

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 675 of 1996

Allahabad this the 24th day of December 1997

Hon'ble Mr. D.S. Bawejia, Member (A)

Sukh Sagar Sinha S/o Sri Bhagwan Sinha, aged about 65 years R/o House No. 49 Hari Om Colony, Shivapur, Sahbajganj P.O. Padri Bazar, Distt. Gorakhpur.

Applicant

By Advocate Sri R.N. Sinha

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Chief Personal Officer, N.E. Railway, Gorakhpur.

Respondents

By Advocate Sri K.D. Pandey.

ORDER

By Hon'ble Mr. D.S. Bawejia, Member (A)

Through this application, the applicant has prayed for the following reliefs:-

(a) to direct the respondents to pay the applicant interest on the entire amount of Rs.44,138-00 of death-cum-retirement gratuity (for short D.C.R.G.) with compound interest from 02.4.89 till November, 1990 and from November, 1990 till the date of payment of Rs.5918-00 with interest after deducting the normal rent amounting to Rs.786-30.

(1)

(b) to direct the respondents to pay the applicant Rs.2550-00 for engaging Chowkidar to safe guard the quarter occupied by the applicant together with interest thereon @ 18% from January, 1990 till the date of actualy payment.

2. The applicant while serving as Hindi Superintendent in the Headquarter Office, N.E. Railway, Gorakhpur, retired from service on 31.3.1989. The applicant was occupying a railway quarter at the time of retirement. The applicant made a request to permit him to retain the railway quarter after retirement which was granted initially from 01.4.1989 to 31.5.1989 and subsequently from 01.6.1989 to 31.7.1989 at normal rent. The applicant made a further request on 19.8.89 for permitting retention of the quarter at normal rent on the ground of education of the children for the further period upto November, 1989. However, the applicant was asked to submit the school certificate as per the letter dated 01.8.1989 but he did not get any response thereafter and as per the letter dated 15.1.1990, the applicant was asked to vacate the quarter no. 462/B in Dary Railway Colony, Gorakhpur. Since the applicant had fallen ill, he made a request on 12.12.1989 for retention of quarter upto February, 1990. However, on receipt of the letter dated 04.1.1990, the applicant managed to vacate the quarter on 15.1.1990 and intimated to the railway authority on 20.1.1990 stating the lapse made by the administration in not allotting the house to any employee. Thereafter, the applicant received a letter not to hand over the quarter to Sri Keshav Pansey and not to vacate or hand over the quarter to anybody till further orders. as per letter dated 23.2.1990. Since the applicant had vacated the quarter and the railway authorities have not taken over the charge, he had to engage casual laobour to work

as a Chowkidar for safe guard^{mg} the house for which the applicant has paid Rs.2550-00. The applicant, as per the letter, dated 12.4.90, was advised to hand over the quarter to Sri V.P. Verma and the quarter was handed over to Sri V.P. Verma on 13.4.1990. After handing over the quarter, the applicant was made a request for the release of the D.C.R.G. which was held up. The applicant made a part payment of D.C.R.G. of Rs.38,219.87 on 15.11.1990 after a lapse of 19 months from the date of retirement and the balance amount of Rs.5,918.37 has been detained by the respondents without assigning any reason. The applicant contends that deduction of penal rent from the D.C.R.G. is arbitrary and against the rules as the applicant was allowed to retain the house as brought out in the original application. The applicant has also contested his case stating that no order for cancellation of the allotment was passed. Feeling aggrieved by the action of the respondents, the present applicant was filed on 05.7.96 praying for the reliefs detailed above.

3. The respondents have contested the O.A. by filing counter-affidavit. The respondents submit that the applicant was allowed retention of the quarter for a period of 4 months from 01.4.1989 to 31.7.1989 at normal rent and further period of 4 months from 01.8.1989 to 30.11.1989 with penal rent of 10% of the total emoluments. The applicant has vacated the quarter on 29.3.90 and for the period from 01.12.1989 to 29.3.1990, damage rent as per the laid down rules has been recovered. Total recovery of Rs.5,918.13 was due from the applicant for the rent including the arrears of the rent on account of enhancement from 01.7.1987 to 31.3.1989 and the electricity

