

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1383/90
T.A. No.

198

DATE OF DECISION

22.11.90

Shri Ujjagar Lal,

Petitioner

Shri S.K.Sawhney,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.S.Mahendru,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative).

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

Done
(J.P.Sharma)
Member (Judl.)

Done
(P.C. Jain)
Member (Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

(B)

Regn. No. OA-1383/90

Date of Decision: 22.11.90.

Shri Ujjagar Lal

.... Applicant.

Vs.

Union of India

.... Respondents.

For the applicant

.... Shri S.K.Sawhney,
Advocate.

For the respondents

.... Shri P.S.Mahendru,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member (Administrative)
Hon'ble Shri J.P. Sharma, Member (Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant/retired Assistant Yard Master (AYM), Northern Railway, New Delhi has been residing in the official railway quarter even after his retirement. The order dated 3.8.1983 retired the applicant on medical grounds with retrospective effect from 31.5.1983, as he was medically invalidated on 17.11.1982. The applicant, under rules, applied for appointment of his daughter and she was appointed with effect from 22.1.1985. The applicant also applied for regularisation of railway quarter in the name of her daughter and the same was regularised in the name of his daughter with effect from 22.1.1985 (Annexure A-5).

2. The applicant, aggrieved with the notice dated 9th August, 1989 for recovery of penal rent for the period after his retirement till the date of regularisation of the railway quarter in the name of his daughter, has filed this application under Section 19 of the Administrative Tribunals Act 1985 for the following reliefs: -

- i) For quashing the order dated 9.8.1989 (Annexure A-1)
- ii) direction for payment of the gratuity with interest at market rate with effect from 1.6.1983.
- iii) Direct the respondents to recover the rent from 1.6.1983 till 30.9.1983 at the normal rate of rent and thereafter under Public Premises Act, 1971.

- iv) Direct the respondents to continue the withheld annual post retirement passes; and
- v) direct the respondents to regularise the quarter in the name of his daughter w.e.f. 24.9.1984 instead of 22.1.1985.

3. The facts of the case, in brief, are that the applicant on medical grounds retired as AYM on 31.5.1983 but he did not vacate the official railway quarter, therefore, the department did not pay his Death-cum-Retirement Gratuity (DCRG) and also withheld post retirement passes because the applicant did not file a No Due Certificate from the Office of the General Manager, Northern Railway, New Delhi. After the regularisation of the quarter in the name of his daughter, the applicant was paid DCRG on 31.11.1989 after deducting a sum of Rs.5,485/- towards rent, including excess and penal rent for the over stay in the railway quarter till regularisation in the name of his daughter and a sum of Rs.1,678/- as electric charges.

4. The case of the respondents is that the applicant was retired with effect from 31st May, 1983 after granting extra-ordinary leave from 17th May, 1983 to 31st May, 1983 as well as the other leaves due to him with effect from 17th November, 1982. He was not entitled for any alternative job. His daughter was appointed with effect from 21st January, 1985 for administrative reasons. The D.C.R.G. was not illegally withheld nor the post retirement passes admissible to the applicant had been illegally denied to him. It is also said that the applicant is not entitled to any interest on the delayed payment of DCRG. The applicant was himself at fault as he continued to retain the railway quarter unauthorisedly after his retirement on 31st May, 1983 and as such, his gratuity could not be released to him as he has failed to obtain No Due Certificate from the competent authority. The applicant could retain the railway quarter beyond a period of four months after retirement provided he obtains permission from the competent authority for retaining the said. Since the applicant did not obtain any such permission,

the applicant was entitled to retain the railway quarter on a payment of normal rent for a period of four month only and thereafter at the rate of 5 times normal rent or 10% of the wages of the applicant whichever is more. The notice to vacate the railway quarter was duly issued to the applicant on 21st July, 1984 and was received by the applicant on 29th July, 1984 and even otherwise the applicant's right to retain the quarter automatically came to an end consequent upon his retirement on 31st May, 1983. No representation of the applicant was received in the office and the application is premature.

5. We have heard the learned counsel for the parties at length and have gone through the records of the case. The relief regarding payment of DCRG is covered by the recent decision of the Full Bench in OA-257 of 1989, Wazir Chand Vs. Union of India decided on 25.10.1990. The Full Bench held "..... We hold that withholding of entire amount of DCRG in the case of a retired railway servant till such period as he does not vacate the railway quarter is unwarranted."

6. The Full Bench has discussed the various objections taken in the present OA in quite some detail and it is of no use to repeat them as regards the payment of DCRG. The judgement of the Full Bench is also based on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Shiv Charan, Civil Appeal No.2002 of 1990 decided on 23rd April, 1990. In this case, the Hon'ble Supreme Court held that "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 the above, it is clear that the respondents can only deduct normal rent from the D.C.R.G. and not any amount in excess of that, which may ^{be} by way of penalty. The Full Bench judgement referred to above also held in para 22 of the judgement that "the obligation to pay rent whether penal or as damages etc. for the premises which are unauthorisedly occupied by retired railway servants is determined either by the provisions of 1971 Act and the Rules made thereunder or by the applicable Rules and instructions issued by the Railway Administration. As has already been pointed out in our discussion under issue No.1, the liability to pay interest on the delayed payment of DCRG arises out of the instructions issued by the Department of Personal and Administrative Reforms, by the Railway Board as also out of the judge-made-law. The aforesaid liability to pay licence fee/rent including penal rent, damages etc. is quite distinct and separate from the liability of the Railway Administration to pay DCRG including the interest thereupon."

