

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 2100/91

Date of Decision: 03-04-92

D.P.Sharma

.. Applicant(s)

Shri R.K.Relan

.. Counsel for the applicants

Vs

Union of India through Secretary to .. Respondents
Govt. of India, Ministry of Railways
and others

Shri P.S.Mahendru

.. Counsel for respondent(s)

CORAM

Hon'ble Mr. S.P.Mukerji - Vice Chairman

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1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

JUDGMENT

(Delivered by Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 10.9.91 the applicant who retired as Chief Clerk in the IRCA office in the office of the Divisional Railway Manager, Northern Railway has prayed that the order of the respondents requiring him to vacate the railway quarters without payment of retiral benefits and Railway passes be quashed and respondents directed to pay gratuity as well as other dues before he is compelled to vacate the Railway quarters. He has also prayed that the respondents be directed to recover only normal rent and electricity charges and release the retirement passes. He has also claimed interest on the delayed payment of gratuity.

2. The brief facts of the case are as follows. The applicant retired as Chief Clerk on 30.4.89 after 34 years of service. He was occupying Railway quarters in Kishanganj, Delhi with normal rent of Rs. 55 per month. By various orders he was granted to retain the quarters upto 31.12.89. On 19.3.90 the Railway authorities informed the

applicant that the tenancy of the Railway quarter stood cancelled with effect from 1.1.90 and required him to vacate the same within 7 days failing which penal rent and other action and forfeiture of retirement passes will be taken. He represented on 12.4.90 praying for retention of the quarters for 6 months on medical grounds. He also informed the authorities that he would vacate the Railway accommodation provided the Gratuity amount of Rs.35,000 due to him since 1.5.89 was paid to him. Instead of responding to the representation the Railway authorities proceeded under the Public Premises (Eviction of Unauthorised Occupants) Act, and withheld the Gratuity amount and post retirement complementary passes. His further representation brought forth no result. He has referred to various instructions and rules of the Railways by which prompt payment of pension and gratuity has been enjoined so as to ensure that settlement dues are paid immediately on retirement and where there is some difficulty provisional payment of pension and gratuity be made. He has also referred to Rule 323 of the Railway Servants Pension Rules according to which no amount exceeding Rs.1000/- be withheld from the gratuity. He has also referred to the ruling of the Full Bench of the Tribunal in Mazirchand's case laying down that the Railway administration cannot withhold the entire amount of gratuity so long as the retired Railway servant does not vacate the railway quarter as also that supplementary Railway passes cannot be withheld for non-vacation of the Railway quarter. He has also produced a copy of the judgment of the Tribunal in O.A.1312/90 at Annexure A.10, where rent on normal rate, electricity and water charges for the period of overstayal has been directed to be recovered. He has referred to the Judgment of this Tribunal in O.A.2045/89 and O.A.191/89 allowing 12 percent interest on delayed payment of retiral benefits.

3. In the counter affidavit the Railway authorities have stated that the applicant having retired on 30.4.89 was allowed to retain the Railway quarters on normal rent and another four months at double the normal rent and that in accordance with the Rules a retired employee cannot be allowed to retain the Railway accommodation for a period exceeding 8 months. Since the applicant continued to occupy the Railway quarter beyond 8 months unauthorisedly and the amount of government dues to be paid by him cannot be ascertained till he vacates the Government accommodation his DCRG could not be released. They have calculated that as against the DCRG of Rs.33825/- payable to the applicant he has to pay to the Government Rs. 40,994/- for the Railway quarters retained by him unauthorisedly. Thus he owes to the Government Rs.7169/- for unauthorised occupation of Railway quarters upto August, 1991 besides electricity and water charges. On 19.3.90 he was informed that damages for unauthorised occupation would be recovered from him. He had also been informed about the rent to be paid by him for occupation during the first 8 months after retirement. The applicant had ^{at} no point of time informed the date when he intended to vacate the quarters and deliver the vacant possession and hence proceedings under the Public Premises Act had to be initiated. He had been forewarned ^{that} _h one set of retirement complementary passes would be withheld for every month of unauthorised occupation of Railway quarters. They have also referred to the Railway Board's order of 1962 for withholding even the entire amount of DCRG till the quarter is vacated.

4. In the rejoinder inter alia the applicant contends that he could not afford to find alternative accommodation because of non-payment of retiral benefits.

