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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No. 1766/1993.

24th December 1993

Hon'ble Shri PT Thiruvengadam, Member(A)

Kedar Nath S/o Sh. Dalu Ram,
R/o L-35Q, Railway Colony,
Loco Shed, Kishan Ganj(M.G)

..... Applicant

By Advocate Shri VP Sharma

1. Union of India Through
The General Manager,
Northern Railway, Bareda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner Division
Bikaner.
3. The Carriage & Wagon Superintendent
Northern Railway, Delhi Sarai Rohilla,
Delhi.

..... Respondents.

By Advocate Shri RL Dhawan

ORDER

Shri PT Thiruvengadam, Member (A)

The applicant retired from Railway service on 30-6-91 on reaching the age of superannuation. During his service he had been allotted a Railway quarter No.L-35 Q, Loco Shed, Kishan Ganj, New Delhi. At the time of his retirement the applicant's DCRG amount of Rs.21,780/- was withheld by the respondents. In addition, Respondent No.3 vide his letter dated 12-1-92 ordered the applicant to vacate the quarter. The applicant was also sent a notice by Respondent No.3, dated 17-3-93 stating that the amount of Rs.21,500/- is payable as rent (market rent/damages) for the unauthorised retention of the accommodation.

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2. This OA has been filed for declaring the letter regarding recovery from the applicant as illegal and for orders for retention of the quarter on normal licence fees till the whole amount of DCRG is paid along with the interest at 18% per annum.

3. On 1-9-1993 an interim order has been passed by this Tribunal to the effect that the applicant should not be dispossessed from the quarter and the interim order is still continuing.

4. During arguments, the learned counsel for the applicant prayed that the DCRG amount along with interest may be made immediately available to the applicant who on receipt of the same would simultaneously vacate the accommodation. Reliance was placed on Supreme Court's order in civil Appeal No.2745 of 1992 (Union of India versus Mala Ram). The order reads as under:-

The question for our consideration in this appeal is whether the gratuity amount due to a railway employee can be withheld on the ground that he has not vacated the Govt quarter or that some money in the shape of quarter rent or otherwise is due from the employee.

It is not necessary for us to decide the question stated above. The learned counsel for the parties, on instructions from their client, have agreed as under:

1. The appellant through the Senior Divisional Personnel Officer Bikaner shall pay Rs.23,381.55 to the respondents Mala Ram on September 30, 1992. On receipt of the said amount Mala Ram shall simultaneously hand over the vacant possession of the Government quarter to the Railway Authorities. The amount of Rs.23,381.55 has been worked out after deducting Rs.4,998.45 - the normal rent recoverable from the respondent - from the gratuity amount of Rs.28,280 due to the respondent.

2. The appellant shall give up its claim to recover the penal rent and other charges detailed in para 3 of the affidavit dated September 8, 1992.

3. In case the respondent has already deposited some money towards normal rent of the quarter for the period ending Aug 31, 1992 then the appellant shall refund the same to the respondent Mala Ram.

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We make it clear that the parties have reached the above agreement in the special facts and circumstances of this case.

The appeal is disposed of in the above terms with no order as to costs.

5. It is the plea of the applicant that similar orders should be passed in his case.

6. The respondents referred to the order passed by Supreme Court in Rajpal Wahi and others versus Union of India and Others in SLP No.7688-91 of 1988 wherein the Supreme court has held that the employees retaining the accommodation were not entitled to get interest on the delayed payment of DCRG as the delay in payment occurred due to the orders passed on the basis of the relevant circular of the Railway Board and not on account of Administrative lapses.

7. The respondents have also referred to the orders passed by the Principal Bench, New Delhi in OA 2807/91 on 8-5-92 wherein the operative portion reads as under:-

In view of the law declared by the Honible Supreme Court as above, we are of the opinion that the respondents should release the DCRG after recovering the penal rent, as distinct from damages, from the amount of the DCRG less the amount of penal rent for the period of unauthorised occupation of the accommodation. Since the delay in payment of DCRG is not on account of the administrative lapse, no interest will be payable on the amount of DCRG. We order accordingly.

8. Having heard both the counsel I note that the recovery of penal rent has been made as per railways letter dated 31-5-88 (Annexure III to counter reply). ~~His~~ ^{The} withholding of DCRG has been made as per Railway Boards letter dated 31-12-90 (Annexure IV to counter Affidavit). Supreme court order in Rajpal Wahi versus Union of India referred to by the respondents disallowed payment of interest on the DCRG which had been withheld as per orders of the Railway Ministry. 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's relevant circulars authorising withholding of DCRG when the Railway quarter allotted is not vacated at the time of retirement. In the SLP 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 relevant circular to meet the anticipated dues of the Railways which could be computed only when the employee ultimately vacates the quarter. Thus the question of payment of withheld amount of DCRG prior to the vacation of quarter by the applicant does not arise. As regards orders of the Supreme Court in Union of India Versus Mela Ram it is to be noted that the court had passed orders in the "special facts and circumstances of the case."

9. As regards the entitlement of the applicant for retention of the quarter such entitlement can be restricted only to the provisions as provided for in the relevant instructions.

10. As regards the rent to be charged for the period of retention of accommodation after the date of retirement the penal rent as per railways letter for ~~any~~ ^{the} period of unauthorised retention is leviable. This is also the purport of the order passed by this Tribunal in OA No. 2807/91 of 8-5-92.

11. In the circumstances of the case the OA is ~~disposed~~ ^{dismissed}.

No cost

P. J. [Signature]
 (PT THIRUVENGADAM)
 Member(A)