

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 926/1990

199

T.A. No.

DATE OF DECISION 30.9.1991.Shri Suraj Prakash chopra

Petitioner

Shri G.D.Bhandari,

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondents

Shri O.N.Moolri,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓



(Amitav Banerji)
Chairman
30.9.1991.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

D.A. No.926/1990.

Date of decision: 30-9-91

Shri Suraj Prakash Chopra ... Applicant.
Vs.
Union of India & Ors. ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A) .

For the applicant ... Shri G.D. Bhandari, counsel.
For the respondents ... Shri D.N. Moolri, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

The applicant has prayed in this O.A. for restoring post retirement passes for his travelling by train, he being a retired railway servant. He has stated that the Asstt. Commercial Officer (Reservn.), Northern Railway, New Delhi (Annexure-I) refused post retirement pass to the applicant in an arbitrary manner on the ground that the applicant had not ^{vacated} railway quarter for 31 months after his retirement on 30.11.1985. The applicant referred to Annexure-A-I to the application wherein the following

endorsement has been made:

" पत्र संख्या - 720 ई/0/XI/ P-13 दिनांक 7-1982
के अनुसार सेवा निवृत्त कर्मचारी को मनौय
पास नहीं मिल सकता है। कारण कर्मचारी ने
सेवा निवृत्त के 31 माह बाद रेलवे का मकान खाली
किया है। "

He is not entitled to a railway pass because he has vacated the railway quarter after 31 months from the date of retirement. This order was written on the application

of the applicant for issuing of post retirement railway pass.

Annexure A-2 is a letter of the Railway Board dated 24.4.1982 addressed to G.Ms, N.Rly. and others on the subject of unauthorised retention of railway quarters by retired Railway officers and staff. certain steps for vacation were indicated, one of them was at No.(iii) which reads:

"for every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallowed. A show cause notice to this effect may be issued to the retired employee before disallowing the pass."

In Annexure A-3, the Railway Board's letter dated 4.6.83 addressed to the General Managers, All Indian Railways including CLW, DLW and ICF etc. It also relates to unauthorised retention of Railway quarters by retired railway officers and staff. Para 2 of this letter reads as follows:

"It is clarified that one set of post-retirement passes should be disallowed for every month on unauthorised retention of railway quarters by retired officers/staff. The concerned retired officers/staff may be allowed the privilege of post-retirement passes after the period during which the forfeited passes would have been admissible is over. for example, if a retired officer/employee retains railway quarters unauthorisedly for six months, six sets of post-retirement passes should be disallowed. He/she will be eligible for post-retirement passes after expiry of 6.3 or 2 years, as the case may be, depending upon his/her entitlement for post-retirement passes in a year."

Annexure A-4 is another letter from the Railway

dated 17.1.1985 to the General Managers, All Indian Railways including CLW, DLW & ICF etc. It points out that before the Railway Administration denies the issue of a post retirement pass applied for by a railway employee on account of retention of Railway accommodation by him beyond the period permissible under the rules, it is clarified that the show cause notice has to be issued as if it is reply to the application made by an employee for issue of a post retirement railway pass. Consequently, wide publicity should be given from time to time by the Railway Administration of the penalties leviable in terms of their letters of even number dated 24.4.1982 and 4.6.83 for unauthorised retention of Railway quarters by railway servants so that they are made fully aware of the implications of unauthorised retention of railway quarters by them and they do not show their ignorance in this regard.

The applicant had filed a representation on 13.9.1989 (Annexure A-9) praying that the period of overstay in railway quarter be condoned and arrangement made for issuing the passes to him.

The applicant has prayed for setting aside and quashing the order dated 19.4.1990 and has also prayed for interest accrued on the amount of gratuity from the date of retirement i.e. 30.11.1985 to the date of actual payment.

The respondents ordered following deductions from the gratuity of the applicant (Annexure A-7) vide letter dated 25.10.1988:

1.12.85 to 31.1.86 @ Rs.27.50 per month.
1.2.86 to 31.3.86 double the normal rent / 10% of
of the emoluments.
1.4.86 to 31.7.88 @ Rs.137.50 per month.
1.8.88 to 29.8.88 @ Rs.1100/- per month.

In addition water charges @ Rs.25.50 per month and safai charges @ Rs.4/- per month were recovered from 1.4.86 to 29.8.88.

Shri O.N. Moolri, learned counsel for the respondents urged that the applicant has asked for two reliefs- one for issuing of post retirement passes and the other is for interest on gratuity. He urged that these two reliefs cannot be considered in the same O.A. as they are hit by the provisions of Section 10 of the rules. He also urged that the Application is barred by time. He urged that the applicant had overstayed in the quarter allotted to him for 31 months and had to suffer a total of 31 passes and he would be issued passes after the expiry of said period.

Shri O.N.Moolri further contended that the necessary show cause notice was given to the applicant. The question of gratuity and any interest thereon or the question of penal rent or market rent are beyond the scope of the present application and cannot be gone into and they are extraneous to the order impugned and challenged before the court and they are not in issue before the present application. He further stated that the departmental remedy has not been exhausted and no effort to that effect has taken place and the applicant has no cause of action. He lastly urged that this Application will have to be

confined only to the question of passes and not in respect of interest.

