

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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18.3.93

O.A. NO. 953/92

DECIDED ON : _____

Smt. Vidya Wati & Another ... Applicants

VS.

Union of India & Another ... Respondents

CORAM : THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri K. N. Nagpal, Counsel for Applicants

Ms. B. Sunita Rao, Counsel for Respondents

J U D G M E N T

One Shri Mata Din who was working with the respondents as Telephone Clerk expired on 3.2.1992 after his retirement on superannuation on 31.3.1991. Applicant No.1, Smt. Vidya Wati is the widow and Applicant No.2, Shri Anil Kumar is the son of deceased (retiree) employee. While in service, the deceased (retiree) employee was allotted a Railway quarter No. E-111-B, Loco Shed, Sarai Rohilla, Delhi. After retirement and even after the death of the retired railway employee, the said railway quarter has not been vacated. A notice dated 10.3.1992 was issued by which the penal rent was demanded from applicant No.1 and also they were asked to vacate the said railway quarter.

2. In this application under Section 19 of the Administrative Tribunals Act, 1935, the applicants have challenged the aforesaid notice dated 10.3.1992 and prayed for the following reliefs :-

- "(i) that the Respondents be directed to pay the gratuity with interest;
- (ii) that the salary from 23rd May 1990 till 31st August 1991 be paid to the Applicants;

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- (iii) that the Respondents be directed to charge the nominal rate of rent which was earlier charged of the railway quarter till the payment of gratuity;
- (iv) that the Respondents be directed not to evict the Applicants from Quarter No. E-111-B, Locosheds, Sarai Rohilla, Delhi."

6 3. On 7.4.1992, status quo ^{as} of that date was ordered to be maintained. That order continues till today. The applicants also filed an amended application by which they have added other legal representatives of the deceased Mata Din as applicant Nos. 3 to 8.

4. The respondents have contested the application and opposed grant of relief to the applicant. It is stated that after retirement on 31.3.1991 said Mata Din was allowed to retain the railway quarter in question upto 31.12.1991. Shri Mata Din before his retirement reported sick on 23.5.1990 and he was paid salary from May, 1990 onwards as per rules and regulations. Applicant No.1 has filed another O.A. No. 2096/92 for seeking appointment on compassionate grounds for her son. The deceased was paid the retirement dues but the amount of DCRG of Rs.31,020/- has been withheld since the railway quarter has been unauthorisedly occupied by the retiree and by his legal representatives after his death.

5. I have heard the learned counsel for the parties at length and have perused the records. As regards payment of gratuity, the matter was considered in the Full Bench judgment in O.A.2573/89 between Wazir Chand vs. Union of India & Ors. decided on 25.10.1990 : Full Bench Judgments of CAT (1989-91) Vol.II Page 287, wherein the Tribunal came to the following conclusion :-

- (i) withholding of entire amount of gratuity of a retired railway servant so long as he does not

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vacate the railway quarter is legally impermissible.

(ii) Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted.

(iii) A direction to pay normal rent for the railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order.

(iv) The quantum of rent/licence fee including penal rent, damages to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.

(v) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before us.

6. Further, in the case of Union of India vs. Shiv Charan - SLP (C) No. 831/90, the Hon'ble Supreme Court considered a similar matter. The Hon'ble Supreme Court observed as follows :-

"Rent for the period overstayed may be deducted from the payment to be made as aforesaid. The appellants will be entitled to make claim in accordance with law to which they are entitled to, for any excess or penal rent, and the respondent will be at liberty to make any claim for compensation in the appropriate forum which he claims to be entitled to."

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7. Thus, the respondents cannot withhold the gratuity and the same has to be paid to the legal representatives of the deceased according to law less the rent for the period of retention of the railway quarter till its vacation with liberty to the respondents to recover the damages/market rate of rent as per extant rules under the relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

3. Regarding the non-payment of salary from 23.5.1990 till 31.8.1991, the respondents in their reply have stated that the salary was paid duly to the deceased employee. The annexure in this regard attached with the counter is not readable and the learned counsel for the respondents inspite of having been afforded opportunity did not file a readable copy of the said annexure. In view of this fact, the respondents shall verify on the basis of the monthly pay bills of the year from May, 1990 till 31.8.1991 and in the event the salary has not been paid to the deceased employee, then the same be paid to the legal representatives of the deceased.

9. Regarding the relief of charging nominal rate of rent till vacation, the learned counsel for the applicant could not show any law under which the nominal rent is to be paid for unauthorised retention/occupation of the railway quarter beyond the concession period of four months after retirement of the deceased railway employee w.e.f. 31.8.1991.

10. Regarding the relief for non-eviction of the applicants, that too cannot be granted as there is no provision where a person who has ceased to be railway servant can continue to occupy the railway quarter which was given to him as part of

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the service conditions till the time he reaches superannuation. This relief also cannot be allowed.

11. In view of the above circumstances, the present application is partly allowed with the direction to the respondents to pay the gratuity to the applicant ~~less~~ the amount of rent calculated till the vacation of the quarter by the legal representatives of the deceased railway employee within a period of three months from the date of receipt of a copy of this judgment.

12. The prayer for grant of interest on DCRG cannot be allowed because of unauthorised retention of the railway quarter in view of the decision of the Hon'ble Supreme Court in SLP Nos. 7688-91 of 1988 : Raj Pal Wahi & Ors. vs. Union of India & Ors.

13. The respondents shall also verify from the pay bills of the year 1990 from 23.5.1990 till 31.3.1991 whether the salary has been paid to the deceased and if the same has not been paid as per the extant rules, then the same be also paid to the legal representatives of the deceased. The relief prayed for retention of the railway quarter as well as for charging nominal rate of rent is disallowed. Parties to bear their own costs. *Slansgno order dt. 7.4.92 is vacated.*

J. P. Sharma
(J. P. Sharma)
Member (J)