

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

C.A. NO. 639/1992

DATE OF DECISION : 11.08.1992

Shri Madan Lal Bhasin

...Applicant.

vs.

Union of India & Ors.

...Respondents

COURT

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri O.P. Gupta,
Counsel

For the Respondents

...Shri R.L. Bhawan,
Counsel

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

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

JUDGEMENT (ORAL)

The applicant retired on superannuation on 31.10.1991

and during the course of his employment, he was allotted

a Railway quarter No.57 A/7 Type-I, Unnotu Moh Sarai, Delhi.

After retirement, the applicant claims the payment of DA

which has been withheld by the respondents on the pretext

that the applicant was never allotted the said premises and

he unauthorisedly entered into the premises as a result of

which the departmental proceedings were held against him and

he was also punished and penalised with the penalty of

reduction of pay by two stages in the same time scale with

(8)

commulative effect with recurring effect. However the date of this order has not been intimated ~~departmentally~~ by either of the parties in their pleadings. During the course of the argument, it is stated by the learned counsel for the respondents that since the applicant has not been allotted the said premises, so he was charged the penal rent for the said premises at the market rate as per the circular of the Railway Board. The contention of the learned counsel for the applicant has averred in the application itself that the respondents have no right to withhold the amount of DRG and in para-323 of the Railway Pension Manual, the limit of retention of amount is Rs.1,000 or 10% of the DRG, whichever is less. The applicant in this application has prayed for the reliefs of the withheld amount of DRG alongwith interest.

2. The respondents contested the application on the ground that a circular has been issued by the Railway Board on 31.12.1990 wherein it is provided that the retirement/DRG should be withheld in full for non vacation of Railway quarter not only after superannuation, but in all cases ^{of} ~~cases~~ cessation of service. Further the amount withheld should remain with the administration only in the form of cash without conversion of the amount of gratuity into any type of security. The DRG

should be released as soon as the quarter is vacated so that there should be no hardship to the retired employee or his family nor there is any claim for payment of interest for the withheld gratuity for the reason of any administrative lapse. The learned counsel for the respondents has also referred to the case of Wazir Chand, a Full Bench decision, reported in 1989 Full Bench decision, p-279 and filed a photocopy of the judgement passed in SLP by the Hon'ble Supreme Court whereby the judgement of Wazir Chand has been stayed. That is Annexure R2 to the counter. It is further averred in the counter that since the applicant was not an allottee of the said premises, so he has been charged during the course of his service at the market rate of rent as provided under the circular of the Railway Board.

3. I have heard both the counsel at length. The contention of the learned counsel for the applicant is that the DRG is not a charity, but it is a hard earned money due to the applicant by virtue of having put in a long standing of service. The respondents are bound to pay the same within the specified period of retirement under the CCS(Pension) Rules, 1972. At the most, they can withhold a certain

le

amount as provided under Para 323 of the Railway Pension Manual. There is no dispute regarding the fact that the DURG is to be paid to the applicant on retirement. But at the same time, the applicant is governed by Statutory Rules. Those Rules govern the conditions of service of the applicant while he was in the employment of the respondents. It is because of the service conditions that he is being ~~appropriate~~ ^{approbate} paid the amount of DURG. He cannot ~~appropriate~~ and ~~reappropriate~~ in one breath. At one place he wants to take ~~the shelter~~ ^e of the Rules while at the other place, he challenges the respondents to act according to the Rules. However, the point need not be thrashed any further in view of the decision in Union of India vs. Shiv Charan, 1992(19) ATC 129. In this case, the applicant Shiv Charan was a Railway employee and did not vacate the premises though he was a lawful allottee of the same. The Hon'ble Supreme Court directed that only the rent should be deducted from the DURG till the date of vacation by such an employee, i.e., Shiv Charan and the respondents shall have a right to recover damages/market rate of rent from that employee as per the Extant Rules in the proper competent forum. The Hon'ble Supreme Court in fact referred to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The application, therefore, can be disposed of in that light. However, in the present case, there is something more. The

applicant has been unauthorised occupant of the quarter. Till the date of his retirement, the amount of compensation for use and occupation which may be called licence fee or rent in this case was the amount calculated by the respondents as per the Extant Rules to be realised from such of the persons who are in unauthorised occupation of the same. When the applicant without any objection has paid the amount and without making a challenge of the same before any forum, so it cannot be said that the respondents can only recover the normal rent. The rent deducted last from the salary of the applicant in the month in which he retired should be the rent in this case which has to be recovered from the applicant as monthly rent till the date of vacation of the quarter from the amount of D.R.G outstanding in his name. The balance amount of D.R.G so left out with the respondents would be paid to the applicant. Now the question remains of the payment of interest.

4. As laid down in Raj Pal Vani's case, the Hon'ble Supreme Court disallowed the interest because there are various circulars of the Railway Board which come in the way of the respondents in paying the D.R.G to such an incumbent, who remains in unauthorised occupation of the Railway quarter

19

even after retirement. But in this case, the applicant is in unauthorised occupation of the Railway quarter from the date he was punished in departmental proceedings. So the applicant in such a case shall also be entitled to interest as the ratio of the Raj Pal vahi's case will not come in this case. The learned counsel for the applicant argued almost amounting to a statement at the Bar that the applicant is prepared to vacate the premises the moment the D.R.G is paid to him. The learned counsel for the respondents also does not oppose this fact.

5. In view of the above discussion, the present application is disposed of with the following directions :-

- (a) The respondents shall pay the D.R.G to the applicant less the rent which was being deducted from his last salary upto the date of vacation of the quarter by the applicant along with interest @10% p.a.
- (b) The respondents shall be free to claim damages at the market rate or as per the extant Rules in the competent forum against the applicant and the applicant shall be bound to pay the same.
- (c) The amount of D.R.G should be paid to the applicant and the applicant shall vacate the quarter the very moment the amount is paid to him.
- (d) The respondents shall comply with the above directions within a period of three months from

J

...7...

the date of communication of this judgement.

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

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)
11.08.1992

AKS