

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1212 of 2002

This the 29th day of September 2015

Presented by :

HON'BLE MR. JUSTICE L. N. MITTAL, MEMBER (J)

HON'BLE MR. U.K.BANSAL, MEMBER (A)

1. Mukh Ram Prasad, S/o Late Mahabir, (dead)
L.R. Smt. Dhanpatti Devi, Ex. Diesel Driver,
Resident of Village Banauli Kalan,
Post – Sikari Via Baburi,
District Chandauli.

1/1 Smt. Dhanpatti Devi W/o Late Mukhram Prasad
aged about 68 yrs., R/o Village Raswa, P.O.
Sakaldiha,
Distt. Chandauli (L.R.)

.....Applicant

By Advocate : Shri Sudama Ram

Vs

1. The Union of India through the General Manager,
Eastern Railway, Kolkatta.
2. The Senior Divisional Personnel Officer,
Eastern Railway, Dhanbad.

.....Respondents

By Advocate : Shri K. P. Singh.

O R D E R

(Delivered by Hon'ble Mr. U. K. Bansal, AM)

O. A. No. 1212/2002 was filed initially by Shri Mukhram Prasad who was working as a Diesel Driver Gr. – A with the respondents. This O.A. was decided by an order of this Tribunal dated 19.01.2010, and the O.A. was partly allowed. The respondents were directed to issue complimentary

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passes as per rules without enforcing the order of forfeiture.

The remaining part of the impugned order was affirmed.

2. However, when it came to light that the applicant had died on 20.10.2009 the applicant's wife filed an application for the recall of this order as the O.A. had abated before pronouncement. An order was passed by this Bench that the orders in the OA had become a nullity. Without specifically allowing the recall application the substitution application filed by widow of the deceased employee was allowed after condoning delay by an order dated 08.10.2014 and by the same order the matter was again listed for hearing.

3. In view of the fact that M. A. No. 2444/2012 (Recall Application) was not specifically allowed but also keeping in mind that the order of this Tribunal dated 19.01.2010 had become a nullity the matter was heard again, retaining the pleadings filed earlier on both sides.

4. The brief facts of the case are that the applicant was allotted a type-III Railway Quarter (No. 23/B) at Singrauli in 1980. The deceased husband of the applicant Shri Mukhram Prasad had stated that he vacated the quarter on 01.07.1995 after his retirement on 30.06.1995. He has also stated that upon vacation he handed over the quarter to Loco Inspector, Eastern Railway, Singarauli and that after vacation of the said quarter it was allotted to one Syed Wahabuddin Diesel Assistant. However, after retirement the applicant was paid all his other retiral dues except part of DGRG which was withheld



by the respondents on the ground that he had not vacated his government quarter upon retirement. The applicant was also denied complimentary railway passes after his retirement.

5. According to the applicant the respondents made recovery of damage rent for the period 01.07.1995 to 08.03.1999 from the DCRG.

6. Curiously the deceased husband of the applicant had mentioned in his O.A. (Para 4.13) that an outsider was residing in the aforesaid quarter since 1991 up to March 1999 and he blamed the respondents for not filing any F.I.R. against this illegal occupant Shri L.N.Singh. However, there is nothing on record in the O.A. to show that Mukhram Prasad (deceased employee) ever informed the Railway authorities that the quarter which was allotted to him in 1980 (according to his own contention) was being occupied by an outsider since 1991. It is the applicant's contention that her husband was transferred from Singrauli to Chopan but he retained the quarter till his retirement and for which he had paid full rent. Since the quarter had been allotted to Sri Wahabuddin the applicant was not blame-worthy for the unauthorised occupation of the quarter after 01.07.1995. In these circumstances the withholding of the DCRG of the retired employee (since deceased) is against rules and that the withholding of complimentary passes at the same time amounted to double jeopardy.

