

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A.No. 2714/1993

New Delhi this the 20th Day of July 1999

Hon'ble Mr.V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Hukam Singh Pipla
S/o Shri Kishori Lal
Retired Supdt.
Claim Branch
Northern Railway,
New Delhi R/o
11/5, Sewa Nagar Colony,
New Delhi
Through Shri S.K. Sawhney
Counsel for the Applicant.

Applicant

(By Advocate: Shri P.M. Ahlawat)

Versus

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Supdtg. Engineer(Estate)
Northern Railway
D.R.M. Office
New Delhi.

Respondents

(By Advocate: None)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri P.M.Ahlawat, learned counsel for the applicant and also gone through the materials on record. None for the respondents.

2. The applicant, a Railway servant retired from service on 31.1.91, He was in occupation of Railway quarter which he was allowed to retain for a period upto 30.9.91 by the General Manager. The applicant however continued to remain in Railway quarter even after this extended period and his retirement

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gratuity was not released to him on the ground that he was in unauthorised occupation of Railway quarters. He has filed the present OA contending that in terms of the settled legal position brought out in the Full Bench judgment in Wazir Chand Vs. Union of India & Ors., the Railway cannot link up the payment of entire gratuity with the unauthorised retention of quarter. It is also his contention that as the Railways had not taken action under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act), it is not open to them to charge market rent.

3. Shri Ahlawat, counsel for the applicant submits that subsequent to filing of the OA the applicant has vacated the Railway quarter on 30.6.94. He further submits that retention beyond eight months as permitted had become necessary as the applicant was seriously ill. He also says that it is within the discretion of the Railway Board to extend the period beyond eight months and it is a fit case for the Railway Board to exercise its discretion not to charge the market rent. He is however, not able to throw light regarding the balance of gratuity if any paid after the applicant had vacated the Railway quarter. He submits that the market rent will be substantially higher than what was due to him by way of DCRG.

4. We take note of the submission of Shri Ahlawat regarding the subsequent development that the applicant has vacated Railway quarter after filing the present OA. The decision of the Full Bench in the case of Wazir Chand V. Union of India & Ors. had laid

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down that it is not open to the Railway Administration to hold back the entire gratuity pending the vacation of the Railway quarter. It further refers to the 1986 circular of the Railway Board which permit appropriate hold back from the DCRG if the same is permissible under the relevant rules. The Full Bench had observed in para 19 as follows:

"19. For the foregoing reasons and on the basis of true import of 1982 Circular, we hold that withholding of entire amount of DCRG in the case of a retired railway servant till such period as he does not vacate the railway quarter is unwarranted. Contrary view expressed in 'Baidyanath Hazra (supra) in 'Kshirod Gopal Mukherjee v. Union of India and others (OA 875 of 1987) decided on 26.4.88 or in any other case does not reflect the correct position in this behalf. We should not be understood that we are questioning the Railway Administration's right to withhold gratuity in a case covered by Rule 2308 of the Code."

It will be clear from this that the Full Bench had dealt with a situation where the entire gratuity was sought to be withheld pending vacation of the Railway quarter. The position in this case is that the Railway quarter had been vacated but the Railways had charged the market rent beyond 30.9.91 till the actual date of vacation. Admittedly the relevant rules empowers the Railway Administration to charge penal/market rent in appropriate cases. In the light of the submission of the learned counsel for the applicant that the gratuity amount would be less than the penal rent, it is possible that no amount would have been payable/paid to the applicant even after his vacation of the Railway quarter.

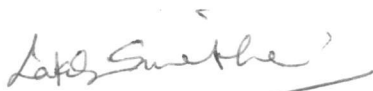
As regards his contention that it is not open

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to the Railways to charge market rent when they had not taken action under the provisions of PP Act the position has been examined by the Full Bench of this Tribunal which had held that it is not mandatory for the respondents to take action under the PP Act and that they have power to charge penal rent even otherwise in accordance with the relevant rules and instructions. This contention therefore, fails.

5. We note that the applicant has not intimated his counsel regarding the present position of the case, ~~We~~ hold that in view of the submission that the applicant was seriously ill and he had sought permission to extend the *period* beyond eight months which can be done only by the Railway Board at their discretion and not at the level of any other authority, It is open to the applicant to submit a detailed representation bringing out his personal difficulties and requesting for some relief in the matter of charging rent for the retention of quarter beyond 30.9.91. If the applicant were to submit such a representation to the respondent No.1, the respondent No.1 shall forward the same to the Railway Board for their consideration and the matter shall be disposed of on merits and the decision in this regard shall be communicated to the applicant expeditiously.

6. With the above observation, the DA is finally disposed of. No costs.



(Mrs. Lakshmi Swaminathan)
Member (J)



(V. Ramakrishnan)
Vice Chairman (A)