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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1030 OF 2005
ALLAHABAD THIS THE 23rd DAY OF April 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman

J.N Tiwari aged about 63 years, S/o late G.P Tiwari, Retd. Station Supdt. Etawah, R/o C/o Sri C.B Dixit, 786, Alkapuri, Etawah.

.....Applicant

(By Advocate: Shri Sudama Ram)

Versus.

1. Union of India through General Manager, North Central Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, North Central Railway, D.R.M Office, Allahabad.
3. Sr. Divisional Railway Manager, North Central Railway, D.R.M Office, Allahabad.
4. Sr. Divisional Finance Manager, N.C. Railway, D.R.M's Office, Allahabad.

.....Respondents

(By advocate: Shri Anil Kumar)

ORDER

Applicant, J.N Tiwari, who superannuated on 31.10.2002 from the service of Railways, has prayed for (a) quashing the order dated 27.2.2004, 3/11.6.2004 and recovery sheet dated 7.6.2005 to the extent the same provide for recovery of damage/penal rent (b) directing the respondents to refund an amount of Rs.27,077/- which the respondents have deducted from the amount payable under the head of retirement gratuity (c) directing the respondents to pay compound interest @ of 12% with compensation on the delayed payment of leave encashment and other retiral benefits.

2. There is no dispute that prior to his retirement on 31.10.2002, applicant was occupying Railway Quarter NO. 16 at Etawah, which he was supposed to vacate after expiry of certain

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period under the Rules. He was, however, permitted to continue therein upto 30.6.2003 on payment of certain licence fees. As he was facing disciplinary proceedings, so he represented to the Authorities for extending the period of retention of said quarter beyond 30.6.2003. This request was turned down, somewhere in the last week of July. He vacated the accommodation on 2.8.2003. It appears the respondents have recovered an amount of Rs.27,077/- as per the recovery sheet dated 7.6.2005 from the gratuity payable to the applicant and this amount included damage/penal rent as well. The contention of the applicant is that no damage/penal rent could be recovered from the gratuity without having recourse to the provisions of Public Premises (Eviction of Unauthorized Occupant) Act 1971, as damage/penal rent for unauthorized occupation of Quarter in the month of July 2003 does not fall within the definition of "dues" or "admitted dues" or "obvious dues". Leave encashment amount was withheld on account of disciplinary proceedings and the same could be released as late as on 18.10.2003, so he is claiming interest on the delayed payment of this amount. He says in view of law laid down by the Apex Court in O.P Gupta Vs. Union of India and others, 1987 S.C.C (L&S) page 400 and Gorakhpur University Vs. Dr. Shitla Prasad Nagendru 2001 SCC (L&S) 1032 and also in view of Smt. Radhika Devi Vs. Union of India 2002 All. CJ 693 and Satish Chandra Goel Vs. Chief Development Officer, 2002 All. C.J. 715-DB, the applicant is entitled to interest on delayed payment of leave encashment and other pensionary benefits.

3. The respondents have filed reply, saying that the O.A. is time barred and not maintainable and recovery of damage/penal rent for unauthorized occupation of the Railway Quarter for the month of July from the gratuity payable to the applicant, was perfectly right as per Rules 15 and 16 of the Railway Service (Pension) Rules 1993 and also in view of law laid down in Ram Poojan Vs. Union of India 1996 (1) A.T.J 540, Wazir Chand Vs. U.O.I. 2001 (6) SCC 596,

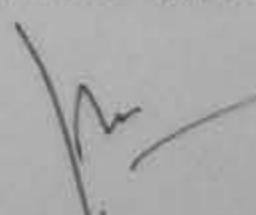
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Union of India Vs. Shishir Kumar Deb 1999 SCC (L&S)-781 and Dilip Kumar Sarkhel Vs. U.O.I ATJ 2002 (3) page 202. According to them, applicant is not entitled to any interest on delayed payment of leave encashment or other retiral benefits as the same were withheld as per Rules.