In these circumstances the applicant sought the following reliefs:



- (i) *The Hon'ble Tribunal may graciously be pleased to issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 9.8.2002 (Annexure No. A-1) of Senior Divisional Personnel Officer, Eastern Railway, Dhanbad.*
- (ii) *The Hon'ble Tribunal may graciously be pleased to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay Rs. 85,806/- as D.C.R.G. with 18% interest to the applicant.*
- (iii) *The Hon'ble Tribunal may further graciously be pleased to issue a writ, order or direction in the nature of mandamus directing the respondents to issue the complimentary passes to the applicant passes w.e.f. 01.07.1995 to till date.*
- (iv) *The Hon'ble Tribunal may further be pleased to issue any other suitable writ, order or direction which is deemed fit and proper in view of the facts and circumstances of the case mentioned above.*
- (v) *The Hon'ble Tribunal may be pleased to award the cost of this Original Application in favour of the applicant.*

7. The impugned order in this case dated 09.05.2002 was issued by respondent No. 2, communicating the amount of damage rent for the period from the date of retirement upto 08.03.1999. Outstanding dues of damage rent, electricity bills etc. were adjusted against the bill of difference of DCRG arising out of Vth Pay Commission's recommendations.

8. In their counter reply the respondents have prominently stated that the applicant did not vacate the quarter upon his retirement (which was allotted to him). In fact, he had sublet the same to an outsider. After the superannuation of the deceased employee w.e.f. 30.06.1995 he retained the Railway quarter for 44 months. Hence, in terms of the order of the Railway Board, 44 sets of complimentary passes were forfeited and since the applicant was eligible for two sets of complimentary passes per year he is not entitled for the same for

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22 years from 01.07.1995 his eligibility for the same shall now arise from 01.08.2017.

9. The respondents have pointed out that the document dated 01.07.1995 which is being cited by the applicant to prove that the applicant had vacated the Railway quarter No. 22/B Type III, does not anywhere say that the applicant had vacated the said quarter. It is in fact an allotment order in favour of Shri Wahabuddin issued **in anticipation of vacation by the employee** (since deceased). The applicant himself has stated in his O.A. that one L.N. Singh was living in the said quarter since 1991. At that time the quarter was allotted in the name of Shri Mukhram Prasad and he never took any initiative either with his own authorities or with the local police to get Shri L.N. Singh evicted. As long as the quarter was allotted in the name of the deceased employee it was his responsibility to hand over vacant possession of the flat to the representatives of the respondents at the time of his retirement.

10. According to the respondents the applicant herein had given out the Railway quarter to Shri L. N. Singh since 1991 for rental purposes and this was accepted by Shri L. N. Singh in the presence of some witnesses and employees of the Railways. It has also been stated that the calculation of damage rent, electricity charges etc. which have been recovered from the DCRG of the employee has been done according to rules.

11. A rejoinder affidavit has also been filed by the applicant (since deceased) where the contents of the O.A. have been



reiterated. It has been stated that the applicant was not given a reasonable opportunity of hearing before passing the impugned order. Some disputed dues of the applicant have also been adjusted against the DCRG which is against rules. In the rejoinder affidavit it has been stated that Shri L. N. Singh who was the contractor of the Asia Company Limited was lodged in the quarter of the applicant after his retirement. This is however contrary to averments made in the O.A.

12. During arguments the counsel for the applicant submitted that it was the responsibility of the respondents and the competent authority to take action for unauthorised and illegal occupation of the said flat, under the P.P. Act 1971. The appropriate Forum for calculation of damage rent etc. is the competent authority as provided under P. P. Act. It was also argued that under Rules 15 (3) (a) of the Railway Service Pension Rules, 1993 only the ascertained and assessed dues example normal rent, electricity, water charges can be recovered while disputed dues such as damage rent etc. can only be recovered after completion of proceedings under the P. P. Act. The counsel for the applicant referred to the judgment of the Allahabad High Court dated 13.05.2004 in **Civil Misc. Writ No. 9640/2001 (Smt. Marjaddi Vs. CAT, Allahabad).** In this case the applicant had died in harness and damages of rent for retention for quarter by the widow were deducted from the gratuity amount. This was found erroneous in law and if the damages had to be recovered it could be done in accordance with the

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procedure established in law. This case is clearly distinguishable from the case herein before us as the claim of the employee that he had vacated the quarter upon his retirement is itself in dispute and in fact the respondents have stated that the applicant had sub let the flat to an unauthorised person.

13. The applicants' counsel also placed reliance on the observation of the Hon'ble Apex Court in ***Union of India and others vs. Madan Mohan Prasad (Supreme Court of India) in Civil Appeal No. 4832-4833 of 1999.*** In this case the payment of DCRG and leave encashment to the employee who had retired had been withheld since he continued to occupy the Railway quarter even after his retirement. The applicant therein had filed an application before the authorities for regularization of the allotment of the house in favour of his son who was living with him before his retirement. Separate proceedings had been initiated under P. P. Act 1971 both for the recovery of the quarter from the employee and for the recovery of penal damages. However, the present case before us is on an entirely different footing where the applicant is claiming that he vacated the said flat on 01.07.1995 and this claim itself is not supported by the evidence led before us. Hence, this cannot be treated as the case of dispute over the amount of damages or penal rent but whether the applicant vacated the flat at all at the time of his retirement. Thus, this case is distinguished from the matter before us.