charges etc. After recovering Rs.5,918.13, the balance of D.C.R.G. of Rs.38,219.87 out of the total amount of Rs.44,138.00 which was withheld on account of non-vacation of the quarter after retirement, was paid to the applicant ^{been} on 15.11.1990. The applicant has already/paid the interest of Rs.552.00 on account of the delay in the payment of D.C.R.G. after vacation of the quarter. The respondents further submit that the applicant was asked to vacate the quarter by 15.1.1990 and the contention of the applicant that nobody took over the charge of the quarter, is untenable as the rules have been clearly laid down as to the vacation of the quarter and handing over ^{of} the charge to the concerned supervisor. The applicant has not followed the laid down rules. The respondents further contend that ~~cancellation~~ of the allotment of the railway quarter after retirement is deemed to be automatically cancelled and withholding of the D.C.R.G. for non-vacation of the quarter and recovery of the rent from D.C.R.G. has been done as per the rules. As regards the contention of the applicant that he has to incur expenditure in arranging the casual labour as Chowkidar to safe guard the quarter after vacation by him, the respondents submit that this contention is cooked up to justify the vacation of the quarter till his vacation on 29.3.1990. In view of these submissions, the respondents plead that application is without any merits and deserves to be dismissed.

4, The applicant has filed rejoinder-reply controverting the submission of the respondents and re-iterating the submissions made in the O.A. The applicant has also cited the case of Hon'ble Supreme Court in R.K. Kapoor Vs. Director of Inspection(Printing and Publication) Income Tax and another* to support his contention that D.C.R.G. cannot be withheld for non-vacation of the quarter and claim

for damages for unauthorised occupation is pending.

The applicant has also cited the following cases of this Bench of the Tribunal;

(a) O.A. No. 556/92 Kamla Pd. Srivastava
Vs.
U.O.I. & Others

(b) O.A. No. 23/93 R.N. Sinha
Vs.
U.C.I. & another

(c) O.A. No. 115/92 Lallan Jha
Vs.
U.O.I. & Others

5. I have heard Sri R.N. Sinha, learned counsel for the applicant and Sri K.D. Pandey, learned counsel for the respondents. The arguments advanced have been carefully considered and material on the record has also been perused.

6. The first issue raised by the applicant is that no cancellation of the allotment of the railway quarter occupied by the applicant had been done. In view of this, the applicant contends that the rent other than the normal rent, cannot be charged as cancellation of the allotment is condition precedent to such an action. The applicant has also contended that in terms of para 1711(b) (v) of Indian Railway Establishment Manual Vol.II, penal rent or 10% of the emoluments can only be charged from the railway servant who does not vacate the residence after cancellation of the allotment of the quarter. These issues have been examined by the Full Bench in the case of Ram Poojan Vs. Union of India and Others (1996)

34 A.T.C. 434 (F.B.). While answering the questions

considered by the Full Bench, it has been held as under:-

"In the Light of the discussions hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows:-

(a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.

(b) Our answer is that retention of accommodation beyond the permissible period in view of Railway Board's circulars would be deemed to be unauthorised occupation and there would be automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway Board's circular."

In view of what is held above by the Full Bench, the pleas taken by the applicant are not tenable. No specific order was necessary to be issued for cancellation of the allotment of the quarter after the period for which the permission to retain the quarter, had expired. Similarly the damage/penal rent as per the laid down instructions could be levied for the period for which the quarter is unauthorisedly occupied. In the light of what is held by the Full Bench, I am unable to find any merit in these grounds taken by the applicant.

7. The second ground taken by the applicant is that though he had vacated the quarter on 15.1.1990 as directed in the notice dated 04.1.1990, but the charge of the quarter was not taken over and the applicant was directed not to hand over the charge till allotment of