4. In rejoinder, reference to Railway Board's instructions dated 1.6.2001 has also been made where it is provided that dispute, if any, regarding the recovery of damage rent from the Ex-Railway servants shall be subject to adjudication by the concerned Estate Officer appointed under the Act of 1971. Few other decisions have also been stated with a view to say that whatever has been said by the Hon'ble Supreme Court in the context of Rule 323 of Pension Rules of 1950 will hold the field even after coming into force of Railway Service (Pension) Rules 1993 as here also Rule 15 (2) says that Government dues as "ascertained" and "assessed" can only be recovered from retirement cum death gratuity and such recoveries shall be regulated in accordance with provision of Sub Rule 4.

5. I have heard Shri Sudama Ram, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and have perused the entire material on record.

6. Shri Sudama Ram has argued that in absence of any order about cancellation of allotment or in absence of order declaring the occupation in month of July, 2003, as unauthorized, applicant could not have been treated as unauthorized occupant of the quarter in question. In view of Full Bench decision of this Tribunal in Ram Poojan's case (supra), no specific orders for canceling the allotment of accommodation on expiry of period of retention of quarters is necessary and further retention of accommodation by Railway servant would be unauthorized and penal/damage rent can be levied. Shri S. Ram has also cited Shangrilla Food Products Ltd. And another Vs. Life Insurance Corporation of India and another (1996)



5 Supreme Court Cases 54 so as to say that liability to pay damages arises only when occupant is adjudged unauthorized. I think the case cited by the Shri S. Ram is not directly on the point as to whether occupation of Railway Quarter by a servant beyond the permissible limit is to become unauthorized without any declaration to that effect. So the Full Bench referred to above has to hold the field and on the basis of that law, it can be said that occupation of the applicant in the month of July 2003, being beyond the permissible limit, became unauthorized and for that no declaration or adjudication was needed. It is never the contention of the applicant, that he had right to retain that quarter even after 30.6.2003.

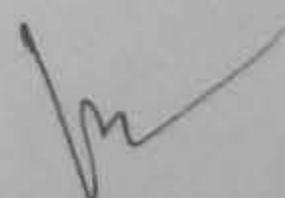
7. Now the question is whether damage/panel rent could be recovered from the D.C.R.G amount. Relying on Union of India Vs. Parvat Kumar Das, 2001 (1) ATJ 294 decided by a Division Bench of Calcutta High Court, N.C Sharma Vs. Union of India and others, Administrative Tribunals Full Bench Judgments 2002 (3) page 212 Bombay High Court, Chandra Prakash Jain Vs. Principal/DIG, Police Training College-II, Moradabad and another-2005 Supreme Court Cases (L&S) 117, Smt. Marjaddi Vs. Central Administrative Tribunal, Allahabad and others, 2005 (1) Administrative Total Judgments page 516, Allahabad High Court and Union of India and Ors. Vs. Madan Mohan Prasad-2003 (1) Administrative Total Judgments Supreme Court page 246, Shri S. Ram has argued that damage/penal rent for unauthorized occupation of a Railway or Government Quarter cannot be recovered from the amount payable under the Head of Gratuity.

8. On the other hand, Shri Anil Kumar has contended that under Rules 15 and 16 of Railway Service (Pension) Rules 1993 and in view of law laid down by the Apex Court in Wazir Chand Vs. U.O.I. 2001 (6) SCC 596, Union of India Vs. Shishir Kumar Deb 1999 SCC (L&S)-781 and Union of India and Ors. Vs. Shiv Charan, 1992 SCC

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(L&S) 140 as referred to and relied on by Calcutta Bench in its order dated 9.8.2002 passed in O.A. No. 786/01 Dilip Kumar Sarkhel Vs. U.O.I ATJ 2002 (3) page 202 such a damage rent can be recovered from the gratuity. He says that the case of Madan Mohan Prasad (supra) was not in the context of Rules 15 and 16 of Rules of 1993 but was in the context of Rule 323 of the old Rules of 1950. According to him, the present Rules of 1993 permit recovery of damage rent from the gratuity.

