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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2057/1990. DATE OF DECISION: 7.12.1990.

Shri Haas Raj Pahwa APPLICANT.

V/s.

Union of India & Ors. RESPONDENTS.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, Counsel for the applicant.
Shri P.S. Mahendru, Counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*.
2. Whether to be referred to the Reporter or not? *Yes*
3. Whether their lordships wish to see the fair copy of the judgment? *No*.
4. Whether to be circulated to all Benches of the Tribunal? *No*

P.C. Jain
(P.C. JAIN)
Member(A)

G. Sreedharan Nair
(G. SREEDHARAN NAIR)
Vice Chairman.

7.12.1990.

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGEMENT

The applicant, who retired as Superintendent (Claims) from Northern Railway on 31.5.1989, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing Notices/Orders dated 15.2.90 (Annexure A-1) and dated 29.3.90 (Annexure A-2) and has prayed for quashing of the aforesaid impugned notices/orders as also for a direction to the respondents to pay his Death-cum-Retirement gratuity along with interest at market rate till the date of payment after recovering only normal rent and electricity charges for the period he retained the railway quarter after his retirement. He has also prayed for a direction to the respondents to issue complimentary passes to him which are said to have been illegally withheld.

2. The impugned notice/order dated 15.2.90 (Annexure A-1) states that the applicant on attaining the age of superannuation, has not vacated quarter No. 17/3, Sarojani Nagar, New Delhi and he was thus in unauthorised occupation of the said quarter from 1.10.89. It further states that in terms of the Railway Board's letter dated 24.4.82, it has been decided to disallow one set of post retirement passes, otherwise admissible to him, for every one month of unauthorised retention of the above said railway quarter and that he is given an opportunity of making representation against the proposed withholding of post retirement passes

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and may make a representation, if he so wishes, within 15 days from the date of receipt of that memorandum. The impugned notice/order dated 29.3.90 (Annexure A-2) communicates that the tenancy of the said railway quarter stands cancelled with effect from 1.10.89 and he should vacate the same within 10 days from the date of receipt / pasting of notice, failing which eviction proceedings under the Public Premises Eviction Act, 1971 will be started against him. It is further stated that damages, charges / penal rent and water and electricity charges shall be recovered with effect from 1.10.89 in accordance with the rates mentioned therein. It was also communicated that for every one month of unauthorised retention of railway quarter, one set of post retirement passes will be disallowed.

3. The case of the applicant, stated briefly, is that the respondents have no right to withhold the full amount of gratuity and that under Rule 323 of the Manual of Railway Pension Rules, 1950, if the retiring Railway servant does not furnish a surety of a suitable permanent Railway servant, then he can be asked to deposit a certain amount or a certain amount can be withheld from his gratuity, but such amount cannot be more than 10 per cent of the Death-cum-Retirement gratuity or Rs.1,000, whichever is less. He has been representing and reminding the respondents for payment of his gratuity, but to no effect. It is also contended that he cannot be treated to be in unauthorised occupation of the Railway quarter till retirement benefits are paid to him. He states to have sent a representation on 15.4.90 with reference to the ^{letter} ~~impugned~~ notice dated 29.3.90, a copy of which is placed as Annexure A-5. Similarly, the decision of the respondents for withholding his complimentary passes and to declare the retention of the quarter by him as unauthorised, are challenged as illegal, arbitrary, discriminatory and violative of the principles of natural justice.

4. The respondents have contested this application and have stated that "the Railway Board ordains that till such time the petitioner does not vacate the Railway quarter allotted to him 'No Claim Certificate' should not be issued and till such time the applicant produces a 'No Claim Certificate', the settlement dues of the applicant cannot be paid." It is also stated that the Government accommodation was allotted to him in consideration of his being an employee of the respondents and after his retirement, he was under a legal obligation to vacate the same. Since he has failed to perform his part of the obligation, he is not entitled to claim any gratuity or the final settlement dues till he vacates the Railway accommodation. In case he wishes to receive his settlement dues prior to vacation of the accommodation, he is liable to comply with the Railway Board's instructions contained in P.S. No.8907/Per/Cir No.6/86 circulated vide letter No.720-E/XXX(Pension), dated 30th January, 1986 (Annexure R-1). They have also relied on the Railway Board's circular dated 24.4.1982 (Annexure R-2). They have also contended that as per extant rules, one set of post retirement passes can be withheld for every month of unauthorised retention of railway accommodation.

5. We have perused the material on the record and also heard the learned counsel for the parties.

6. As is seen from the above, the applicant has linked the matter of vacation of the railway accommodation in his possession with the matter of non-payment of gratuity and the respondents have linked the matter of payment of gratuity with non-vacation of the railway quarter by the applicant. The two matters cannot be linked up by the either party in a manner as to be one dependent on the other. in view of the judgment of the Full Bench of the Central Administrative Tribunal in OA-2573 of 1989 decided on 25.10.1990. We have, therefore,

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to consider the two matters as independent of each other. Taking the question of payment of gratuity first, it was held in the aforesaid Full Bench Judgment that "withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible." The next question in this connection is how much of the gratuity can be withheld. The applicant relies on Rule 323 of the Manual of Railway Pension Rules, 1950, according to which 10% of the gratuity or an amount of Rs.1,000/-, whichever is less, can be withheld, if no surety of a permanent railway servant is furnished. According to the respondents, the applicant was to furnish sureties of two suitable permanent employees and in addition amounts at the rates mentioned in P.S. No.8907/Pen.Cir.No.6/86 No.720.E/XXX (Pension), dated 30.1.1986 (Annexure R-1) are also to be held back from the DCRG before the balance amount can be released.