the quarter is done to somebody. The applicant further submits that he had vacated the house finally on 13.4.90. I have carefully gone through the documentary evidence brought on record by the applicant in support of his submissions. The applicant had been initially allowed retention of the quarter for the period of 4 months upto 31.7.1989. Subsequently, he made request for further retention of the quarter upto November, 1989. Though the applicant has submitted that he did not receive any approval for the same from the respondents but the respondents in the counter-reply have admitted that the applicant was allowed retention of the quarter for a further period of 4 months from 01.8.89 to 30.11.89. The applicant has also averred that he made subsequent request for further extension of retention of the quarter as per his application dated 12.12.1989 but he has not brought on record any approval of the competent authority permitting him to retain the quarter upto February, 1990. In view of this, it is to be taken that the applicant was allowed retention of the quarter upto 30.11.1989 only and therefore, any retention of the quarter beyond this period would be unauthorised. It is admitted fact that the applicant was issued a notice dated 04.1.1990 to vacate the quarter latest by 15.1.1990. The applicant has brought on record copy of his letter dated 20.1.1990 at annexure A-9 wherein he had informed General Manager (Personnel) that he has vacated the quarter on 15.1.1990 and no-one is ready to take the charge of the same. Vide his letter dated 26.3.90(ann. A-10), he again advised General Manager (Rajya Bhasha), Gorakhpur indicating the same position and also referred-to the letter dated 23.2.90(ann.A-11) as per which the allotment of the quarter which was done to somebody, had been cancelled. The respondents in the

reply though have denied the receipt of the letter dated 20.1.90 but have admitted the receipt of the letter dated 26.3.90, it is noted that the allotment of the quarter occupied by the applicant which was done for somebody had been cancelled and the copy of this letter had been also endorsed to the applicant. The quarter was finally allotted to the another employee as per order dated 12.4.90, copy of which has been endorsed to the applicant with the instruction to hand over the charge of the quarter to the allottee - Sri Ved Prakash Verma. As per annexure A-13, the applicant has handed over the charge of the quarter to Sri Ved Prakash Verma on 13.4.90. The contents of these documents lead to infer that the applicant was asked not to hand over the charge and continue the quarter in his own charge till it is allotted to somebody. Infact, the respondents have averred that the quarter was vacated finally on 26.3.90. The respondents have not brought any document to establish as to how this date has been taken for vaca-
tion of the quarter in the face of the documents at A-12 and A-13 as per which the applicant has been asked to hand over the charge of the quarter to Sri V.P. Verma and the same has been hand over on 13.4.90 with joint signatures of both the parties. In light of these ob-
servations, I am inclined to agree with the contention of the applicant that he had vacated the quarter on 15.1.90 but subsequently the quarter continued in his charge on the instructions from the Department not to hand over the charge to anybody. In such a situation, the occupation of the quarter after 15.1.90 cannot be treated as unauthorised. Since the applicant was allowed retention of the quarter only upto 30.11.89, he can be treated as unauthorised occupant only upto

15.1.90 and thereafter it is not the fault of the applicant that the charge of the quarter was not taken over. In view of these findings, recovery of the penal rent can only be done for the period from 01.12.89 to 15.1.90 and the amount of excess recovery made for the period beyond 15.1.90, thus, becomes refundable to the applicant out of the total amount of Rs. 5918/- deducted from D.C.R.G.

8. The last ground taken by the applicant is that D.C.R.G. cannot be withheld for non-vacation of the quarter and for recovery of the charges for damage/penal rent. The applicant has sought the support of the judgment of the Hon'ble Supreme Court in the case of R.Kapoor as referred to in para 4 above. The applicant has also relied upon some orders of the ^{Bench} ~~Tribunal~~ as detailed in para 4 above. However, the applicant has not brought on record the copies of these orders and hence, it is not possible to review these orders to find out if the ratio of what is held in these orders is applicable to the case of the applicant. Referring to the judgment of the Hon'ble Supreme Court in R. Kapoor's case, I note the judgment of the Calcutta Bench in the case of H.K. Banerjee Vs. Union of India & Others 1996(32) A.T.C. 761' wherein the judgment in R. Kapoor's case has been reviewed in context of the other judgments of the Hon'ble Supreme Court in case of 'Jarnail Singh Vs. Sec, Ministry of Home Affairs 1993(23) A.T.C. 642', State of U.P. Vs. U.P. University/Colleges Pensioners Association(1994) 2 SCC 729, D.V. Kapoor Vs. Union of India(1990(14) A.T.C. 906 and Union of India Vs. Shiv Charan (1992) 19 A.T.C. 129. After review of the various judgments of the Hon'ble Supreme Court, it is held that R. Kapoor's case is not essentially a general

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pronouncement on an issue like recovery of penal rent and D.C.R.G.. It does not make the recovery of specific amount of government dues on account of unauthorised occupation of government accommodation from the D.C.R.G. of a retiree legally impermissible. ^{With} I am in respectfull agreement the view held in this order.

