

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. No.1638 of 1993.

New Delhi, this the 9th of November, 1993.

HON'BLE MR P.T. THIRUVENGADAM

1. Shri T.N. Sinha S/o
Late Shri Brahmdev Narain
Retired Asstt. Commercial Manager
Northern Railway
R/o 40, Railway Officers Transit Camp
State Entry Road, New Delhi-110055.

...Applicant

(By Advocate Mr S.K. Sawhney).

Vs.

1. Union of India through
General Manager
Northern Railway
NEW DELHI
2. Divisional Superintending Engineer(Estates)
Northern Railway, New Delhi. ...Respondents

(By Advocate Shri Romesh Gautam).

JUDGEMENT

This OA has been filed by Shri T.N. Sinha under Section 19 of the Administrative Tribunal's Act, 1985 against the action of the respondents in withholding the DCRG benefits and post retirement free Railway passes due to him and against the contemplated eviction proceedings.

2. The facts of the case are that the applicant retired from service on attaining the age of superannuation on 31.07.1992, while he was working as Assistant Commercial Manager in the Northern Railway. He was in occupation of Railway accommodation No.40, Railway Officers Transit Camp, New Delhi and he was permitted to retain the said quarter upto 31.03.93 as per the extent terms and conditions. The administration withheld the payment of entire DCRG benefits, pending vacation of the Railway

accommodation by the applicant. This OA has been filed with the following prayers :-

(i) Direct the Respondents to release the D.C.R.G. amounting to Rs.57,750/- alongwith penal interest @ 12% per annum without any deduction.

(ii) Direct the Respondents to release the post-retirement passes which have been illegally withheld after his retirement on 31.7.1992.

(iii) Direct the Respondents not to evict the Applicant from Railway Accommodation No.40, Railway Officers Transit Camp, State Entry Road, New Delhi till he is paid D.C.R.G.

3. The learned counsel for the applicant advanced a number of grounds in support of his case, as under :

(a) As per Rule 2308 of the Railway Establishment Code, DCRG can be withheld only when a departmental enquiry or judicial proceeding is pending against the applicant.

(b) The post retirement Complimentary Passes have to be given as per the provisions of Rule 1554 of Indian Railway Establishment Manual and there cannot be any abridging of this facility.

(c) The instructions issued by the Railway Board vide letter dated 24.4.82 cannot apply to other than non-gazetted staff.

(d) For any delay in releasing of the D.C.R..G. benefits, interest on stipulated rates has to be paid, as per Railway Board's Letter No.F(E)III/PNI/15 dt 14.08.84

(e) The recovery of penal rent as per the notice issued on 4.6.93 is in breach of provisions of Section-7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

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(f) The benefit of judgement in the case of Union of India and Others Vs Shiv Charan in (1992(19) ATC 129) should also be extended to him.

4. The learned counsel for the respondents mainly relied on the judgement of the Hon'ble Supreme Court in the case of Raj Pal Wahi and others versus Union of India and Others (SLP No.7688-91 of 1988), wherein "the only ground of challenge was that the Railway authorities were wrong in withholding the DCRG benefits and complimentary passes on the basis of administrative instructions issued by the Railway Board on 24.4.82." The Supreme Court held that the petitioners were not entitled to get interest on the delayed payment of DCRG on the basis of the Railway Circular (dated 24.4.1982).

The Supreme Court had also noted the provisions in this Circular authorising the concerned Railway administration to withhold post-retirement passes directly related to unauthorised retention of railway accommodation.

5. The learned Counsel for the applicant contended that the above case of Raj Pal Wahi could be distinguished on the ground that the extant orders and Railway Board circulars are not discussed. The same objection was raised in O.A. 782/93 which was decided on 16.9.1993 with the following observations :-

" The portion extracted from Raj Pal Wahi Versus Union of India decided in the Hon'ble Supreme Court is reproduced below :-

"There is no dispute that the petitioners stayed in the Railway Quarters after their retirement from service and as such under the extant rules penal rent was charged on these petitioners which they have paid. In order

to impress upon them to vacate the Railway Quarters the Railway Authorities issued orders on the basis of the Railway Circular dated 24th April, 1982. Purporting to withhold the payment of death-cum-retirement gratuity as well as the Railway passes during the period of such occupation of quarters by them. The delay that was occurred is on account of the withholding of the gratuity of the death-cum-retirement gratuity on the basis of the aforesaid Railway Circular. In such circumstances, we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death cum retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway of Railway Board and not on account of administrative lapse. Therefore we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same. The special Leave Petitions, thus disposed of. The respondents, however, will be issued the passes prospectively from the date of this order."

It is relevant from the above, that extant rules and Railway Circulars have been considered in the judgement."

6. I agree with the above appreciation. It cannot be argued that the Supreme Court disallowed the interest on the delayed release of DCRG without taking into account the contents or admissibility of Railway Board Circular dated 24.4.82 authorising withholding of DCRG when the railway quarter allotted is not vacated at the time of retirement. In these SLPs before Supreme Court specific attention had been drawn in the affidavit filed on behalf of the railways that the DCRG was being held back temporarily as per Railway Board's Circular dt 24.4.82 to meet the anticipated dues of the railways which could be computed only when the employee ultimately vacates the quarter. From this position a distinction could be made between withholding of the DCRG under Rule 2308 of Railway establishment Code in departmental enquiry or ~~and~~ judicial proceeding and a temporary hold back for the purpose of recovery of railway dues.

7. In the affidavit in the above SLPs before the Supreme Court, it was also mentioned that the stopping of post-retirement complimentary passes was only for a limited period, directly related to the unauthorised retention of accommodation and is not for all times. This position was also noted by the Supreme Court.

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✓8. The applicant advanced the plea that the Railway Board Circular dated 24.4.1982 cannot apply to other than non-gazetted staff, since under Rule 157 of the Establishment Code, Railway Board have full powers to make rules of general application to non-gazetted railway servants under their control.

There is no need to discuss this plea since admittedly the instructions of Railway Board dated 24.4.1982 are treated as administrative instructions, as mentioned in Supreme Court's orders referred to earlier.

0 9. With regard to the plea of applicability of Railway Board's letter of 14.8.82 wherein payment of interest on delayed disbursement of gratuity is permissible where delay occurs because of administrative lapse or for reasons beyond the control of the government servants concerned, this has to be rejected in view of Supreme Court's order.

9 10. Reference to Section 7 of the Public Premises Eviction of Unauthorised Occupants) Act, 1987 has no relevance, since the main prayer in this O.A is, for the release of DCRG and ~~as~~ such a prayer is based on the premise that such holding back of DCRG is not tenable.

0 11. The relevance of Supreme Court Order in Union of India & Others Vs Shiv Charan, (1992) 19 ATC 129 has been discussed in O.A. 782/93 which has been disposed of by this Bench on 16.9.93. The relevant paras are as under :-

3 "The learned counsel for the applicant has also placed before us a copy of the one page judgement of Union of India and others Versus Shiv Charan 1992 (19)

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ATC page 129, the relevant portion of which is reproduced
✓ below :

3 Rent for the period overstayed^{al} 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 ^{to} ~~to~~

Here, the learned counsel for the applicant (categorically stated ~~that~~ the Bar that compensation means interest only. He has not placed before me any material as to appreciate this contention and the observation of their Lordships (Supra) in connection with the compensation. The above observation ~~to~~ gives a cause of action to make a claim only."

12. For the reasons stated, the O.A. is liable to be dismissed and is accordingly dismissed. No costs.

P. J. Thiruvengadam

(P.T. THIRUVENGADAM)
MEMBER (A)

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