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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

* * *

Date of Decision: 20.10.92.

OA 780/92

ROSHAN LAL

... APPLICANT.

vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

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

For the Applicant ... SHRI S.K. SAWHNEY.

For the Respondents ... SHRI R.L. DHAWAN.

1. Whether Reporters of local papers may be *45* allowed to see the Judgement ?

2. To be referred to the Reporters or not ? *45*

JUDGEMENT (ORAL)

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

Shri Roshan Lal is the applicant, who retired as Deputy Chief Yard Master on 31.3.90. He was allotted a Railway Quarter No.71/4, Railway Colony, Kishanganj, Delhi. He did not vacate the said quarter when he retired on 31.3.90 and even four months thereafter, a period allowed to retiree for retention of the allotted quarter. The grievance of the applicant is that he has been paid the full amount of gratuity alongwith interest. Though in the present proceedings he has challenged the order dated 16.11.90 issued by the DSE (Estate) informing him that penal rent shall be charged for every one month

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unauthorised retention of the railway quarter, one set of post-retirement passes will be disallowed.

The present application was filed by the applicant in March, 1992 when the applicant was already been paid a sum of Rs.28,356/-, a balance amount of gratuity after deducting of the amount of Rs.7,640/- as rent/damages for unauthorised retention of the allotted railway quarter beyond four months period after retirement.

In the present application, the applicant has claimed the relief that the amount of DCRG deducted be ordered to be reimbursed alongwith interest at market rate and the post-retirement passes withheld may be released. He has also prayed that he has applied for commutation of the pension but the commutation of pension was not effected within time and there was a delay in payment of the commutation amount so the interest be allowed and a direction be issued to the respondents in that regard.

The respondents contested the application and stated that since the applicant, in an unauthorised manner, retained the railway quarter beyond the prescribed period, allowed under rules, the amount of DCRG has not been paid to the applicant and as per rules damages/rent

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was deducted from the applicant. It is also stated that the applicant was proceeded with a departmental inquiry in 1989 under D&AR, 1968 but since the applicant superannuated so the proceedings were closed down neither absolving the applicant from charges levelled against him nor holding him guilty of the charges aforesaid. Regarding the interest on the withheld amount of DCRG, the learned counsel for the respondents has referred to the Notification issued by the Railway Board dated 31.12.90 (Annexure R-2) and also referred to the case of Raj Pal Wahi Vs. UOI (SLP No.7688-91/88), decided on 27.11.89 by Hon'ble Supreme Court. It is further contended that the post-retirement passes has been withheld because of non vacation of the railway quarter and the commutation of the pension has been delayed as earlier provisional pension was sanctioned because the applicant was facing a departmental inquiry and the charge of misconduct. In view of this, it is stated that the present application deserves to be dismissed.

I have heard the learned counsel for the parties at length. In fact, when the proceedings which were initiated under Rule 9 of the D&AR, 1968 did not end in any punishment the applicant, therefore, has to be held not liable for any misconduct and the only inference is that the charges framed against the applicant did not warrant any punishment. As a consequence, the applicant

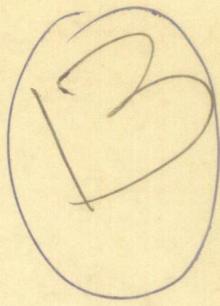
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gets a clean chit on his retirement and the respondents are bound to pay the amount of DCRG as per extant rules. There has been delay but it cannot be administrative lapse upto 2.4.91 because the applicant never stayed in the allotted railway quarter and as per decision of the Raj Pal Wahi Vs. UOI (supra) and also because of the various circulars issued by the Railway Board, it cannot be said that there was an administrative lapse in not processing the case of the applicant for payment with immediate effect of DCRG. However, after 2.4.91, the respondents have no case either on the ground of non-vacation of quarter or on the ground of pendency of the disciplinary proceedings against him. The applicant, therefore, is entitled to the interest @ 12% per annum w.e.f. 2.4.91 till the date of final payment to the applicant.

Though, the learned counsel for the applicant has made out a case on the basis of the case of UOI Vs. Shiv Charan (1992 (19) ATC 129) that the respondents have a remedy under PP Act, 1971 to recover under the relevant provisions the damages for unauthorised retention of the railway quarter and the applicant, the employee, is entitled to the full amount of DCRG less the rent for the period he was legally entitled to retain the allotted premises, but since the applicant himself has approached the court after the said deduction has been made, it shall amount to an unnecessary harassment to the applicant also

if a direction is issued to the respondents to proceed against the applicant under the relevant provisions of PP ACT, 1971. A view might have been different if the applicant has approached earlier before any such deduction was made from the amount of DCRG. The spirit of law is that the applicant has to vacate the premises after due period of authorisation after retirement and the respondents are bound to settle the terminal benefits expeditiously. In the present case, the applicant himself is at fault. The ratio of Raj Pal Wahi case (supra) also points to the same conclusion. Thus, it is not considered proper to pass any order for refund of the amount deducted from the DCRG with a direction to the respondents to proceed action against the applicant under PP Act, 1971. However, it is made clear that the said damages of Rs.7640/- should be according to the extant rules prevalent at that time and if any amount is found to be in excess then the applicant shall be entitled to refund of the same alongwith 10% interest till the date of payment.

As regards the withholding of the post-retirement passes, I do not think that after the vacation of the quarter the stand of the respondents is fair and justified. As per rules also they have to release the same (Wazir Chand Vs. I.O.I, R.B. Decision).



The applicant has also claimed interest on the delayed payment of commutation of the pension. The pleadings in this regard are vague, so no relief in this regard can be granted.

In view of the above facts, the present application is disposed of with the following directions:-

- a) The respondents are directed to pay interest @ 10% on the amount of DCRG w.e.f. 2.4.91 till the date of payment within three months from the date of receipt of the copy of this order.
- b) The respondents are further directed to calculate the amount of damages to recover from the applicant from the period of unauthorised retention beyond the date of superannuation, and if the amount is found to be in excess of the prescribed rates for the relevant period, the balance of the rent so in excess recovered shall be refunded to the applicant with 10% interest and the applicant shall be given calculation of the said amount.
- c) The respondents are further directed to restore the withheld post-retirement passes within a period of

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three months from the date of receipt of a copy of this judgement.

In the circumstances, the parties to bear their own costs.

J. P. SHARMA
20.10.92
(J. P. SHARMA)
MEMBER (J)
20.10.92