11.1989 and by the time, the D.C.R.G. after deduction of penal rent was paid to the applicant, so also the withheld passes commenced. The Hon'ble

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Supreme Court finally decided the case and passed the following operative portion of the order :-

"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 those 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 hear that the petitioners are entitled to get interest of 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. Therefore, we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same. The Special Leave Petition is thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order.

9. The learned counsel for the applicant also relied on an authority reported in 1973 Labour and Dispute

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Cases at p-1659 (Harbhajan Singh Versus Union of India & Ors.) decided by Delhi High Court in which it has been held that if the Railway employee retains the quarter beyond the permission period of four months after retirement and in the absence of further permission, the retention of possession becomes unauthorised occupation and the employee becomes chargeable to rent as an outsider. However, it has been held that the liability to pay rent as an outsider arises only when the allottee fails to vacate the quarter after the cancellation of the allotment under Rule 1713 (b)(v) of the Railway Establishment Code. The learned counsel for the applicant argued that the applicant has never been given a notice nor the allotment which was cancelled, so no penal rent can be charged.

10. The learned counsel further argued that the circular of the Railway Board No E (G) 81 DRI-51 dated 24.4.1982 (in short 1982 Circular) pertaining to steps to be taken for vacation of unauthorised retention of Railway Quarters by retired Railway Officers and staff as also the Northern Railway Circular No.720-E/XXVI/Pension dated 4.5.1982

(Pensions Circular No.7/82-in short Pension Circular)

have been discussed in detail in the Full Bench

judgement. Both the Circulars are reproduced below :-

"Copy of Railway Board's letter No.E(G)91 DRI-51 dated 24.4.1982 from Desk Officer, Estt.(Genl), Railway Board, New Delhi addressed to General Manager, Northern Railway and others

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Subject : - Unauthorised retention of Railway quarters by retired Railway Officers and staff. Steps to be taken for vacation of.

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On the Railways there is an acute shortage of Railway quarters for officers and staff. This shortage is further accentuated by unauthorised retention of the quarters by officers and staff after their retirement. Eviction proceedings for getting the quarters vacated, are normally protracted. As a result, a large number of officers and staff is deprived of the privilege of Railway quarters. The Ministry of Railways have viewed this situation with concern and have decided that the Railway Admn. should take the following steps to discourage unauthorised retention of Railway quarters by retired officers and staff :-

- i) 'No claim' certificate should not be given unless the employee after retirement has vacated the Rly. quarter and cleared all his arrears of rent, electricity and other charges etc.
- ii) Settlement dues of the employee should be finalised with an appropriate "hold-back" amount from DCRG/Spl. contribution to P.F., as the case may be, for rent recoveries, as permissible under the extant rules.

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- 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.

The above stipulations apply to officers/ staff occupying transit flats, Railway Rest House, Railway loased houses and Railway quarters temporarily transferred to Directorate of Estates Pool, but do not apply to officers and staff occupying houses owned by the Directorate of Estates.

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NORTHERN RAILWAY

Headquarters Office,
Baroda House, N.Delhi.

No.720-E/XXVI/Pension

Dated 4-6-1982.

All Divl.Rly. Managers &
Extra Divl. Officers, N.Rly.
All Sr.Divl. Accounts Officers,

Pension Circular
No.7/82
P.Br. S.No.8045

N.Rly.,
FA /CAO
Director
of Audit

Baroda-House,
New Delhi.

Sub :- Un-authorized retention of Railway Quarters by retired Railway officers and staff - steps to be taken for vacation of :-

In supersession of this office Joint Account and Executive Department Circular dated 8.3.1982 a copy of Railway Board letter No.%(G)81-QR1-51 dated 24.4.82 is sent herewith for information and strict compliance.

So far as the instructions contained in para (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.

DA/As above.

Sd/-
for General Manager (P)"

The Full Bench held that the instructions contained in para-2 of the Pension Circulars are clearly inconsistent with those contained in Clause 2 of the opening para of 1982 circular in so far as these provide for withholding the entire amount of D.C.R.G. On the basis of the above, the Full Bench observed that the Railway Administration cannot withhold the entire amount of gratuity so long as the retired Railway servant does not vacate the Railway quarter. It has been further held by the Full Bench that the 1982 circular would not appear to be sustainable for the reason that the same is tainted by the Vice of discrimination and is hit by Article 14 of the Constitution.

