

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(19)

O.A. NO. 2588/91

DECIDED ON : 5.3.93

Smt. Som Lata

... Applicant

Vs.

Union of India & Anr.

... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri G. D. Bhandari, Counsel for Applicant

Shri K. K. Patel, Counsel for Respondents

JUDGMENT

Hon'ble Mr. J. P. Sharma, Member (J) :-

The applicant who is the widow of one Shri Bhagwat Swaroop who retired on superannuation as Loco Foreman working under the Divisional Railway Manager, Northern Railway, Bikaner at Sarai Rohalla, Delhi. During the service, the retiree was allotted a Railway quarter, L-1, Loco Shed, Sarai Rohalla, Delhi. He retired on 31.12.1987 but he did not vacate the quarter. Subsequently, the retiree died the natural death in October, 1988. The gratuity due to the retiree on his retirement was not paid to him on account of non-vacation of the Railway quarter. After the death of the retiree a notice was issued to the widow, i.e., the present applicant, for vacation of the aforesaid quarter and also levying penal rate of rent for the period of unauthorised occupation by the deceased employee and after his death by the applicant and her family. The applicant, therefore, filed this application under section 19 of the Administrative Tribunals Act, 1985 in November, 1991 and she has prayed for the grant of the following reliefs :-

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- "i) this Hon'ble Tribunal may be pleased to direct the respondents to pay the gratuity amounting to Rs.51,563/- to the applicant with interest at the rate of 18% p.a.
- ii) this Hon'ble Tribunal may be further pleased to quash the notice of the respondents dated 24.7.91 (Annexure 4)
- iii) this Hon'ble Tribunal may be further pleased to direct the respondents to recover only normal rent of the quarter from the amount of retirement benefits due to her.
- iv) Any other or further relief which this Hon'ble Tribunal deems fit and proper in the circumstances of the case.
- v) Cost of the proceedings in favour of the applicant."

2. The applicant has also prayed for grant of interim relief. But the interim relief granted to her was only to the effect that the applicant shall not be dispossessed from the premises in question except through due process of law.

3. The respondents have contested the application and also filed subsequently a photocopy of the judgment given by the Estates Officer, Northern Railway, DRM's Office, Bikaner, in the case of Union of India vs. Som Lata decided on 10.3.1992 passing an order of eviction and also levying damages of Rs.52,430/- upto 31.7.1991 and thereafter further damages to be paid at the rate of Rs.400/- per month till the vacation of the said premises. During the course of the arguments it has come that the applicant has since been evicted in May, 1992 from the said premises.

4. We have heard the learned counsel for the parties at length and perused the records. The circular of the Railway Board No. E(G)83 RN/2-6 dated 13.6.1986 pertains to retention of Railway accommodation by retired Railway servants dieing in harness. Para 2(1) of the aforesaid circular makes the following

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provisions in respect of such retired Railway servants :-

"2(1) Retirement — A Railway servant on retirement may be permitted to retain the Railway accommodation for a period of four months on payment of normal rent and the next four months on educational or sickness account on payment of double the assessed rent or double the normal rent or ten percent of the emoluments, whichever be the highest."

In the present case, there is no averment that the deceased employee in his life time ever applied for the retention of the allotted Railway accommodation to him. Along with the application the applicant has not filed any such document to show that the deceased employee in his life time, or, after his death his legal representatives, made any representation to the respondents for settlement of the retirement dues. The applicant has only annexed with the counter certain correspondence entered into on behalf of the applicant by their advocate Shri Chaudhary. These representations also do not go to show any relevant provision of law under which the applicant or the retiree in his life time could have retained the Railway accommodation after the retirement. The matter has been considered in the Full Bench decision of Wazir Chand vs. Union of India & Ors. reported in Full Bench Judgments of the CAT Vol. II Page 287. The Full Bench has summarised its conclusion as follows :-

- (1) Withholding of entire amount of gratuity of a retired Railway servant so long as he does not vacate the Railway quarter is legally impermissible.
- (2) 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.

(3) 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.

(4) 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.

5. The Full Bench also considered the judgment rendered on 23.4.1990 in Civil Appeal No. 2002/90 (Union of India & Ors. vs. Shiv Charan) decided by the Hon'ble Supreme Court. The following pertinent observations were made in para 2 of the judgment :-

"Rent for the period overstayed may be deducted from the payment to be made as aforesaid. The appellants will be entitled to make claim in accordance with law 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 forum which he claims to be entitled to."

The above extracted observations unmistakably shows that the Apex Court treated the two matters, i.e., the payment of rent including penal rent etc. and the claim for compensation for the delayed payment of gratuity as distinct and separate.

