

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 2382/1990

DATE OF DECISION : 21.2.92

SHRI SURAJ RAM

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

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

FOR THE APPLICANT

... SHRI B.S. MAINEE

FOR THE RESPONDENTS

... SHRI H.K. GANGWANI

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ans*
2. To be referred to the Reporter or not? *No*

JUDGEMENT

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

The applicant, Suraj Ram sought voluntary retirement as Switchman w.e.f. 1.1.1987 on medical grounds. The applicant has been in occupation of the Railway quarter No.D-1/F Railway Station, Sarai Rohilla, Delhi. The applicant has not been paid DCRG and the post retirement passes of the applicant were also stopped by the letter dt.22.4.1987. *impugned*

2. The applicant has claimed the relief that the DCRG amount be paid to him @18% interest p.a. from the date of retirement and further to restore the post retirement passes of the applicant.

3. The respondents contested the application and admitted that the applicant has not vacated the Government accommodation till date, therefore, his gratuity has been withheld vide order dt. 20.12.1987 passed by the General Manager and the same will be released only on the vacation of the Government. The applicant only applied for retention of the Railway quarter after retirement and he was granted permission upto 6.3.1987 and thereafter further extension was granted on 6.5.1987 on the payment of market rent and the applicant was informed that thereafter the accommodation will be treated as cancelled. Further it is stated that in terms of Railway Board's letter dt. 4.6.1983 (P.S. No. 8346), one set of complementary passes is liable to be disallowed for every month of unauthorised retention of the Railway quarter by retired employee. Thus according to the respondents, the applicant has no case.

4. I have heard the learned counsel for the applicant at length and have gone through the record of the case. None appeared for the respondents. The position of law is clear in the case of Wazir Chand Vs. UOI, decided by the Full Bench on 25.10.1990 (O.A. No. 2573/1989). The

Full Bench held as follows :-

- "(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) Disallowing one set of post-retirement benefits for every month of unauthorized retention of railway quarter is also unwarranted."

5. The Full Bench in this case also considered the judgement given by the Hon'ble Supreme Court in Civil Appeal No.2002/1990-Union of India Vs. Shiv Chetan. The following pertinent observations were made in para 142 of the judgement :-

"Rent for the period overstayed may be deducted from the payment to be made as aforesaid. The claimants will be entitled to make claim in accordance with the 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 form of which the claims to be entitled to."

6. Thus the above extracted observations show that the Apex Court treated the two matters, namely the payment of rent including penal rent etc. and compensation for the delayed payment of gratuity as distinct and separate.

7. Further the matter was also considered by the Hon'ble Supreme Court in the matter of D.V. Kapoor Vs. Union of India & Ors., 1990(4) SCC p-314. The Hon'ble

Supreme Court observed as follows :-

"The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. The President was not empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

8. : In view of the above discussion, the present application is allowed and the respondents are directed to pay the gratuity to the applicant with simple interest @10% p.a. till the date of payment and also release the post retirement passes which have been withheld for non-vacation of the Railway quarter. However, the respondents shall be free to proceed against the applicant for realising compensation/damages for retention of the Railway quarter for retirement without permission as per Extant Rules. In the circumstances, the parties to bear their own costs.

AKS

J.P. SHARMA
(J.P. SHARMA)
MEMBER (J)