7. There is nothing in the pleadings that the applicant offered to furnish any sureties. It may be stated that the aforesaid circular dated 30.1.1986 had been issued under the authority of the General Manager ^{who} ~~has~~ rule making power only in respect of Group 'D' and Group 'C' (Class IV and Class III respectively) of railway employees. The Manual of Railway Pension Rules is not statutory in character and, as such, the effect of Rule 323 thereof relied upon by the applicant is not relevant (para 17 of the aforesaid Full Bench Judgment). Thus, the position remains that while the full amount of gratuity cannot be withheld for non-vacation of the railway quarter, an appropriate amount can be withheld from the amount of gratuity otherwise payable to the applicant. In the absence of any other rule or circular, this would appear to be governed by the aforesaid pension circular dated 30.1.1986. If the applicant furnishes

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sureties of two suitable permanent employees, he can be paid the amount of gratuity admissible to him after withholding the amount as per the scale given in the circular dated 30.1.1986 (supra).

8. The applicant has also prayed for a direction to the respondents to issue complimentary passes. According to the respondents, complimentary passes have not been issued to the applicant in accordance with the provisions of the Railway Board's circular dated 24.4.1982 (Annexure R-2) wherein it is provided that for every one month of unauthorised retention of Railway quarter, one set of post-retirement passes should be disallowed and that a show cause notice to this effect be issued to the retired employee before disallowing the pass.

9. The above issue also came up before the Full Bench in the aforesaid case of OA 2573 of 1989 and the Full Bench held as below: -

"Dis-allowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted."

It is true that the applicant was asked vide notice/order dated 15.2.90 (Annexure A-1) to show cause as to why the proposed action of withholding of passes in accordance with the Railway Board's circular dated 24.4.82 should not be taken. He was to represent in this connection within 15 days from the date of receipt of that letter. It appears that this was communicated to the applicant vide letter dated 21.3.90 and he represented on 15.4.90 (Annexure A-5). This representation was thus not within the time prescribed. In any case, in this representation, the only ground taken is non-payment of gratuity. It is obvious that the show cause notice for withholding post-retirement passes and the final order of withhold of these passes as in letter dated 29.3.90 (Annexure A-2) was linked up by the respondents with the issue of non-vacation of railway quarter by the applicant. This is not permissible in view

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of the ruling given by the Full Bench as reproduced above. Therefore, the applicant is also entitled to post-retirement passes unless they are withheld in accordance with law/rules; these could not be withheld in pursuance of the orders contained in para (iii) of the Railway Board's circular dated 24.4.1982 *ibid*.

10. The remaining prayer in the application relates to quashing of the impugned orders at Annexure A-1 and A-2 and for a direction to the respondents for recovery of normal rent and electricity charges for the period the applicant has retained the railway quarter after retirement. In Annexure A-1, it is stated that the applicant retired on 31.5.89, that he has not vacated the railway quarter mentioned therein, and that he is thus in unauthorised occupation of the said quarter from 1.10.89. In Annexure A-2, on the basis of the same assertion, the tenancy of the said railway quarter was declared as "stands cancelled w.e.f. 1.10.89". It was also stated in Annexure A-2 that damage charges/penal rent as mentioned therein along with electricity and water charges will be recovered from him.

11. As we have stated above, according to the Full Bench Judgment in the aforesaid case of OA 2573 of 1989, the question of retention of railway quarter and recovery of only normal rent etc. after the permissible period, cannot be linked up with the question of non-payment of gratuity. The relevant portion from the judgment is reproduced below: -

"24. The upshot of the aforesaid discussion is that a direction to pay normal rent for the railway quarter by a retired railway servant only because DCRG has not been paid to him would lack legal backing. Such a direction by the Tribunal in this view of the matter would not thus be legally in order".

11. In Civil Appeal No.2002 of 1990 titled "Union of India and others Vs. Shiv Charan", the Hon'ble Supreme Court also treated the two matters, viz., the payment of penal

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rent etc. and the claim for compensation for the delayed payment of gratuity as distinct and separate.

12. In view of the above, the prayer of the applicant for quashing the impugned orders at Annexure A-1 and A-2 in so far as these relate to the declaration of the applicant being in unauthorised occupation of quarter No.17/3, Sarojani Nagar, New Delhi, and for cancellation of the tenancy respectively with effect from 1.10.89 cannot be allowed. Similarly, the prayer for a direction to recover only the normal rent etc. can also not be allowed.

13. In view of the foregoing discussion, the application is partly allowed as below: -

- (1) Impugned order dated 15.2.90 (Annexure A-1) and order dated 29.3.90 (Annexure A-2), in so far as they relate to the proposal to withhold post-retirement passes and in fact withholding of such passes respectively are hereby quashed. The applicant shall be entitled to the post-retirement complimentary passes unless the same are withheld in accordance with law/rules.
- (2) If the applicant furnishes sureties of two suitable permanent employees, the respondents shall pay within one month from furnishing of such sureties the amount of Death-cum-Retirement gratuity admissible to him after withholding an amount of Rs.7,500/- therefrom till the vacation of the quarter by the applicant; the applicant shall also be entitled to interest at the rate of 12 per cent per annum on the aforesaid amount with effect from 1.9.89 till the actual date of payment.
- (3) The respondents shall be free to take appropriate action in accordance with the provisions of the Public Premises Eviction

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Act, 1971, rules framed thereunder and the applicable rules, instructions etc.

The interim order passed on 9.10.1990 shall stand vacated with immediate effect. The application is disposed of accordingly. We leave the parties to bear their own costs.

C. C. Jain
(P.C. JAIN)
Member (A)

G. Sreedharan Nair
(G. SREEDHARAN NAIR)
Vice Chairman.

7.12.1990.