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6. Coming to the relief claimed by the applicant, the applicant has claimed the amount of gratuity due to her husband with interest at the rate of 18 per cent per annum. So far as the amount of gratuity is concerned, the respondents are under duty to pay the same to the applicant as she is the legal representative of the retiree who died afterwards. As regards the payment of interest, a similar matter came up before the Hon'ble Supreme Court in the case of Raj Pal Wahi & Ors. vs. Union of India & Ors. (SLP No.7688-91/88) decided on 27.11.1989. In that case also 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 had paid. Purporting to withhold the payment of DCRG as well as the railway passes during the period of occupation of railway quarters by them was to impress upon them to vacate the railway quarters and the railway authorities issued orders on the basis of the Railway Board circular dated 24.4.1982. The delay that occurred was on account of the aforesaid Railway Board circular. The Hon'ble Supreme Court in such circumstances held that the petitioners were not entitled to interest as the delay in payment occurred due to the order passed on the basis of the said circular of the Railway Board and not on account of administrative lapse. Before the Hon'ble Supreme Court the issue was also whether the appellants of that appeal were entitled to award of interest in respect of the amount of DCRG which was withheld and paid subsequently.

7. In view of the above position of law, we have to judge the circumstances of the present case whether the applicant is entitled to the award of interest on the withheld amount of gratuity or not. It is evident from the record that the deceased employee retired on superannuation on 31.12.1987.

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He could have retained the allotted railway quarter till the month of April, 1988.. Instead, he continued to retain the said premises and even after his death his legal representative, i.e., the applicant and her family continued to occupy the same. In the present application also the applicant has prayed for grant of interim relief that the respondents be restrained from evicting the applicant and her family from the railway quarter. That relief was not granted and only it was directed that the applicant shall not be dispossessed from the said railway quarter except under due process of law. There is no reason as to why the applicant should be allowed to retain the railway quarter even if the deceased employee was not paid the DCRG after retirement. There is a provision to compensate the delayed payment under the instructions issued by the Railway Board itself. Had the deceased employee vacated the railway quarter then the said quarter would have been available to another needy employee and seeing to the paucity of accommodation for the employees, the retention of the railway quarter in an unauthorised manner by the deceased employee and after his death by his family members cannot be taken easily. The law has to take its own course. The deceased employee was a Loco Foreman and was very well aware of the extant rules. In view of this the retention of the railway quarter by the deceased employee after four months of retirement and by the family members till the date of eviction in May, 1992 is totally unauthorised. The relief claimed in this O.A. that only normal rent for the quarter be ordered to be realised, cannot be accepted. The applicant cannot, therefore, also claim interest on the delayed payment of DCRG.

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8. The question now remains is whether the respondents can effect the recovery from the amount of DCRG or not which is payable to the applicant? In the proceedings before the Estates Officer under section 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the applicant was asked to show cause regarding the payment of damages for unauthorised occupation of the railway quarter and also as to why she be not evicted from the said premises. The applicant even after repeated chances given to her and after due service of notice on her, did not appear before the Estates Officer and the proceedings before the Estates Officer went ex parte. The Estates Officer vide reasoned order dated 10.3.1992 decided the case instituted by the Union of India through the Divisional Mechanical Engineers, Northern Railway against the applicant and passed the order of eviction and further in exercise of the powers under section 7(2) of the Public Premises (EOU) Act assessed the damages for unauthorised occupation of the Railway quarter amounting to Rs.52,430/- upto 31.7.1991 and thereafter further damages at the rate of Rs.1400/- per month till vacation of the said premises. In view of this order which has not been assailed nor is it said that the same is under challenge in any proceedings, the Union of India is entitled to the aforesaid amount decreed by the Estates Officer from the applicant. Since the deceased employee is no more and the recovery has to be effected on account of unauthorised retention of the quarter by the deceased in his life time, so the respondents have a right to get the amount set off against the dues which are liable to be paid to the deceased employee. It is not the case of deduction from the DCRG but it is a case where there is a decree of recovery against the deceased employee as well as the legal representative of the deceased for an amount which the retiree was bound to pay. In fact, the respondents on one

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hand can pay the amount of DCRG to the applicant and at the same time they have to recover the damages awarded by the Estates Officer vide order dated 10.3.1992 from the applicant.

9. In view of the above facts and circumstances, the present application is disposed of with the following directions :-

(A) The applicant is entitled to the amount of DCRG due to the deceased employee without any interest.

(B) The respondents are entitled to recover the damages from the applicant for unauthorised retention of the railway quarter <sup>the retirement</sup> four months after (the death) of the retiree till the vacation of the quarter in May, 1992 on the basis of assessment and decree passed by the Estates Officer in the order dated 10.3.1992.

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(C) The respondents are at liberty to get the amount set off against the amount of DCRG payable to the legal representative of the deceased, i.e., the applicant and pay the balance, if any, which is left out of deduction of that amount of damages as held in para (B) above.

In the circumstances of the case, the parties are left to bear their own costs,

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( J. P. Sharma )  
Member (J)