11. However, it appears that the unreported judgement of the Hon'ble Supreme Court of Raj Pal Wahi was not placed before the Full Bench. It appears that the Hon'ble Supreme Court placed reliance on the 1982 circular. The applicant, Raj Pal Wahi and others were not allowed interest on the withheld amount of D.C.R.G.

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12. However, there is no controversy regarding the fact that the recovery of damages as an outsider from the retired Railway servant is a matter totally different from the payment of D.C.R.G. to the retired Railway employee. To this extent, the deduction of penal rent from the D.C.R.G. cannot be justified.

The applicant has no objection to the deduction of the normal rent and other water charges etc. which are logically due by virtue of use and occupation of the Railway premises by the retired Railway servant.

13. Now going to the reasonableness of the plea of the applicant for award of interest, it appears that the applicant never made any representation before the Railway quarter was regularised in the name of his son, for the payment of D.C.R.G. or other retirement benefits. The applicant retired from service on 5.3.1987 and it appears that he made the representation in January, 1989. It is not evident from the record whether he made that representation after the payment of D.C.R.G. ^{or} before he was paid. The language of the ^{applicant's} ~~the~~ representation (Annexure-A 10) January, 1989 shows that the D.C.R.G. had been paid to him after deducting the rent at the penal rents and the applicant claimed

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refund of the same. Thus the applicant himself is to blame for not making his stand clear and he wanted to persuade the department logically to give compassionate appointment to his son, Naresh Chand and further to regularise the quarter in his name. Judgement by the Full Bench of the Central Administrative Tribunal referred to above, did not specifically command the allowing of the interest, but it may be allowed in appropriate cases. In the present case, the applicant himself did not claim the amount of D.C.R.G. and further there was no administrative lapses in the payment of the D.C.R.G. As such the applicant cannot claim as of right the award of interest according to the 1984 Circular of the Railway Board.

14. Regarding the withheld passes, since the amount of D.C.R.G. has been paid as well as the deduction of penal rent has been made, this relief becomes infructuous and the withheld passes would have been resumed to be given to the applicant as per relevant rules. If not so, a direction can be issued to the respondents to resume the delivery of passes to the applicant as per rules.

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15. As regards the deduction of penal rent, the act of the respondents cannot be justified, particularly, in view of the law laid down by the Hon'ble Supreme Court in the matter of Shiv Charan Lal's case and by the Full Bench in Wazir Chand's case. So the respondents are bound to refund the penal amount of rent only deducted from the D.C.R.G. to the applicant. However, the respondents shall have a right to proceed against the applicant for award of damages or penal rent before the prescribed authority under Public Privilege (Eviction of Unauthorised Occupants) Act, 1971. ^{In fact} the learned counsel for the applicant also desired the same during the course of arguments.

16. Having given a careful consideration to the above aspects of the matter, the present application is disposed of as follows :-

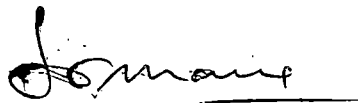
- (a) The claim of interest on the withheld amount of D.C.R.G. is not allowed to the applicant and the relief in that regard is disallowed.
- (b) The withheld passes, which if not already resumed, shall be resumed by the respondents within a week from the receipt of the order.
- (c) The respondents are further directed to refund the amount deducted from the D.C.R.G.

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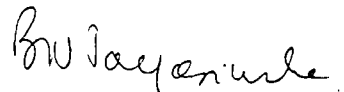
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as a penal rent from the retired Railway employee of the allotted Railway premises within a period of one month from the receipt of this order and the respondents shall have a right to claim damages as per rules under Public Privilege (Eviction of Unauthorised Occupants) Act, 1971 before the competent prescribed authority.

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



(J.P. SHARMA)
MEMBER (J)



(B.N. JAYASIMHA)
VICE CHAIRMAN

Pranoned by me
on 4.6.91.



4.6.91.