8. It is, therefore, clear that the payment of DCRG cannot, in any case, be connected by the respondents for non-payment of penal rent for vacation of the railway quarter which has been in unauthorised occupation after retirement of the employee. It is clear that the respondents have to pay the DCRG and if the payment is delayed also interest on the same after deducting the normal rent, and for the recovery of penal rent and damages the department has to proceed legally under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

9. In the present case, the respondents have deducted one month's normal rent for the month of September, 1983, and also the damages. ~~which they have deducted~~ Though, there is no specific prayer by the applicant for the refund of this amount which has been realised in excess as penal rent by deduction from the

DCRG, yet the applicant had made a representation Annexure A-6, for the refund of that amount and also made a prayer for quashing the notice dated 9.8.1989 by which the damages at the enhanced/alongwith the normal rent for one month has been claimed. The applicant, therefore, shall be entitled to refund/all the amount deducted as damages and penal rent for unauthorised occupation amounting to Rs.5485/- less one months amount which can only be deducted from the DCRG. The respondents, however, are entitled to deduct the electricity charges amounting to Rs.1678/- if it is ascertainable whether the same has/not been charged as a penalty for overstay.

10. The learned counsel for the applicant argued that the circular of the Railway Board regarding the realisation of penal rent cannot be given effect to in view of the provisions for recovery of damages under Public Premises Act,1971. However, the applicant has not challenged the vires of the rules for recovery of the damages and further the Full Bench in its judgement in para 22 held that the damages or penal rent can be realised from the Railway servant either by the provision of 1971 Act and the rules made thereunder or by the applicable rules and instructions issued by the Railway Board. As such, the validity and vires of those instructions cannot be gone into at this stage and nor specifically these have been/challenged in this application.

11. The learned counsel for the respondents argued that the applicant is not entitled for refund of the damages which have been recovered from the DCRG. But this argument has no force as the matter has already stood decided that the respondents cannot deduct any amount from the DCRG by way of damages or penal rent and can only adjust rent at the normal rate and after adjusting the same the DCRG should be paid within a period of three month from the date of retirement, otherwise interest shall be payable to the retired employee at the market rate.

12. The learned counsel for the respondents has also referred to the authority of B.S.Vedhra Vs. General Manager and Others reported in 1969 SLR page 6 and referred to para 4 of the same. The validity of the Board's circular and the instructions regarding realisation of the penal rent and damages has not been challenged nor any relief has been claimed in that regard, so it is not necessary to deal with that aspect of the matter in this case and the same is left open.

13. The learned counsel for the applicant also referred to Rule 2308, wherein a clarification was issued in 1983 by which the pension was also included in DCRG but that now is not so much relevant, in view of the Full Bench judgement referred to above.

14. The learned counsel for the applicant also argued on the point that the appointment of the daughter of the applicant was delayed by the respondent but this question cannot be raised in the present application as the matter relates to the year 1985 and is hopelessly time barred and also on the fact that it was the daughter who could herself have challenged her ~~✓~~ appointment on compassionate ground. Similarly, the applicant cannot challenge the delayed regularisation of the quarter in the name of her daughter after such a long time. In fact, the quarter was regularised ~~✓~~ with effect from the same day i.e. 22.1.1985 when the daughter of the applicant got the appointment.

15. The learned counsel for the applicant also argued that the post retirement passes of the applicant have been illegally withheld. The same matter is also covered by the judgement of the Full Bench referred to above and the respondents cannot withhold the post retirement passes for want of no due certificate or for non-vacation of the railway quarter.

16. In view of the above discussion, we are of the opinion that the applicant is entitled to interest at the

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rate of 7% per annum on the non-payment of DCRG within three months from the date of retirement. The order of retirement was passed in August, 1983. The DCRG in every respect should have been paid by November, 1983 but it has been paid in November, 1989 so the applicant shall be entitled to interest on the whole of the amount of DCRG subject to adjustment of one months' rent from 1st December 1983 to October, 1989 at the rate of 7% per annum for the first twelve months and at the rate of 10% per annum for the period thereafter, as is provided in the Rules/Instructions of the Railway Board. Further, the respondents are directed to refund the amount of deduction made from the DCRG Rs.5485/- less one months' normal rate of rent of the premises within a period of three months with 7% per month interest till the date of refund from 3.11.1989. The respondents are not bound to refund a sum of Rs.1678/- the electricity charges deducted from DCRG unless the same has been charged as a penalty and if so the same be refunded within a period of three months from the date of receipt of a copy of this order.

17. The respondents shall be free to recover the penal rent and charges as well as unpaid electric charges etc. as the case may be, from the applicant for the period the applicant overstayed in the premises from October, 1983 till the regularisation of the quarter in the name of his daughter i.e. 22.1.1985 under the provisions of the Public Premises (Eviction of unauthorised occupants) Act, 1971 and other applicable law/rules/instructions.

18. We direct the respondents to continue the withheld post retirement passes to the applicant after receipt of this judgement. The other reliefs claimed by the applicant regarding regularisation of quarter in the name of his daughter w.e.f. 24.2.1984 is disallowed. In the circumstances of the case, the parties are left to bear their own costs.

J. P. Sharma
(J. P. Sharma) 22.11.90
Member (Judl.)

P. C. Jain
(P. C. Jain) 22.11.90
Member (Admn.)