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Date of decision: 20.8.1993

Coram:-

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Sh. K.L. Bhatia, counsel

For the respondents : Sh. B.B. Dinkar, counsel

JUDGEMENT

(delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

In this O.A., Sh. Niranjan Prasad Gautam, a retired employee of the Indian Railway is seeking relief that the amount of gratuity withheld may be paid to him with interest, post retirement passes may be allowed as per rules and he may be allowed to retain the railway quarter till the amount of gratuity is paid.

The applicant was working as Issuer at Loco Shed Rosa when he retired on attaining the age of superannuation on 1.8.1991. He was allowed to continue occupation of the railway quarter upto 30.11.1991 and was promised for consideration of further extension provided necessary certificate was submitted in support of his

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request. A medical certificate relating to illness of his wife was submitted on 7.1.1992. However, vide impugned order dated 4.2.1992, he was ordered to vacate the railway quarter.

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Interim orders were passed by this Tribunal on 17.7.1992 and 31.7.1992 directing the respondents not to dispossess him from the Railway accommodation and to release the post retirement passes admissible to him. These interim orders have been extended till date.

The respondents have stated that on 20.11.1990, the applicant was advised that he will retire from railway service on 31.7.1991 and he will have to vacate the railway quarter within a period of one month from the date of retirement, failing which penal rent for unauthorised occupation will be recovered from his settlement dues and one set of complimentary pass may be given to retired staff shall be forfeited for each month of unauthorised occupation of railway quarter. Considering his further representation vide order dated 30.7.1992, he was permitted to retain this quarter for a further period from 1.12.1991 to 31.1.1992. In terms of Railway Board's letter dated 31.12.1990, he cannot be paid the amount of gratuity till he vacates the railway quarter.

I have heard the learned counsel for the parties and perused the records. The law has been well settled in the case of Wazir Chand Vs. UOI 1991(1) ATJ 60

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where the Full Bench of this Tribunal observed as follows:-

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"Gratuity is payable to a retired Railway servant as a consideration for services rendered and not for enabling him to hire residential accommodation. Furthermore, the submission would be clearly inapplicable and would be rendered otiose in cases, where a retired Railway servant wishes to take up residence in a relatively smaller town or in his own house which he may have built or purchased. The aforesaid potpourri flavoured argument has left us unimpressed and the same is accordingly hereby turned down."

The learned counsel for the applicant has drawn our attention to the judgement of Hon'ble Supreme Court in the case of U.O.I. Vs. Shiv Charan reported in 1992 Vol.19 ATC page 129 wherein it was held that the payment of gratuity cannot be linked with the unauthorised possession of the allotted premises by a retiree. The employee has a right to get the DCRG while administration can recover damages for unauthorised occupation of the allotted quarter after retirement. However, in a case where the gratuity is being paid, only normal licence fee can be deducted from the same alongwith electric and water charges with the right to the administration to proceed under PP(EOU) Act, 1971 for eviction as well as for recovery and realisation of rent/damages as per extant rules. Division Bench of this Tribunal of which I was a

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Member also considered this issue in O.A.No.2806/91 decided on 14.5.1992 reiterating the view held by the Hon'ble Supreme Court in the case of Rattan Lal Vs. Union of India and Ors.

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In view of the above facts and circumstances of the case, the O.A. is disposed of as follows:-

- (i) The respondents are directed to pay the amount of DCRG due to the applicant after deducting the normal licence fee of the occupied allotted quarter to the applicant alongwith electricity and water charges till the date of vacation;
- (ii) The respondents shall have a right to recover damages under PP(EOU) Act, 1971.
- (iii) The amount of DCRG shall be paid with 10% interest at the very moment when the applicant vacates the allotted accommodation and give the possession to the respondents.;
- (iv) The respondents are also directed to release the supplementary retirement passes to the applicant;
- (v) The respondents shall comply with the above directions within a period of 3 months from the date of receipt a copy of this judgement.

No order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 20/6/93
MEMBER(A)