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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2330/93.

New Delhi, this the 11th day of March, 1994.

SHRI J.P.SHARMA, MEMBER(J).

Smt. Amarti Devi,  
W/o Shri Hardwari Lal,  
aged about 59 years,  
R/o Block No.54, A/3, Railway Colony,  
Chhoti More Sarai, Delhi,  
lastly employed as Waiting Room Attendant,  
with the Station Superintendent,  
Northern Railway, New Delhi. ...Applicant  
(Through advocate Shri Mahesh Srivastava)

Versus

1. Union of India, service to be effected  
through : General Manager, Northern Railway,  
Baroda House, New Delhi.
2. Divisional Railway Manager,  
Northern Railway, Pahar Ganj, New Delhi.
3. Divisional Superintending Engineer/Estate,  
Northern Railway, D.R.M. Office,  
Pahar Ganj, New Delhi. ...Respondents  
(Through advocate Shri R.L.Dhawan)

O R D E R (O R A L)

The applicant was lastly employed as Waiting Room Attendant with the Station Superintendent, Northern Railway, New Delhi. She retired from service on 31-8-92. During the course of her employment, she was allotted a Government accommodation Block No.54, A/3, Railway Colony, Chhoti More Sarai, Delhi. Since the applicant did not vacate the quarter, the respondents invoked the

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provisions of Section 190 of the Indian Railway Act and obtained an order dated 19-10-93 for eviction of the applicant from the said quarter. The grievance of the applicant is that the amount of gratuity has not been paid to her and direction to the respondents be given to allot the premises to Shri Ashok Kumar. The applicant also prayed for the grant of the interim relief that the applicant may not be evicted forcibly from the railway quarter. However, no interim order was granted to the applicant.

2. A notice was issued to the respondents who have stated that since the applicant, after retirement and four months thereafter the period for which she could retain the quarter, did not vacate the Government premises, the amount of DCRG has been withheld as per circular issued by the Railway Board.

3. I have heard the learned counsel for the parties. The contention of the learned counsel for the applicant is that regarding the order passed by the Special Railway Magistrate under the provisions of section 190 of the Railway Act, the proceedings

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have been drawn with the higher authorities and there a stay order is operating against the respondents of this case. However, since there is no interim direction issued in this case, the law shall take its own course with the liberty to the respondents to agitate the matter, if so advised, regarding the aforesaid order. There is no interim direction in this case withholding the eviction of the applicant.

4. The next contention of the learned counsel for the applicant is that her son Ashok Kumar has been serving the Railways since 1983 and that he is still in employment. The respondents in their reply stated that the particulars of Ashok Kumar have not been furnished and due to this fact, they are at a loss to state about regularisation of the quarter in his favour according to the extant railway rules or circular of the railway board. In fact, this prayer of regularisation of the applicant is an alternative prayer and the only prayer made is for the grant of the relief that the applicant be paid the withheld amount of gratuity, so the present application is confined only to the main relief prayed for in the application. The

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The employee on retirement is entitled to the terminal benefits immediately after retirement. The circular of the Railway Board, however, issued from time to time lays down that in case the Government premises are not vacated, the amount of DCRG be not paid. However, a similar matter came before the Hon'ble Supreme Court in the case of SHIV CHARAN vs. UNION OF INDIA reported in 1992 ATC VOL. 19 p.129. In that case, the petitioner did not vacate the railway quarter and the respondents did not pay the DCRG. The Hon'ble Supreme Court held that the petitioner be paid DCRG less the rent due and for penal rent and damages, the respondents shall be at liberty to recover the same, according to law. The present case is almost covered by the aforesaid judgment. In the case of WAZIR CHAND Vs. UNION OF INDIA decided by the Full Bench in OA 2573/89 by the order dated 25-10-90, it has been held that withholding of entire amount of DCRG is not permissible as pension circular cannot override the 1982 circular. The Full Bench has also considered the Railway Board's circular dated 8-6-83. Under para 109 of the Manual of Railway Pension, 1950, Government servant is entitled for his past service benefits. For amount of

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pensionary benefits, under para 323, there is a chapter of recovery of Government dues from the pensionary benefits, viz., sub-clause (a) of clause IV of para 323 authorises the Government to retain 10 per cent of the amount of DCRG or Rs.1,000/-, whichever is less. However, it also authorises the administration to deduct the outstanding dues plus 25 per cent thereof and where the amount could not be estimated approximately, then in that case, only ten per cent of the amount of the gratuity can be withheld. The appeal against the WAZIR CHAND's case has since been rejected by the Hon'ble Supreme Court. In view of the above facts, the law laid down in WAZIR CHAND vs. UNION OF INDIA & OTHERS holds the ground besides the ratio of SHIV CHARAN vs. UNION OF INDIA (supra), referred to above.

5. The question, therefore, arises is whether the respondents can deduct the damages from the withheld amount of DCRG or not. The reliance to sub-clause (a) of Clause IV of para 323 has to be taken in context with the above observation made in the authorities cited above.

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6. The next question arises of the payment of interest of the withheld amount of DCRG. The counsel for the applicant, however, referred to the decision in the case of RAJ PAL WAHI AND ANOTHER vs. UNION OF INDIA, Special Leave Petition No.7688-91 of 1989 where the Hon'ble Supreme Court vide decision dated 27-11-89 disallowed the interest in view of the fact that the retired employee retained the Government premises after exhausting the concession period after retirement. The relief for interest, therefore, cannot be granted to the applicant.

7. The counsel for the respondents, however, argued that the damage rent also amounts to outstanding dues against the retiree and in view of the provisions of para 323 of the Manual of Railway Pension, 1950, the respondents can deduct their amount. However, this position has been cleared by the aforesaid decision and there is no scope of further arguments on this point.

8. In view of the above facts and circumstances, the application is disposed of as follows :

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a) The respondents shall pay to the applicant the amount of DCRG less the rent due within one month from the date of communication of this Order. The learned counsel for the applicant, however, prays for six months' time for vacation of the aforesaid quarter. However, six months' period cannot be granted because the applicant has already retained the quarter since January, 1993, and more than a year has already passed. However, as a matter of grace, three months' time is allowed but this will not give a claim to the applicant to assert any right of payment ordinary rent or licence fee but that will be subject to the prevalent rates or as determined by the competent authority. The respondents will also pay the amount of DCRG less the rent, as said above, within this period. If the respondents fail to pay the amount within this period of three months, and the applicant vacates the government premises, the applicant shall be entitled to the interest at the rate of 12 per cent per annum after that period.

b) The respondents shall be free, if so advised, to claim damages etc. for the unauthorised

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occupation of the quarter if the amount is excess than the rent deducted, as said above, from the person and property of the applicant. Cost on parties.

*J. P. Sharma*

( J.P.SHARMA )

MEMBER (J)

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