

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. RA 152/1993 in
OA 2566/1990

Date of decision: 06.09.1993

Union of India & Another

...Petitioners

Versus

Shri Tara Singh

...Respondent

For the Petitioners

...Shri Romesh Gautam, Counsel

For the Respondents

...Shri B.S. Maine, Counsel

ORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

This is an application filed on behalf of the Union of India and Another praying that the judgment dated 27.08.1992 rendered by a two - member Bench of this Tribunal consisting of Hon'ble Mr. T.S. Oberoi and Hon'ble Mr. P.C. Jain (as then they were) in OA No.2566/1990 may be reviewed.

2. In OA 2566/1990 the controversy in main centres round the delayed payment of leave encashment dues to the applicant (Shri Tara Singh). This Tribunal took the view that there was undue delay of about 4 months on the amount of Rs.25,665/- towards leave encashment and, therefore, the Bench directed the respondents to pay to Shri Tara Singh interest at the rate of 12% per annum for the said period of 4 months. The Tribunal also gave certain other directions with regard to the deductions to be made from the amount payable to the petitioner towards rent/damages for the use of occupation of Government quarter by Shri Tara Singh after his retirement from service.

3. It is contended on behalf of the Union of India & Another that this Tribunal committed a patent error of law in ignoring a certain circular which has been filed as Annexure P-6 to the Review Application and the judgment given by the Supreme Court while interpreting the said circular. Annexure P-6 is a copy of the letter dated 10.12.1987 of the General Manager to all DRMs and others. Its subject is:

"Unauthorised retention of Railway quarters by officers/staff the old practice of withholding of entire DCRG till vacation of Railway Quarter".

It, inter alia, provides that it has been decided that in case of unauthorised retention of Railway quarters by officers/staff the old practice of withholding of entire (Full) DCRG till vacation of Railway accommodation may be continued.

4. The Supreme Court in SLP No.7688-91 of 1985 decided on 27.11.1989 (Raj Pal Wahi & Others Vs. U.O.I. & Others) while taking into account the aforesaid circular/communication took the view that the Union of India were justified in withholding the death-cum-retirement benefit of Raj Pal Wahi & Others and, therefore, they were not entitled to be paid any interest on the delayed payment on the basis of the aforesaid circular.

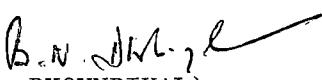
5. The case before the Tribunal was not that the Union of India and Another had withheld the payment of death-cum-retirement benefit to Shri Tara Singh but the case was with respect to delayed payment of leave encashment dues. Therefore, neither the aforesaid circular nor was the judgment of the Supreme Court aforementioned apposite.

6. Learned counsel for the Union of India & Another has very fairly stated that the said judgment of the Supreme Court in Raj Pal Wahi's case had not been brought to the notice of the learned members. In fact, he stated at the Bar that the said judgment was not even within the knowledge of Union of India & Another when this judgment was delivered. He has stated that the Union of India acquired knowledge of the said judgment after 27.11.1992. Be that as it may, nothing would have turned on the merits of the judgment even if the judgment of the Supreme Court in Wahi's case had been brought to the notice of the learned members. Therefore, the question that the Tribunal committed any error much less an error apparent on the face of record

did not arise.

7. It is next contended that the Tribunal did not issue any direction whatsoever to the Union of India with respect to the payment of rent at penal rate by Shri Tara Singh. Having read the judgment of the Tribunal, we are of the opinion that that is not so. The Tribunal took pains to give detailed direction in paragraph 6 of the judgment. It gave cogent reasons as to why Shri Tara Singh should not pay rent at penal rate and instead pay rent at double the assessed rent or double the normal rent or 10% of the emoluments whichever is the highest. The Tribunal pointed out that having regard to the special facts and circumstances of the case before it, it thought it expedient and in the interest of justice that Shri Tara Singh should pay rent at rate in the manner indicated by them. It is again contended that the Tribunal should not have given a direction in disregard of Raj Pal Wahi's case. It has to be remembered that in Raj Pal Wahi's case an attack was being made in the Supreme Court on the direction given by the authorities that the Government servant there should be saddled with the responsibility of paying rent at penal rate. We have already seen that that was a case where in accordance with the relevant directions rent at penal rate had been realised from Shri Raj Pal Wahi & Others. We have already indicated that the judgment of the Supreme Court was not before the Tribunal. Moreover, the Tribunal, in our opinion, had made out a special case for Shri Tara Singh. Having considered the matter carefully ^{we are of the view} that this Tribunal committed no error much less an error apparent on the face of the record within the meaning of Rule XLVII Rule 1 of CPC.

8. The Review Application is dismissed but without any cost.


(B.N. DHOUNDIYAL)
MEMBER (A)
06.09.1993


(S.K. DHAON)
VICE CHAIRMAN
06.09.1993

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