

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 2807/91

DATE OF DECISION: 8.5.1992.

V. SAMUEL

... APPLICANT

VERSUS

UNION OF INDIA

... RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN(J)

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

FOR THE APPLICANT SHRI R.K. RELAN, COUNSEL.

FOR THE RESPONDENTS SHRI R.L. DHAWAN, COUNSEL.

1. Whether Reporters of the Local Papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*

Arlyn

(I.K. RASGOTRA)
MEMBER(A)

Parvin

(P.K. KARTHA)
VICE-CHAIRMAN(J)

May 8, 1992.

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The applicant Shri V. Samuel has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of the respondent No.99M/DEE/89/VS dated 4.6.1989, cancelling the allotment of Railway Quarter No.L-21D, Loco Shed, Railway Colony w.e.f. 1.5.1988 and demanding from him payment of market rent/damages amounting to Rs.14,750/- as indicated therein for the period 1.5.1988 to 31.5.1989. The applicant had continued to remain in occupation and of the Railway quarter unauthorisedly/on and from 13.12.91 onwards in accordance with the interim order of the Tribunal as reproduced below:-

"As regards interim relief, the respondents may proceed with the proceedings regarding eviction but shall not pass the final order and shall not dis-possess the applicant from the quarter in his occupation, till the next date."

(b)

The said interim order was continued from time to time till the case was finally heard on 4.5.1992. Since the applicant did not vacate the quarter the respondents have not released the death-cum-retirement gratuity (DCRG) amounting to Rs.57,544/- and have also withheld the post retirement railway passes admissible to him. He has prayed for the following reliefs:-

- i) That the Hon'ble Court may be pleased to direct that the impugned order by which the Applicant has been asked to vacate the Railway Quarter immediately without prior payment of his retiral benefits such as Gratuity and Bonus and release of post retirement Railway passes is quashed.
- ii) That this Hon'ble Tribunal may be pleased to direct the Respondents to pay the amount of Gratuity as admissible before the applicant is compelled to vacate the Railway Quarter.
- iii) That this Hon'ble Court may direct the Respondents to recover only Normal Rent and Electricity Charges in respect of the Quarter retained by the applicant as has already been decided on other similar cases.
- iv) That the Respondents be directed to release the post retirement passes due to the applicant but withheld without any authority of law and suitably compensate the applicant monetarily in lieu of the passes for the period which cannot be restored for the past period.
- v) That the Hon'ble Tribunal may be pleased to direct the Respondents to pay interest at the market rate on the Gratuity from the date of retirement till the date of payment.

2. Shri R.K. Relan, learned counsel for the applicant submitted that the DCRG became payable to the applicant on 1.5.1988. As the amount was not released by the respondents, the applicant could not make alternative arrangement to vacate the Railway Quarter. Relying

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on paragraph 3.23 of the Manual of Railway Pension Rules, 1950, the learned counsel submitted that respondents can only instruct the Railway servants furnish a surety of a suitable Railway permanent servant and to retain an amount not exceeding Rs.1,000/- towards recoverable dues. In no circumstance the respondents can withhold the entire amount of DCRG. The learned counsel also relied on the Full Bench of the Tribunal in **OA 2573/89 Wazir Chand Vs. UOI & Ors. decided on 25.10.1990 (Full Bench Judgements of CAT 1989-91 Vol.II page 287**, where the Tribunal came to the following conclusion:-

- "(i) Withholding of entire amount 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 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 a 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."

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(10)

3. The learned counsel for the respondents, on the other hand submitted that the applicant after his retirement had no right to continue in the Railway quarter, as he had not even applied for its retention for a normal period permitted under the Rules. He should have, therefore, vacated the quarter immediately on retirement. He was in unauthorised possession of the quarter and the order impugned by the applicant indicates that his allotment has been cancelled w.e.f. 1.5.1988. He also drew our attention to paragraphs 23 & 24 of Wazir Chand (supra) Full Bench judgement and further referred us to the **Full Bench Judgement in Rasila Ram & Ors. Vs. UOU & Ors. in OA 89/88 etc. decided on 5.5.89** and submitted that the applicant could have approached the Tribunal only after the final orders had been passed by the Estate Officer under the P.P. Act. He also referred to the General Manager letter No.E/ADA/720E-0/x dated 15.3.1988 according to which the respondents can withhold the entire amount of DCRG till the vacation of the Railway quarter.

4. We have considered the matter carefully. An identical case in regard to withholding of gratuity and post - retirement passes had come up before the Hon'ble Supreme Court in SLP No.7688-91/88 **Raj Pal Wahi & Ors. Vs. Union of India & Ors.** when their Lordships held:-

"....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 thus disposed of. The respondents, however, will

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(11)

issue the passes prospectively from the date of this order."

In view of the law declared by the Hon'ble Supreme Court as above, we are of the opinion that the respondents should release the DCRG after recovering the penal rent, as distinct from damages, from the amount of the DCRG less the amount of penal rent for the period of unauthorised occupation of the accommodation. Since the delay in payment of DCRG is not on account of the administrative lapse, no interest will be payable on the amount of DCRG. We order accordingly. We further order and direct that the applicant shall vacate the Railway quarter as early as possible but not later than 31st July, 1992. The respondents shall also make payment of the DCRG during the same period, as ordered above. The respondents shall further restore the issue of post-retirement complimentary passes to the applicant prospectively from , the date the Railway quarter is vacated by the applicant.

The O.A. is disposed of as above. No costs.

Subhash
(I.K. RASGOTRA)
MEMBER(A) 8/3/1992

Subhash
8/3/1992
(P.K. KARTHA)
VICE-CHAIRMAN(J)

May 8, 1992.

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