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14. Counsel for the applicant also argued that such dues as damage rent/penal rent cannot be recovered from the gratuity of an employee and in support of his submissions he referred to the observations of the Hon'ble Apex Court in **Chandra Prakash Jain Vs. Principle Police Training College, Moradabad (2005) Supreme Court Cases (L&S) 117 in Civil Appeal No. 8492 of 2001**, decided on December 7, 2001. This case is also distinguishable as it deals with over stay in the allotted quarter after the date of retirement, the question for consideration in this case was the amount of rent liable to be paid for unauthorised occupation of quarter. The Hon'ble Apex Court held that calculation of amount which was deducted from the retiral benefits was wrong as it was based on a circular which was not applicable in the case. The issue herein is very different since, the applicant herein has claimed that he had vacated his flat and this fact itself is in dispute. Reference has also been made to the order of **CAT, Allahabad dated 23.04.2008 in O.A. No. 1030/2005** where it has been held that damage rent could not have been recovered from the gratuity payable to the applicant on his retirement. However, in this case there was no dispute that prior to his retirement the applicant was occupying a Railway Quarter which he was supposed to vacate after expiry of certain period, under rules. The applicant in that case had applied for the retention of the house and after his request was rejected he vacated the said accommodation and in these circumstances certain amount of damage/penal rent was recovered from his gratuity. It was the



contention of the applicant that without taking recourse of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, damage/penal rent for unauthorised occupation of the quarter does not fall within the definition of dues, admitted dues or obvious dues. In the case before us the situation is entirely distinguishable as the unauthorised occupation (retention) of the flat is itself being disputed by the applicant.

15. Counsel for the respondents argued on the lines of the pleadings and emphasised that the applicant had sub let the flat against all rules and he did not handover the vacant possession of the flat upon his retirement. Hence, he was liable for the rent of the flat till it was vacated by the unauthorised occupant. He referred to Para 8(iv) of RBE No. 100/2001 dated 01.06.2001 which refers to Railway Services (Pension) Rules 1993 which is quoted below:

8(iv) The provisions under Sub Rule - (8) of Rule 16 of the Railway Services (Pension) Rules, 1993, as reproduced below for ready reference, shall be strictly followed:-

“(8)(a) In case where a Railway accommodation is not vacated after superannuation of the Railway servant or after cessation of his services such as on voluntary retirement, compulsory retirement, medical invalidation or death, then, the full amount of retirement gratuity, death gratuity or special contribution to provident fund, as the case may be shall be withheld.



(b) *The amount withheld under clause (a) shall remain with the Railway administration in the form of cash.*

(c) *In case the Railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the Railway administration shall have the right to withhold, recover, or adjust from the Death-cum-retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-Railway employee and return only the balance, if any, on vacation of the Railway accommodation.*

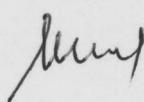
16. The learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in **Vazir Chand Vs. Union of India and others 2000 (87) FLR 778**, where it has been observed as follows :

"These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the applicant, who happens to be a retired Railway servant. Admittedly, the appellant even after superannuation, continued to occupy the Government quarter, being placed under hard circumstances. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Government servant, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellants' main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the Special Leave Application was

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dismissed as withdrawn, it was bounden duty of the Union of India not to withhold any gratuity amount, and, therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the Government Quarter, was liable therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed."

17. After a careful examination of the pleadings on record and careful consideration of the arguments presented before us it is amply clear that the deceased employee, husband of the substituted applicant did not vacate the flat which was allotted to him at the time of his retirement. In fact there is enough reason to believe that he sub let this flat to an unauthorised person in 1991 itself while he retired in 1995. By the impugned order the dues arising out of this continued illegal occupation of the flat which was in the name of the applicant, have been calculated and deducted from the DCRG payable to him in compliance of the instructions contained in RBE 100/2001. The application of P.P. Act, 1971 to evict the applicant did not arise as the applicant was claiming all along that he had vacated the flat and handed over its possession to the Loco Inspector. At no stage did the applicant inform the respondents that an unauthorised person was in occupation of his flat from 1991 and hence, it was reasonable for the respondents to presume



that the applicant (since deceased) was himself in continued occupation. The penal rent etc. arose since the applicant did not vacate the flat allotted to him upon his retirement as required under Rules.

