

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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OA.782/93

Date of Decision: 16-09-1993.

Shri R.C. Goswami

Applicant

Versus

Union of India

Respondents

Shri S.K. Sawhney

Counsel for the applicant

Shri Romesh Gautam

Counsel for the respondents

SINGLE BENCH JUDGEMENT

(delivered by Hon. Member(J) Shri C.J. ROY)

This application has been filed by Shri R.C. Goswami under Section 19 of the Administrative Tribunal Act, 1985 against the illegal withholding of D.C.R.G. due to him on his retirement on 30.4.92 on the ground of non-vacation of quarter, despite the fact that he has been granted permission to retain the Railway Quarter for four months on payment of normal rent and further four months on payment of double the normal rent.

2. According to the applicant, he was appointed as Commercial Clerk on 5.11.1953. He retired on 30.4.1992 while he was working as Chief Good Supervisor in the scale of pay of Rs.2000-3200. His last pay drawn was Rs.2525/-. He is entitled to receive DCRG equal to 16-1/2 months of pay which amount to Rs.41,663/- as he had rendered 39 years of qualifying service. He is still in occupation of the Railway Quarter allotted to him on permission for four months on payment of normal rent vide order dated 1.5.92 (Annexure A-2) and for further four months on payment of double the normal rent vide order dated 17.9.92

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(Annexure A-1). The DCRG amount of Rs.41,663/- became due to him on 1.5.92 on his retirement on 30.4.92 but was withheld on the ground of non-vacation of Railway quarter. His post retirement passes has also been withheld. He made representations which was also rejected (Annexure A6 & A7). Hence this application.

3. The respondents have stated in their counter affidavit that the amount of Rs.41,663/- which was due to the applicant on his retirement, was withheld due to the fact that he has not vacated the Railway Quarter after retirement. Accordingly the payment of DCRG was stopped in accordance with P.S. circular No.8045 and 9461 (Annexure R1 and R2). The applicant was allowed to retain the quarter for 4 months on ordinary rent after his retirement and further extended on request for a period of 4 months on payment of double the ordinary rent. Thus the applicant had to vacate the quarters on 01.01.1993 which was not done. There is no question of payment of any interest to the applicant because the delay in payment of DCRG is attributed only to him. Para 1554 of Railway Establishment Manual does not deal with the subject of vacation of quarters or the Railway passes and if the employee does not vacate the quarter, for every one month of unauthorised retentions, one set of post retirement passes should be disallowed. There is no provision that DCRG should be paid to the employee even without vacating the Railway quarter. The applicant has not made any representation against this. Hence this application be dismissed.

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4. The applicant has filed a rejoinder in which he has stated that he filed representations dated 1.10.92 and 4.12.92 and the acknowledgement of AD receipt for the letter dated 4.12.92 is at Annexure AA1. As otherwise, he has reiterated the same views as stated in the application.

5. I have heard the learned counsel for both parties and perused the documents on record.

6. The learned counsel for the applicant referred to the case of Raj Pal Wahi and others Versus Union of India and others, filed in the Supreme Court vide SLP No.7688-91 of 1988 delivered on 27.11.1989; Wazir Chand Versus Union of India and others; OA 2573 decided on 25.10.90 and Union of India Versus Melaram in the Civil Appeal No.2745 of 1992 decided by the Supreme Court, ~~the argument that the case of Raj Pal Wahi could be distinguished on the ground that they have not been referred to the Railway Circular and extant rules, is not correct. In fact the Hon. Supreme Court has referred to the extant rules and also the Railway circular dated 24.4.82. Therefore, the case of Raj Pal Wahi could be distinguished cannot be sustained. Besides, in Wazir Chand's case, the case of Raj Pal Wahi has not been referred to.~~

The argument of the learned counsel for the applicant that Raj Pal Wahi's case could be distinguished on the ground that they have not been referred to the Railway Circular and extant rules, is not correct. In fact the Hon. Supreme Court has referred to the extant rules and also the Railway circular dated 24.4.82. Therefore, the case of Raj Pal Wahi could be distinguished ~~cannot~~ cannot be sustained. Besides, in Wazir Chand's case, the case of Raj Pal Wahi has not been referred to.

7. The relevant portion of the case of Union of India Versus Melaram is reproduced below:

"The applicant through the Senior Divisional Personnel Officer Bikaner shall pay Rs.23,381.55 to the respondent Mela Ram on September 30, 1992. On receipt of the said amount Mel 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

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after deducting Rs.4,998.45 - the normal rent recoverable from the respondents- from the gratuity amount of Rs.28,280 due to the respondent.

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

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

8. The learned counsel for the applicant contends that the case of Raj Pal Wahi could be distinguished on the ground that the words 'Extant Rules' and 'Railway Board Circular' is not discussed.

9. The portion extracted from Raj Pal Wahi Versus Union of India decided in the Hon. 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 their 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 has occurred is on account of the withholding of the 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 to 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 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 Petition is thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

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

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11. 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) ATC page 129, the relevant portion of which is reproduced below:

"3. 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."

12. Here, the learned counsel for the applicant categorically stated across the bar that compensation means interest only. He has not placed before me any material as to appreciate his contention and the observation of their Lordships (supra) in connection with the compensation. The above observation is giving a cause of action to make a claim only.

13. The learned counsel for the respondents also cited the judgements of this Principal Bench in OA 2719/90 decided on 26.8.91 and OA.2288/92 decided on 23.8.93 where the interest has not been granted, and OA.2709 decided on 11.3.93 where interest has been granted. *is cited by learned counsel for the Applicant.*

14. In my opinion, granting or non-granting of the interest is discretionary and is based on the facts and circumstances of each and every case and on whose fault the delay has occurred.

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15. Therefore, I feel that the applicant has not made out a case for granting interest as prayed for in the OA <sup>as he has over-stayed in the quarters</sup> and dispose of the case with the following orders and directions.

- (a) The respondents are directed to pay the DCRG benefits to the applicant and release the Railway passes in accordance with the Rules.
- (b) The applicant after receipt of the said DCRG amount from the respondents is directed to vacate the Government quarter simultaneously, and handover the vacant possession to the respondents.
- (c) The applicant is not entitled for payment of any interest thereon.
- (d) The respondents are directed to recover the penal rent after issuing a notice and personal opportunity to the applicant and determining the penal rent for the unauthorised occupation of the premises as per the extant rules.
- (e) The above directions shall be complied with, preferably and expeditiously, within a period of three months from the date of communication of this order. **No Costs.**

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*[Signature]*  
(C.J. ROY)  
MEMBER(J)