5. I have heard the learned counsel for both the parties and gone through the documents carefully. The question whether the

Railway authorities can withhold the entire amount of Death-cum-Retirement Gratuity for getting the Railway quarters vacated from the retired Railway servant was gone into in great detail by the Full Bench of this Tribunal in Wazir Chand Vs. Union of India, (page 289 of the Book Full Bench Judgments of CAT 1989-91, Vol.II). They found that the 1982 circular of the Railway Board permitting such withholding is violative of Articles 14 of the Constitution. It was further argued that since a retired Railway servant is entitled to the payment of gratuity immediately on retirement and he is permitted to retain the Railway quarter for four months on normal rent and next four months at double the assessed rent the retention of the Railway quarter during this period cannot be taken to be unauthorised and therefore the gratuity amount payable immediately on retirement cannot be withheld. Accordingly the Full Bench held that "withholding of entire amount of DCRG in the case of a retired Railway servant till such period as he does not vacate the Railway quarter is unwarranted."

6. The Full Bench went into the validity of withholding of post retirement passes for each month of retention of Railway quarter and observed as follows:

"Adverting to the question of validity of withholding of one set of post-retirement pass for each month of retention of railway quarter, it is scarcely necessary to point out the obvious import of the provisions contained in clause (iii) of para 1 of 1982 circular. This clause envisages disallowing of one set of post-retirement pass for each month of unauthorised retention of railway quarters. Recourse to the withholding of post-retirement passes can be had only after the retired railway servant has been adjudged to be in unauthorised occupation of the railway quarter. In other words, disallowing of post-retirement passes before such adjudication would not be legally in order. The question of this Circular being hit by Article 14 of the Constitution is, however, a separate question. We may also pause here to point out that the requirement of issuing a show-cause notice prior to withholding the post retirement passes is a sine qua non to the taking of action envisaged by clause (iii). This wholesome condition precedent is more often observed in breach. This point has come to our notice in several Applications, which have been allowed on account of the failure to give a show-cause notice. Holding as we do that 1982 circular infracts Article 14 of the Constitution, the action to withhold post retirement passes on the basis of this Circular shall also have to be held unsustainable."

16

7. The Full Bench also referred to the Judgment of the Supreme Court in Shri Shiv Charan Vs. Union of India and others in which the Supreme Court directed that normal rent for the period of overstaying need only be deducted from the gratuity amount and left it open to the Union of India (Appellants) "to make claim in accordance with law to which they are entitled to for any excess of penal rent." Summing up the Full Bench concluded as follows:

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

Issue No.2: (i) A direction to pay normal rent for the railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order.

(ii) The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.

(iii) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it."

8. In more or less similar case like the one before me another Bench of this Tribunal in its judgment dated 23.10.90 in P.N. Atre Vs. Union of India (copy at Annexure A.10) ruled as follows:

"It is apparent from the above, that the respondents have appreciated the arbitrary character of their instructions for holding back of the entire amount of gratuity and the hardships it was causing to retired railway employee and have, now specified reasonable amounts which should be withheld from the different categories of retiring employees, besides obtaining suitable sureties from them. Having regard to the facts of the present case and the totality of the circumstances, we order and direct that the applicant should give vacant possession of the railway quarter to the respondents or their representatives not later than 30th November, 1990 and the respondents or their representatives shall hand over the entire amount of DCRG due and owing to the applicant less the amount mentioned hereinafter at the time the possession of the railway quarter is taken over.

"Rent at normal rate, electricity and water charges etc. for the period of over-stay may be deducted from the payment to be made to the applicant as aforesaid. The respondents will be entitled to make claim in accordance with law, to which they are entitled to, for any excess or penal rent and the applicant will be at liberty to make any claim for compensation in the appropriate forum which he claims to be entitled."

9. In the light of the ruling of the Full Bench and the aforesaid judgement in a similar case I allow the application to the extent and on the lines as indicated below:

(a) The applicant shall give vacant possession of the Railway quarters to the respondents or their representatives not later than 31st May, 1992 and the respondents or their representative shall hand over the entire amount of DCRG due to the applicant less the rent on normal rate, electricity and water charges etc. for the period of over-stay.

(b) The post-retirement passes shall be released to the applicant on the basis of his entitlement forthwith irrespective of whether the Railway quarter is in unauthorised occupation or not.

(c) The respondents will be entitled to make claim in accordance with law to which they are entitled to, for ^{any} _{in} excess of penal rent and the applicant will be at liberty to make any claim for compensation ^{before} _{in} the appropriate forum ^{to} which he claims to be entitled.

(d) There will be no order as to costs.

S.P. Mukerji
3-4-92
(S.P. MUKERJI)
VICE CHAIRMAN
03-04-92