18. In these circumstances this case is clearly one in which the allottee of a Govt. Flat failed to surrender the same within the prescribed period after his retirement in a vacant position. Hence, the calculation of penal rent etc. would follow a well led down procedure and these amounts cannot be called disputed. The applicant has also not raised any plea in this regard. There is also no plea in the context of Rule 323 of Pension Rules, 1950. The applicant had neither applied for retention of the govt. accommodation beyond the date of his superannuation nor is there any evidence of having handed over the same on the date claimed by him. On the date of filing the O.A. the DCRG was already adjusted against the rent/penal rent etc. and to that extent it is a *fait accompli*. On the facts the applicant's case is not comparable with the facts of the case before the Hon'ble Supreme Court in Union of India Vs. Madan Mohan Prasad (Supra). We have also noted several contradictions in the averments of the applicant on different occasions with regard to the handing over of defacto-possession of the flat in question, making his stand unreliable and short of credibility.

19. On the issue of forfeiture of the Railway passes the respondents have placed reliance on Railway Board letter No. E(W)99PS5-1/41 dated 18.11.1999 which reads as follows:

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A copy of Railway Board's letter No. E(W)99PS 501/41 dated 18.11.1999 addressed to General Manager, Eastern Railway and others.

Sub: Disallowance of Post-retirement complimentary pass on unauthorised retention of Railway quarters-Amendment to Railway Servants (Pass) Rules, 1986 (2nd Edition 1993 – Schedule IV (Post retirement complementary Pass).

It has been decided by the Board that the administrative instructions contained in their letters No. E(G) 81 Qr 1 -51 dated 24.4.1982 and No. E (G) 81 QR 1 – 51 Pt. Dated 04.06.1983 be incorporated in the Railway Servants (Pass) Rules, 1986 so that the provision of disallowance of one set of post retirement complimentary pass for every month of unauthorized retention of Railway Quarter by a retired Railway Employee may be made legally enforceable.

2. In view of the above, Schedule-IV (Post – retirement Complimentary Pass) of the Railway Servants (Pass) Rules, 1986 be amended as in the Advance Correction Slip No. 18 enclosed.

3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways (Railway Board)

Advance Correction Slip No. 18 to the Railway Servants (Pass Rules, 1986 (2nd Edition, 1993.)

The following may be added as item NO. (XX) after Item NO. XIX below column NO. 3, in schedule IV (Post Retirement complimentary Pass) of Railway servants (Pass) Rules, 1986 (2nd Edition, 1993).

"(XX) One set of post-retirement complimentary pass shall be disallowed for every months of unauthorized retention of railway quarter by retired officers/ staff. For this purpose a part of a month exceeding 10 day in any calendar month shall be taken as a full month. A show cause notice to

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this effect may be issued to the concerned retired employee before disallowing the complimentary passes. The concerned retired employee shall be allowed the post - retirement complimentary passes after the period during which forfeited cases could have been admissible is over."

(Authority : Railway Board's letter No. E(G)81/QR 1-51 dated 24.4.1982 No. E(G)81/QR 1-51 dated 4.6.1983 and No. E(W) 99 PS 5-1/41 dated 03.11.1999.

Conclusion :

19. Learned counsel for the applicant argued that withholding of post retirement passes cannot be done without issuing a show cause notice to the concerned employee. This notice is a condition precedent of withholding the passes. In support of his arguments he places reliance on the CAT (Principal Bench Full Bench) in case of Wazir Chandra case (supra) and contents of Railway Board's letter (Supra).

21. There is no indication in the counter affidavit that any show cause notice was issued to the applicant before forfeiting the free passes as per provisions of the Railway Board directions. We are firmly of the view that mandatory nature of requirement of show cause notice not having been complied with, hence free passes could not have been withheld.

22. In view of the foregoing discussions the OA is partly allowed. The impugned order dated 09.08.2002 to the extent it directed for withholding complimentary passes is set aside and quashed and authorities are directed to issue complementary passes as per rules without enforcing the order of forfeiture. We



find no infirmity in the rest of the impugned order dated 09.08.2002 and it warrants no interference and is accordingly affirmed/maintained.

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Member (A)

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Member (J)

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