

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

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O.A.No.2635/92.

DATE OF DECISION 22-7-1993

<u>SHRI SUNDER LAL SHARMA</u>	Petitioner
<u>SHRI V.P. SHARMA,</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>SHRI R.L. DHAWAN,</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. B.S. Hegde, Member (Judicial)

The Hon'ble Mr.

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 ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant, Sunder Lal s/o Shankar Lal, was allotted a railway quarter No. 117(1), Loco (MC), Railway Colony, Delhi Sarai Rohiela. The applicant joined the Railways in the year 1981 and was working as Shunter and was posted at Loco Shed Northern Railways, Delhi Sarai Rohiela and was retired on 30.4.1988. On account of general local employees strike

in the year 1981 along with others, the applicant's services were terminated under Rule 14(ii) of the Railway servant (D&A) Rules, 1968. The applicant, alongwith other employees, filed a civil suit in the Rajasthan High Court at Jodhpur and the High Court had passed interim order vide dated 11.10.1982 directing the Railways to make payment of his pay till the disposal of the writ petition. Subsequently, the writ petition was transferred to Central Administrative Tribunal, Jodhpur Bench and the same was decided on 4.9.1992 alongwith the transfer application to the extent the impugned order/dismissal and the appellate orders rejecting the appeals are set aside. The respondents are directed to grant pension and other retirement benefits to the applicant from the date on which they would have retired on superannuation, on the basis of salary that they would have drawn prior to superannuation, if they had not been removed from the service. It was also observed that the period prior to the retirement will be treated as duty for the purpose of pensionary benefits etc.

2. The main contention of the applicant is that his pensionary benefits have not been paid and he has no

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alternative accommodation to settle down. Therefore, till his pensionary benefits are given, he would not be able to vacate the railways quarter. On that plea, this Tribunal vide its order dated 13.10.1992 directed the respondents not to evict the petitioner from the quarter for a period of 14 days so as to enable him to make alternative arrangements for vacating the railways quarter and also directed the applicant to thereafter, make a request to the respondents, / Interim order had been extended from time to time.

3. The Learned Counsel for the respondents, Shri R. L. Dhawan, contends that the applicant had been in unauthorised occupation since 1988 till today and as per the orders passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 vide dated 18.6.1992, the applicant is duty-bound to make the payment of the rent as per law. Accordingly, the gratuity due to him is off-set against the damages due from the applicant. He also further submits that except pension and commutation, no other dues are payable. Regarding gratuity, the respondents have already intimated to the applicant that his gratuity amount has been adjusted against the damages recoverable from him. In this connection

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Shri Dhawan has brought to my notice the full Bench
decision of this Tribunal in the case of Wazir Chand
Vs. Union of India wherein it is specifically stated
that payment of settlement dues and retention of
railway quarter after retirement are two distinct
and separate matters. Therefore, keeping in view of
the rationals of that decision, the applicant should
not be allowed to continue indefinitely in the said
quarter. He also brought to my notice the recent
decision of this Tribunal in O.A . No.13/92,
dated 6th January, 1993 wherein it has been
observed that the respondents were free to
deduct the amounts from the amount of gratuity
and to pursue the case under the Public Premises
(Eviction of Unauthorised Occupants) Act, 1971 against
the applicant for recovery of damages for use of
occupation of the quarter after 31.5.91 and may
recover the same from the applicant as per extent
rules and Law. The Tribunal had further observed
that respondents are free to deduct the amount of
gratuity but inffairness it requires that if
ultimately the orders of the P.P.Act is set aside or the

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amount due from the petitioner is reduced, the petitioner should be refunded the amount deducted from the gratuity amount. It is proper to make a direction that in the event of petitioner succeeding in his challenge to the order under the P.P. Act, the respondents should refund the deducted amount, with interest at the rate of 12% per cent per annum from the date of withholding of the amount of the gratuity till the date of actual payment."

4. During the course of hearing, it is conceded by the Learned Counsel for the applicant that all the dues are duly processed by the respondents subsequent to the decision of the Jodhpur Bench and he submits that he ^{is} inclined to give an undertaking that on receipt of payment of pensionary benefits, he would vacate the quarter within one month. In the instant case, PP Act proceedings under Sections 4 & 7 have already been completed vide letter dated 20th July, 1981. Keeping in view of the decision of the Division Bench of this Tribunal dated 6.1.1993, it is open to the respondents to deduct rent as per law. However, the Learned Counsel for the applicant submits that the respondents be directed not to recover damages from the applicant or adjust the gratuity amount towards damages/

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penal rent. Since the decision of the Division Bench is binding on a Single Judge, It is difficult for me to take a different view than what has been decided by the Division Bench in so far as this issue is concerned. Therefore, regarding the payment of normal rent, keeping in view of the decision rendered by the Jodhpur Bench which was delayed on account of transfer of the same from Rajasthan High Court and in view of the inter-im order of the High Court as well as this Tribunal, it is open to the applicant to make a suitable representation to the competent authority to charge normal rent till his retirement benefits are paid i.e. pension and commutation amounts within a period of two months from the receipt of this order. / In case the pension and commutation amount is paid within two months in that event the applicant shall have to vacate the quarter within one month thereafter, failing which, the respondents are at liberty to take necessary action pursuant to the Public Premises (Eviction

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of Unauthorised) Act, 1971 to evict him from the
quarter.

5. The O.A. is disposed of with the above
directions.

(B.S. Hegde)
Member (Judicial)

B.S. Hegde 27/7/93