

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1269/90

DATE OF DECISION: 24.9.90.

SHRI MULAK RAJ

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

ADVOCATES:

SHRI UMESH MISRA

FOR THE APPLICANT

SHRI O.N. MOOLRI

FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI I.K.RASGOTRA, MEMBER (A))

In this application filed by Shri Mulak Raj, the question of withholding of payment of gratuity until the railway accommodation is vacated, has been raised. The case of the applicant in brief is that he retired from service on 31-8-1989 but has not been paid the Death-cum-retirement gratuity (DCRG) due to him. In absence of the payment of DCRG by the respondents, he has suffered by way of erosion in value of money as also by the rising cost of construction. He has not found it possible to vacate the railway quarter^{No.} 167/4, in Railway Colony, Kishan Ganj, Delhi after retirement as he has not been able to construct a dwelling for himself and for his family. In justifying the demand for payment of DCRG without

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vacating the railway quarter he has cited the case of State of Kerala & Ors. V. M. Padmanabhan Nair - AIR - 1985 - SC - 356 wherein their Lordships of the Supreme Court have impressed the need for prompt payment of retirement dues to the retiring Government servants.

2. The respondents in their written statement have submitted that the application is not maintainable as there is no impugned order against which the application² has been filed. The impugned letter dated 4-10-1989 relates to his request for payment of DCRG to enable him to construct the house. There is no specific order of the respondents against which he has sought any relief. Further Annexure A-2 filed along with the application is only a notice calling upon him to vacate the quarter unauthorisedly retained by him after his retirement. On merits the respondents have averred that his DCRG has been withheld as he has not produced the "No Demand Certificate". Further "No Demand Certificate" can be issued to him only after he has vacated the railway quarter. The respondents have relied upon instructions contained in the Railway Board's letter No.E(G)81 QRI dated 24-4-1982 for not issuing him the no claim certificate authorising the withholding of payment of DCRG.

The relevant portion of the letter is reproduced below:

"On the Railways there is an acute shortage of Railway quarters for officers and staff. The 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

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the privilege of Railway quarters. The Minister of Railways have viewed this situation with concern and have decided that the Railway Administration should take the following steps to discourage un-authorised 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 railway quarter and cleared all his arrears of rent, electricity and other charges etc.

ii) Settlement dues of the employees should be finalised with an appropriate "hold-back" amounts from DCRG/Spl. contribution to P.F. as the case may be, for rent recoveries, as permissible under extant rules.

ii) For every one month of unauthorised retention of railway quarter, one set of post retirement passes should be dis-allowed. 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 leased 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."

3. Shri Umesh Misra, the learned counsel for the applicant drew our attention to the case of B.S. Mainee Vs. U.O.I. & Ors. - ATR - 1989(1) CAT (PB) 696 where in identifical issues of law and fact have been decided by the Tribunal. It was held in the said case that there was no justification in withholding the entire amount of DCRG and that keeping in view the totality of the circumstances, the respondents may charge the "normal rent for the Railway flat occupied by Shri B.S. Mainee till he vacated the house and also restore issue of complimentary passes with immediate effect as applicable under the rules but the respondents will not be liable to pay any interest on the delayed payment of gratuity. The rate of house rent or damages payable by Shri Mainee should be worked out as ordered above and the gratuity paid to him within three months deducting the amount payable by Shri B.S. Mainee towards house rent on normal rate."

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4. Shri O.N. Moolri, learned counsel for the respondents, quoted extensively the instructions of the Railway Board, justifying the withholding of the DCRG in absence of non-production of no claim certificate by the applicant.

5. We have heard the learned counsel of both the parties and considered the matter carefully. We find that the Tribunal had provided similar relief in an identical case of Shri Shiv Charan Vs. U.O.I. & Ors. vide judgement dated 16-8-1989 in OA 1114/89. This case came up before the Hon'ble Supreme Court in a Special Leave Petition (C) No.881/90 when their Lordships passed the following order:

"Having considered the facts and circumstances of this case and having heard counsel for both the parties, we are of the opinion that the appropriate order would be to allow this appeal and to direct that the possession of the railway quarter, now in possession and occupation of the respondent, should be handed over by the respondent and taken possession of by the appellants or their representatives on or about 23rd May, 1990 and the entire amount due and owing to the respondent, less the amount mentioned hereinafter will be handed over by the officer taking possession then and there.

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."

6. In the facts and circumstances of the case, we order and direct that the railway quarter should be vacated and handed over by the applicant to the respondents or their representatives by 26-10-1990.

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and the entire amount of DCRG, less the amount recoverable
should be handed over ^{to} the applicant by the officer
taking possession then and there. Rent for the period
the applicant overstayed may be deducted from the
payment to be made as aforesaid. The respondents
shall be entitled to make claim in accordance with
law for any market/penal rent and the applicant will
be at liberty to claim any compensation, which he
claims to be entitled to, in the appropriate forum.

The application is disposed of at the admission
stage with the above directions.

There will be no orders as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 24/9/90

T.S. Oberoi 24/9/90
(T.S. OBEROI)
MEMBER (J).