9. In the case of R. Kapoor, the issue involved was not the unauthorised occupation of the quarter after retirement. D.C.R.G. of the appellant was ^{With} held on account of non issue of 'No Dues' certificate by the Estate Officer for recovery of the rent during the service period. In the present case, the applicant has not vacated the quarter after retirement and the D.C.R.G. ^{With} have been held by the respondents as per the extant rules.

10. On the question of payment of interest on account of the delay in payment of D.C.R.G., which is withheld for non-vacation of the quarter on retirement by the government servants, I refer to the judgment of the Apex Court in the case of Union of India Vs. Utagar Lal 1997 S.C.C.(L&S) 473! In this case the Tribunal had allowed the payment of interest for delay in payment of D.C.R.G. which was withheld for non-vacation of quarter after retirement. The respondents filed an appeal before the Hon'ble Supreme Court. The appeal has been allowed holding as under; -

*The admitted position is that the respondent^s was unauthorisedly in occupation of the quarter allotted to him and, therefore, he was not paid death-cum-retirement gratuity since the respondent^s had remained in possession unauthorisedly for more than two years. This question was considered by this Court in

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'Raj Pal Wahi V. Union of India' and held that in those circumstances, the Court was unable to hold that the petitioners are entitled to get interest for 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 the Railway Board and not on account of administrative lapse. In this case, in view of the circular issued by the administration directing not to make payment of death-cum-retirement-gratuity till the retired employee surrenders possession, the delay in payment was not due to any administrative lapse but on account of the circular issued by the Board. Under these circumstances, the respondent is not entitled to the interest as directed by the Tribunal.*

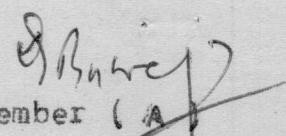
As stated earlier, the respondents have submitted that withholding of D.C.R.G. for non-vacation of the quarter was done as per the extant rules. The applicant has not contested this by stating that withholding of D.C.R.G. for non-vacation of the quarter was in violation of the rules laid down by the administration. In view of what is held by the Hon'ble Supreme Court above, the applicant ^{is} ~~is~~ not entitled for payment of interest for delay in payment of D.C.R.G. which was on account of the applicant for non-vacation of the quarter after retirement. Thus, the claim of the applicant for payment of interest for the entire period from the date of retirement till the date of payment of D.C.R.G. is devoid of merit. However, after vacation of the quarter, the interest would become payable incase any further delay is caused in making payment of D.C.R.G. The applicant has stated that the payment of D.C.R.G. has been made to him on 15.11.1990. In view of this, it is provided that leaving aside one month from the date of vacation of the quarter i.e. 15.1.1990, the applicant shall be entitled for payment of interest at the rate as laid down by the extant rules

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at that time. However, payment of ~~entire~~ interest ^y already made for delay in payment of D.C.R.G will be suitably adjusted.

11. The applicant has also sought a relief of reimbursement of the expenditure of Rs.2550/- said to be incurred in hiring the Chowkidar for guarding of the quarter from 15.1.90 to 13.4.90. The applicant has not furnished any details to establish his claim with regard to the details of engagement and the proof of having made the payment. Further the applicant has not quoted any rules under which he ^{was} ~~is~~ required to keep a Chowkidar for guarding the said quarter. This was a decision which was taken by the applicant on his own. From perusal of the documents at A-9 and A-10, I also find that there is no mention about the engagement of Chowkidar by him. There is also no document on record to show that he had made a claim for payment of this amount for hiring the Chowkidar before the administration. In the light of these observations, I am unable to appreciate any merit in the claim made by the applicant.

12. Keeping in view, what is held above, the O.A. is partly allowed with the directions as contained in para 7 and 10 above. The compliance shall be done within the period of 4 months from the date of receipt of this order. No order as to costs.


Member (A)

/M.M./