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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

OA 1277/92

28.07.1992

SHRI F. WILSON

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SHRI V.P. SHARMA

FOR THE RESPONDENTS

...MS. SUNITA RAO

1. Whether Reporters of local papers may
be allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant retired on superannuation on 30.11.1985 and during the course of his employment he was allotted Quarter No.P 86-B Loco Colony, Kishan Ganj, Delhi. The applicant has been served with a notice that he is in unauthorised occupation of the said Railway quarter and action under Public Premises (Eviction of Unauthorised Occupation) Act, 1971 shall be taken against him. The case of the applicant is that he has not yet been paid his retirement benefits including gratuity and the same has not been paid because the applicant did not vacate the Railway quarter though he had already superannuated in November, 1985. It is stated that he is not able to make alternate arrangements of shifting his family. It is stated tht the applicant's gratuity cannot be withheld and that is required to be paid

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with interest. The respondents in their counter have stated that the applicant has no right or entitlement to the retention of the Railway quarter No.P 86-B Loco Colony, Northern Railway, Kishan Ganj after he has retired from the Railway service and the requisite period of four months under which he could have utmost retained the Railway quarter has already expired in the first quarter of 1986. After this, the applicant is in unauthorised possession of the Railway quarter for all these six years. Under the various circulars of the Railway Board, the amount of DCRG was not paid to the applicant. The proceedings under Sections 4 and 7 of the Public Premises Act, 1971 have been commenced by the respondents and they are pending.

I have heard the learned counsel for the applicant. In fact, the applicant has not claimed any relief regarding the payment of DCRG. But it is argued by the learned counsel for the applicant that the moment, the amount of DCRG is paid, the applicant shall be vacating the Railway quarter. The learned counsel for the applicant has annexed a copy of the case of Mela Ram (p-14 of the paper book) decided by the Division Bench of the Principal Bench, on 19.7.1991. In that case, the reliance has been placed on the case of Wazir Chand Vs. Union of India, Full Bench decision 1991 (1) ATJ p-60. But this fact has not been brought to the notice of the Bench that the decision has been stayed by the Hon'ble Supreme Court in SLP filed by the Railways. However, it has been ordered in

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that case that the applicant be paid the amount of gratuity, but in the case of Union of India Vs. Shiv Charan, reported in 1992 (19) ATC p-129, the Hon'ble Supreme Court on a similar matter of non payment of DCRG has held that the respondents shall be free to recover the penal rent/damages for the period of unauthorised occupation of the Railway quarter by the retiree and the retiree shall be entitled to the amount of DCRG due to him, of course, after deduction of the normal rate of rent. Both retiree as well as the respondents shall be free to take the course to the competent forum for recovery of other dues claimed against the other. The learned counsel for the applicant has also referred to the case of Rassila Ram (Annexure A5), but that case has also been stayed by the Hon'ble Supreme Court.

It is undisputed fact that the applicant after his retirement in November, 1985 continues to occupy the Railway quarter without any entitlement or authority and as such the respondents are free to take proceedings against the applicant according to the law. The challenge by the applicant to the notice issued by the respondents to initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1972 appears to be misconceived. There is no law or rule or circular where a retiree can continue to occupy the premises allotted to him as a licensee as a service condition during his employment with the respondents. However, the respondents are also to clear the outstanding retirement dues of the employee and cannot withhold the same on the basis of non vacation of the Railway quarter.

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The question, therefore, arises is if the respondents have not paid the DCRG amount in that situation like the present one, then the applicant shall be entitled to any interest on the withheld amount or not. A similar case came before the Hon'ble Supreme Court in Raj Pal Vahi Vs. Union of India, reported in SLP No.7688-91 decided on 27.11.1989 where the Hon'ble Supreme Court disallowed the interest because of the special feature of that case.

In view of the above discussion, the application is disposed of in the following manner :

- (a) The respondents can proceed for ejection of the applicant on the basis of the show cause notice issued (Annexure A1), but the eviction order shall not be carried out till the DCRG amount is paid to the applicant less the amount of the penal rent as distinguished from the damage rent. The moment, the applicant vacates the premises, the amount be handed over to him.
- (b) The respondents shall be free to pursue the remedy of recovery of damage rent as laid down in the latest circular of the Railway Board under the relevant provisions of law.
- (c) The applicant shall not be entitled to any interest on the withheld amount of DCRG because of the decision of Raj Pal Vahi's case (supra).

(d) The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this judgement.

(e) In the circumstances, the parties shall bear their own costs.

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)
28.07.1992