

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA 2185/90

Date of decision: 22-10-92

Shri Mahavir Singh

.. Applicant

Versus

Union of India & Ors.

.. Respondents

CORAM:

Hon'ble Shri C.J. Roy, Member (J)

For the applicant .. Shri S.K. Sawhney, Counsel

For the respondents .. Shri P.S. Mahendru, Counsel

JUDGEMENT

(Delivered by Shri C.J. Roy, Hon'ble Member (J))

The applicant is aggrieved by the letter dated 16.10.90 (Annexure A-1) withholding his retiral benefits and eviction notice dated 2.1.90 (Annexure A-2) in respect of the Railway Quarter No.C-15A, Lajpat Nagar, New Delhi, allotted to him while he was in service.

2. The applicant retired from service on superannuation as Superintendent, Construction Division, Northern Railway, with effect from 31.10.89. While in service he was allotted the above said Railway Quarter. The applicant claims that he was granted permission to retain the quarter from 1.11.89 to 30.6.90, vide letter dated 29.8.90 at Annexure A-3, and the tenancy was terminated with effect from 1.7.1990. The applicant made a representation on 12.10.90 (Annexure A-4) for the release of retirement benefits to enable him to complete his house as early as possible so that he may vacate the railway quarter, but the Respondent replied to him vide letter dated 16.10.90 to vacate the railway quarter so that he may be paid the amount of DCRG expeditiously.

3. Hence this application praying for quashing the impugned orders.

4. The respondents have filed their counter denying the averments made in the application. They say that the applicant never applied for release of his DCRG by offering two sureties as required under the Rules and also that the DCRG can not be released till he vacates the railway quarter. They further say that the applicant sought permission to retain the quarter from 1.11.89 to 30.4.90 on the grounds of his children's examination and he was allowed to retain upto 28.2.90 as per Annexure R-1. He again made a request in April, 1990 for retaining the quarter upto 31.8.90 on the ground of his wife's illness and he was permitted to retain the quarter only upto 30.6.90. Thereafter, it is alleged that, the applicant neither applied for further extension to retain the quarter nor vacated the same but he continues to occupy illegally and unauthorisedly thereby rendering himself liable for payment of penal rent as per extant rules. They further contend that the amount of DCRG and retiral passes, which are complimentary in nature, can be released only after the applicant vacates the railway quarter so that the amount payable by him on account of retention of the quarter is properly calculated and adjusted from his dues.

5. The applicant has filed a rejoinder more or less asserting the same points.

6. I have heard Shri S.K. Sawhney, learned counsel for the applicant and Shri P.S. Mahendru, learned counsel for the respondents and perused the records.

7. The applicant claims release of post-retirement passes and withheld amount of Death-cum-Retirement Gratuity to which he is entitled on his retirement with effect from 31.10.89, and also claims that normal rent be charged and not to evict him upto the date of payment of gratuity and also for payment of penal interest at market rate on the amount of gratuity of Rs.44,138/-.

8. In a similar case, I have passed orders in OA 782/93 dated 16.9.1993. In that case, I relied upon the case of Union of India Vs. Melaram (Civil Appeal No.2745/92), the relevant portion of which is reproduced below:

"The applicant through the Senior Divisional Personnel Officer, Bikaner shall pay Rs.29,381.55 to the Respondent Mela Ram on September, 1992. On receipt of the said amount Mela Ram shall simultaneously hand over the vacant possession of the Government quarter to the Railway Authorities. The amount of Rs.28,381.55 has been worked out after deducting Rs.4,998.45 - the normal rent recoverable from the respondents - from the gratuity amount of Rs.28,280 due to the respondents.

3. In case the respondent has already deposited some money towards normal rent of the quarter for the period ending August 31, 1992, then the appellant shall refund the same to the respondent Mela Ram.

We make it clear that the parties have reached the above agreement in the special facts and circumstances of this case"

9) Reliance was also made on the judgement of the Hon'ble Supreme in the case of Raj Pal Wahi & ors. Vs. Union of India in SLP No.7688-91/1988 decided on 27.11.1989, the relevant portion of which is as under:

"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 these petitioners which they have paid. In order to impress upon them to vacate the Railway Quarters the Railway authority issued orders on the basis of the Railway Circular dated 24th April, 1982 purporting to withhold the payment of death-cum-retirement gratuity ~~xxxxxx~~ as well as the Railway passes during the period of such occupation of quarters by them. The delay that occurred is an account of the withholding of the gratuity on the basis of the aforesaid Railway ~~xxxxxx~~ Circular. In such circumstances, we are unable to hold that the petitioners are entitled to get interest on 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"

10. The learned counsel for the respondents also cited the judgements of this Principal Bench in OA 2719/90 decided on 26.8.91 and OA 2288/92 decided on 23.8.93 where the interest has not been granted.

11. In my opinion, granting or non-granting of interest is discretionary and is based on the facts and circumstances of each and every case and on whose fault the delay has occurred.

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12. Following the decisions cited supra, I feel that the applicant has not made out a case for granting interest as prayed for since he has overstayed in the said quarter. Therefore, I dispose of the case with the following orders and directions:

- (a) The respondents are directed to pay the DCRG benefits to the applicant and release the Railway passes in accordance with the Rules;
- (b) The applicant after receipt of the said DCRG amount from the respondents is directed to vacate the railway quarter simultaneously and hand over the vacant possession to the respondents;
- (c) The applicant is not entitled for payment of any interest therein; and
- (d) The respondents are directed to recover the penal rent after issuing a notice and personal opportunity to the applicant of being heard and determining the penal rent for the unauthorised occupation of the premises as per the extant rules.

13. The above directions shall be complied with expeditiously, preferably within a period of three months from the date of communication of this order.
No costs.

(C.J. Roy)
Member (J)