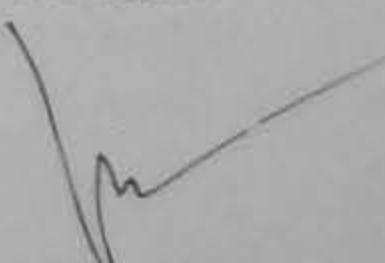
9. I have considered the respective submissions in the light of law and the Rules, so cited. There appears to be no unanimity in the judicial pronouncements, on the point, whether damage rent can be recovered from the gratuity, payable on retirement of servant of the Railways. I may so in the very outset that Full Bench decision of the Tribunal in Ram Poojan (supra) and Dilip Kumar Sarkhel (supra) case is not on the point under discussion. There the point involved was as to whether the Railway had to have recourse to the provisions of Public Premises (Eviction of Unauthorized Occupants) Act 1971, for recovering the damage rent or could recover the same without going under the said Act. Another question involved was, whether a servant of the Railway would become unauthorized occupant only when he was so declared ~~by executive orders~~. The full Bench took the view that no express orders for cancelling the allotment or for declaring the occupant unauthorized were unnecessary, in cases where accommodation was being retained against the Rules after transfer or retirement etc. and any such retention beyond the permissible limit would become unauthorized and there will be an automatic cancellation and penal and damage rent could be levied. There the Learned Members were not directly confronted with the question as to whether the damage rent could be recovered from D.C.R.G. In Wazir Chand's case (supra), the Apex Court upheld the recovery of damage rent from D.C.R.G and likewise in Sishir Kumar's case (supra), the Apex Court observed that Railway was free to recover



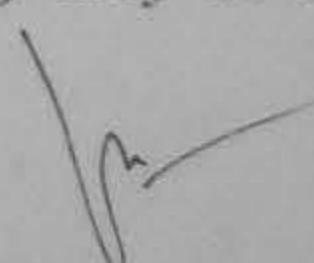
its dues from any amount payable to the employee. In Shiv Charan's case (supra) also the Apex Court said that damage rent for the period of overstay by the employee after retirement, could be deducted from the payment to be made to the employee on his retirement. But in subsequent decision in Madan Mohan Prasad's case (supra), Shiv Charan's case (supra) and Wazir Chand (supra) were distinguished and it was ruled that in none of those cases Rule 323 of the Railway Pension Rules 1950 was under consideration. It said that damage rent neither falls under the expression "admitted dues" nor under the expression "obvious dues", so did not fall under Rule 323 of Rules of 1950 and could not be recovered from D.C.R.G. Apex Court went on to add normally house rent inclusive of Water charges could however be deducted from D.C.R.G. Bombay High Court has also held in S.C. Sharma's case (supra) that damage/penal rent cannot be recovered from the gratuity and such recoveries are not permissible under Rule 323 of the Pension Rules of 1950. What relevant is that it has also expressed its view in para 21 as regards the permissibility of recovery of said damage rent from gratuity under Rule 15 of the Rules of 1993. Before we refer to what the Hon'ble High Court has said in the context of Rule 15 of Rules of 1993. I would like to refer to Rule 15, it reads as under:-

"15. Recovery and adjustment of Government or Railway dues from pensionary benefits:-

- (i) *It shall be the duty of the Head of Office to ascertain and assess Government or Raibway dues payable by a railway servant due for retirement.*
- (ii) *The Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death of gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).*
- (iii) *For the purposes of this rule, the expression "Railway or Government dues" includes-*



- (a) dues pertaining to railway or government accommodation including arrears of licence fee, if any;
- (b) dues other than those pertaining to railway or government accommodation, namely, balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance Premia, losses (including short collection in freight charges, shortage in stores) cause to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service.
- (iv) (i) A claim against the railway servant may be on account of all or any of the following:-
 - (a) losses (including short collection in freight charges, shortage in stores, caused to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service;
 - (b) other Government dues such as overpayment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance;
 - (c) non-Government dues.
- (ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in Rule 8 being satisfied from recurring pensions and also committed value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of Rule 8, and any recovery on account of sub-clause items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servants, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant.
- (iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealized the following course should be adopted:-
 - (a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule a suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be



considered sufficient, may be held over till the outstanding dues as assessed and adjusted.

