

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1860/92
T.A. No.

199

DATE OF DECISION 27.8.1993.

Shri Inder Pal

Petitioner

Shri B. S. Mainee

Advocate for the Petitioner(s)

Versus
 Union of India

Respondent

Shri P. S. Mahendru

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT (ORAL)

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

The applicant retired as a Monoset Mistri from the Northern Railway and during the course of employment, while in service, he was allotted a railway quarter No. 260/2, Railway Colony, Shakur Basti. The applicant retired on superannuation on 31.3.1990. His son, Hari Mohan, is a regular railway employee since 18.7.1980. He has been sharing accommodation with his father w.e.f. 1.7.1989 and a permission to that effect was granted by the letter dated 24.10.1989. On the retire-

(3)

ment of the applicant, the son, Hari Mohan, applied for regularisation/allotment of eligible type of quarter in his name and that was allowed to him by providing Type I quarter by the order dated 6.4.1992. Even after retirement, the applicant continued to occupy the aforesaid railway quarter and was issued letter dated 15.5.1992 by which the penal rent at the rate of Rs.932/- per month for the period from 11.11.1990 to 31.5.1991 and at the rate of Rs.1864/- per month for the period from 1.6.1991 to 30.4.1992 was levied and was ordered to be recovered and as a result of the same, the payment of DCRG of the applicant was withheld. In the counter filed by the respondents, the total amount of dues on account of the above calculation of rent, comes to Rs.27,304/- and besides that, there were electricity charges amounting to Rs.10,164/-, water charges:Rs.450.50 and conservancy charges:Rs.70.65. The total amount comes to Rs.37,989.15. It is also stated in the counter that the amount of DCRG payable to the retiree is to the tune of Rs.29,040/-.

2. The applicant, in this application, has prayed for the payment of the withheld amount of DCRG with interest at the rate of 18 per cent per annum with a further direction to the respondents to recover only normal rent for the said quarter and also to release the withheld post-retirement passes.

(X)

3. We have heard the learned counsel for the parties. The case of the applicant is that after his retirement on 31.3.1990, his son was a regular Railway employee and was eligible for 'out of turn' allotment/regularisation of the eligible type of quarter, being a ward of a retiree under the circular of the Railway Board. The delay on the part of the regularisation/allotment, is account of the respondents and the applicant should not be penalised for the administrative lapses undergone in the office of the respondents. The applicant has also filed a comprehensive chart of dates to reveal the fact that the regularisation/allotment of quarter to his son has been delayed because of the unforeseen inadvertence from the side of the respondents.

4. We have carefully gone through the summary of dates given by the applicant, which is a part of the paperbook.

5. The learned counsel for the respondents, however, argued that the applicant retained the quarter as of right for four months permissible after retirement and was also granted an overstay of three months further on double the licence fee on the grounds he has stated in the application for retention of the quarter. Thereafter, the applicant did not make any such prayer and since he has retired from service, he became unauthorised occupant and under the extant rules after the date of permissible overstay, he is liable to pay the penal rate of rent prescribed by

(15)

the Divisional Superintending Engineer (Estates).

6. In the case of Union of India Vs. Shiv Charan decided by the Hon'ble Supreme Court reported in 1992, Vol.19 ATC 129, it has been held that the question of retention of a quarter by a retiree is a matter different from the payment of retiral benefits which an employee has earned by virtue of having put in a record service with the respondents. Thus, the DCRG cannot be connected in any manner and the railways have no right to withhold the amount of DCRG even though the retiree may be in unauthorised occupation of the earlier allotted quarter to him. Another matter came before the Hon'ble Supreme Court in the case of Raj Pal Wahi Vs. Union of India, where certain circulars of the Railway Board of 1982 and 1984 were considered and there was a delay in payment of DCRG. The Hon'ble Supreme Court held that such a retiree who has unauthorisedly retained the quarter, cannot be given the benefit of interest on the withheld amount of DCRG.

7. Taking the above position of law, the fault of the applicant, if at all, lies in not vacating the quarter when the permission for overstay had exhausted. But there is a greater fault on the part of the respondents in not regularising within time or allotting an alternative accommodation of eligible type to an eligible ward of retiree.

Ultimately, the respondents have allotted Type I quarter to the son of the applicant. In fact, the policy behind the out of turn allotment/regularisation of the same quarter is that a retiree has to be rehabilitated and the son, by virtue of getting this privilege of out of turn allotment, undertakes to live with the father in the quarter to be allotted/regularised in such a manner.

8. Another factor that comes before us is that when the respondents were not prompt in regularising the quarter in favour of the son, an application under Section 19 was moved before the Principal Bench (OA-197/92) and by the time the application could be decided in its turn, the quarter had been regularised/alternative accommodation was provided by the order dated 6.4.1992 and as such, this application became infructuous and consequently, withdrawn. In the aforesaid application, the Bench had considered the matter on the grant of interim relief and a direction was issued to the respondents ~~to~~ not to evict the son, including the applicant, from the said allotted premises given to the father.

9. Taking all these facts into account and also that a sharing permission had already been granted by the order dated 24.10.1989, almost six months, or a few days less than six months before the retirement of the applicant on 31.3.90, the applicant has made out a case for interference regarding

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the impugned order of recovery of damage rate of rent.

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

(i) The respondents shall pay the amount of

D.C.R.G. less the amount of rent as referred to above, but the applicant shall not be entitled to any interest on this amount because of overstay in the said premises in view of the Raj Pal Wahi's case (supra.).

However, the interest will be liable to be paid to the applicant at the rate of 12% per annum from the date of the vacation of the quarter, i.e., 30.4.1992. The respondents are directed to pay this amount within a period of three months from the date of receipt of a copy of this order and if the amount is not payable by that date, the rate of interest will be enhanced to 18% per annum after that.

(ii) The applicant shall be liable to pay the amount to be adjusted from the aforesaid amount of DCRG at the normal licence fee of the allotted premises for a period of four months after retirement and double the licence fee till the date of allotment of eligible type of quarter

(18)

as well as till the date of vacation, i.e., 30.4.1992. The applicant shall also be liable to pay the electricity charges, water charges, as per the bills received by the department.

- (c) The impugned order for recovery, therefore, is modified to that extent.
- (d) The withheld post-retirement passes, shall also be released.

The parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)