In the rejoinder, the applicant stated that the two reliefs are interlinked and cannot be separated from each other. Gratuity is a property under Article 91 and cannot be withheld for retention of the Government accommodation.

During the course of the arguments, learned counsel for the applicant, Shri G.D. Ghandari relied on the Full Bench decision of this Tribunal in the case of WAZIR CHAND V. U.O.I. & ORS. (OA 2573/1989) decided on 25.10.1990 where the Full Bench summed up the conclusions in the following words:

Issue No.1:

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

The conclusions arrived in the above Full Bench case are fully applicable on the question raised in the present O.A.

Shri D.N. Moolri, learned counsel for the respondents urged that the Supreme Court has admitted the S.L.P. against the above decision and the matter is pending in the Supreme Court.

In our opinion, the admission of a S.L.P.

is not a sufficient ground for not applying the law laid down by the Full Bench decision. It is only when the Supreme Court sets aside the decision of the Tribunal, then only that judgment would operate under Article 141 of the Constitution. The Supreme Court has laid down that only reasoned order passed by the supreme Court would be applicable as a decision under Art.141 of the Constitution. Normally, an admission of a case by the Supreme Court does not contain any reason.

Shri O.N.Moolri, learned counsel for the respondents referred to the decision of the Supreme Court in the case of RAJ PAL WAHI & ORS. V. UNION OF INDIA & ORS. (SLP No.7688-91 of 1988) wherein it was held:

"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 Authorities issued orders on the basis of the Railway Circular dated 24th April, 1982. Purporting to withhold the payment of death-cum-retirement gratuity as well as the Railway passes during the period of such occupation of Quarters by them. The delay that was occurred is on account of the withholding of the gratuity of the death-cum-retirement gratuity on the basis of the aforesaid Railway 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."

In the above case of RAJ PAL WAHI & ORS (supra) the only ground of challenge was that the Railway authorities were wrong in withholding the death-cum-retirement gratuity and complimentary passes on the basis of the administrative instructions issued by the Railway Board in Circular dated 24.4.1982. In the body of the judgment, it has been stated that after vacation of the quarter by the petitioners, the passes have been released as well as the amount of death-cum-retirement gratuity which was held back were also released. On behalf of the petitioners it was stated that they have no grievance with regard to withholding of the death-cum-retirement gratuity as the same has been released by the Railway Authority. As regards the passes the petitioners cannot have any grievance because these were directed to be issued after vacation of the quarters. The only question which was before their Lordships thereafter was whether they were entitled to interest in respect of the amount which was withheld and paid subsequently at the rate mentioned therein. This was done in view of the Railway Board's Circular dated 14.9.1984. The relevant portion of the circular is quoted below:

"The Government have had under consideration the question of raising the rate of interest payable to a Railway employee on delayed payment of gratuity where the delay occurs on account of administrative lapse or for reasons beyond the control of the Government servant concerned. In partial modification dated 3.9.1979, the

President is now pleased to decide that where the payment of D.C.R.G. has been delayed the rate of interest will be as follows:

Beyond 3 months and upto one year - 7% per annum.
Beyond one year - 10% per annum."

Their Lordships observed that there was no dispute that the petitioners stayed in the Railway quarters after their retirement from service and they were also liable to pay penal rent. In order to impress upon the petitioners to vacate the Railway Quarters, the Railway Authorities issued orders on the basis of the Railway Circular dated 24.4.1982 to withhold the payment of D.C.R.G. as well as the Railway passes during the period of such occupation of quarters by them. It was held that the delay that has occurred was on account of the withholding of the gratuity on the basis of the aforesaid Railway circular. Thereafter their Lordships observed:

"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."

Their Lordships disposed of the S.L.P. accordingly and the respondents were directed to issue passes prospectively from the date of the order.

It will be seen from the above, the principal question which was determined by the Supreme Court was: whether any interest was liable to be paid to the applicant by the Railway Administration? Their Lordships have clearly laid down that the payment of interest will

depend on the facts and circumstances of the case. They had clearly held that because of the Railway Board Circular dated 24.4.1982, they were unable to interfere in the matter. In other words, if it was not due to the lapse on the administrative part of the respondents, no interest was liable to be paid. In regard to the passes, their Lordships held that the passes will be issued prospectively from the date of the order.

In the present case we find that the applicant has asked for two reliefs - one is for restoration of ^{post-retirement} passes and, second, is for payment of interest. We are of the view that according to the law laid down by the Supreme Court in the case of RAJ PAL WAHI & ORS (supra), the applicant will be entitled to the restoration of post-retirement passes but not to interest as claimed by him. The reason for not allowing the interest proceeds on the same footing as in the above case of RAJ PAL WAHI & ORS. (supra).

In the result, therefore, this O.A. succeeds in part. The applicant's claim for payment of interest on delayed payment of gratuity is declined but his claim for restoration of post-retirement passes is allowed prospectively from the date of this order. We order accordingly. There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)


30.9.91
(AMITAV BANERJI)
CHAIRMAN