(b) In respect of the dues as mentioned in sub clause (b) of clause (i) of this sub-rule-

- (i) The retiring railway servant may be asked to furnish a surety or a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay etc. should not be withheld and the surety shall sign a bond in Form 2.
- (ii) If the retiring railway servant is unable or not willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).
- (iii) The authority sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) the quasi-Government and non-Government Cooperative Societies, consumer Credit Societies or the dues payable to an autonomous organization by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he given his consent for doing so in writing to the administration.

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over the unduly long periods. To achieve this the following principles should be observed by all the authorities concerned:-

- (a) The each deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.
- (b) Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.
- (c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and

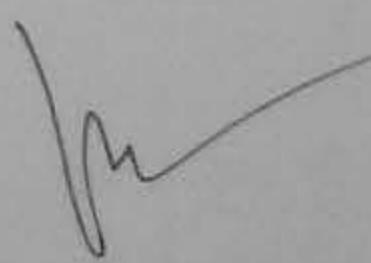
processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) *As soon as proceedings of the nature referred to in Rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact of the Accounts Officer".*

10. The Bombay High Court has said, Rule 15 permits recovery of Govt. dues which stand "ascertained" and "assessed" and which remain outstanding till the date of retirement or death of a Railway servant. It went on to say that the words "ascertained" and "assessed" pre-supposes crystallization of the dues after adjudication and such an adjudication should be prior to the recovery and there can not be adjudication without involvement of the employee concerned. This decision of Bombay High Court is the binding precedent and it has been rendered after considering the Supreme Court's case so cited by Shri Anil Kumar.

11. So I come to the conclusion that damage rent could not have been recovered from the gratuity payable to the applicant on his retirement.

12. The next point for consideration is as to whether the applicant is entitled to any interest on delayed payment of leave encashment. Leave encashment amount was paid to the applicant on 18.10.2003, after more than a year of the retirement. Applicant is claiming the compound interest at the rate of 12% per annum. Relying on O.P. Gupta Vs. Union of India and Ors. 1987 SCC (L&S) page 400, Smt. Radhika Devi VS. Union of India and ors. 2002, Allahabad Civil Journal and Subhash Kumar Vs. Chief Development Officer 2002, Allahabad Civil Journal page 715, Shri S. Ram has submitted that applicant is entitled to interest on this delayed



payment of leave encashment. Shri Anil Kumar has tried to say that the applicant is not entitled to any interest, as amount was withheld in accordance with Rules. I am of the view, the applicant is entitled to simple interest at the rate of 12% per annum, for delayed payment of leave encashment amount from 1.11.2002 to 17.10.2003.

13. So the O.A. is disposed of and impugned orders dated 27.2.2004, 3/11.6.2004 and recovery sheet dated 7.6.2005 to the extent the same provide for recovery of damage rent for overstay in the Railway Quarter from D.C.R.G., are hereby quashed and respondents are directed to refund the amount, which they have deducted as damage/penal rent from D.C.R.G., within a period of two months from the date, a certified copy of this order is produced before the respondent NO.2. They are not required to re-fund the amount, which they have recovered as normal rent or double rent or as electricity charges or as water charges. The respondents are also directed to pay interest @ 12% per annum from 1.11.2002 to 17.10.2003 on delayed payment of leave encashment amount of Rs.89908/- within the period mentioned above.

No order as to costs.

Chunaw
23.4.08

Vice-Chairman

Manish/-