

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 29TH DAY OF April, 2011)

HON'BLE MR. A. K. BHARDWAJ, MEMBER (J)

Original Application No. 707 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Lal Muni Devi, W/o D. P. Sharma, R/o Manas Nagar, Colony
Mughalsaria, District Chandauli on behalf of her husband D. P.
Sharma.

..... **Applicant**

Present for Applicant : Shri S.K.Pandey, Advocate
Shri S.K.Mishra, Advocate

Vs.

1. Union of India, through the General Manager E.C.Rly. Hazipur Bihar.
2. The Divisional Rly. Manager E. C. Rly. Mughalsari District - Chandauli.

..... **Respondents**

Present for Respondents: Shri K.P.Singh, Advocate

ORDER

(Delivered by Hon. Mr. A. K. Bharwaj, Member-J)

Applicant has filed the present Original Application making the following prayer:-

"(1) To quash the impugned order dated 01.05.2003 and respondents may be directed to make payment D.C.R.G. leave



salary of 240 days and packing allowance and complimentary pass, with due interest.

(2) To direct the respondents to recover normal rent or double of normal rent of quarter No. 1037 C.D. New Central Colony Mughalsarai from 28.2.1995 to 09.5.1998."

2. Grounds canvassed by the applicant to substantiate the relief sought in the OA noted above are as under:-

- (i) Because impugned order dated 01.5.2003 is arbitrary illegal and against the law.
- (ii) Because damage rent was assessed arbitrarily and without jurisdiction and without jurisdiction and without giving any reasonable opportunity.
- (iii) Because complimentary pass can not be forfeited.
- (iv) Because the impugned order dated 1.5.2003 is against principles of natural justice.
- (v) Because here husband never engaged entire earned leave.
- (vi) Because in any other view the impugned order is liable to be quashed.

3. Counsel appearing for the applicant contends that respondents are not justified in adjusting the amount of DCRG payable to her husband against damage rent of Rs. 6978/-, excess payment Rs. 5446/- recovery for the period from 16.3.1994 to 30.4.1994, electric charges from 1994 to 09.05.1998 of Rs 2784/-.

4. Taking the plea of natural justice, he also contends that the dues, if any, to be recovered from husband of applicant would not be adjusted by forfeiting the other terminal dues as such Provident Fund, GIS and pension commutation payable to husband of the applicant. It is further submitted by counsel for the applicant that the act of the respondents in not releasing the amount of leave encashment payable to her husband is also illegal. It is also emphasized by the applicant appearing for the applicant that the

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respondents should have issued complimentary passes as admissible to family of retired/deceased Railway employee to her. He further contends that under no circumstances, applicant could be directed to deposit the amount of Rs. 78012 in Railway cash.

5. Learned counsel appearing for the respondents submits that the applicant had earlier approached this Tribunal by way of OA No. 579/99. He submits that in the said OA, Tribunal had considered the grievances of the applicant regarding adjusting of gratuity and other dues against the pen normal/damage rent, excess payment recovery/electric charges etc.

6. It is also contended that in terms of policy decision of Railway Board taken vide letter dated 13.12.2000 placed on record as enclosure to counter reply, Railway Administration was justified in adjusting the gratuity of applicant against the normal rent special SSP damage rent as might be due from Railway employee. He has also drawn my attention to Para 7(iii) of said letter. Referring to said letter learned counsel appearing for the respondents submits that one retirement pass admissible to Railway servant could be withhold for each month's unauthorized occupation of Rly. accommodation.

7. I have heard counsel for the parties at length. As far as the issue of payment of DCRG is concerned, while deciding OA 579/99, this Tribunal viewed that in terms of decision of Hon'ble Supreme Court in the case Wazir Chand Vs. Union of India & Others (2001 SC (L&S) 1038), Railway Administration could withhold the gratuity of the applicant to adjust the dues of Railway Administration on account

of non vacation of Government accommodation. The relevant portion of order passed by Coordinate Bench, is as under:-

"At this juncture, it would be relevant to refer to the judgment given by the Hon'ble Supreme Court in the case of Wazir Chand Vs. Union of India & Others (2001 SC (L&S) 1038). In the said case, the Apex Court has an occasion to deal with identical case whereby the railway employee had submitted that in view of Full Bench decision of the Tribunal, the respondents could not have withheld his gratuity to adjust the dues of Govt. employee on account of non-vacation of Government quarter. It was held by the Apex Court that they are unable to accept the contention as the applicant having unauthorisedly occupied the Government quarter was liable to pay the penal rent in accordance with rules and, therefore, there was no illegality in those dues being adjusted against the DCRG of the appellant. In my considered view, the present case in hand is fully covered by the judgment given by the apex court in Wazir Chand (Supra). Accordingly, I do not find any illegality in withholding the amount of DCRG of the applicant's husband on account of penal rent that was due in favour of the Railway administration from the applicant's husband. It is, however, made clear that in case any other decision is taken by the District Judge in the appeal said to have been filed by the applicant that would be given due regard in accordance with law after it attain finality. The applicant's grievance is also that since the applicant's husband has been decategorised and retired from service, complimentary passes cannot be denied to her. In this connection no positive directions can be given, suffice would be to say that in case she applies for complimentary passes and there is no legal impediment in the way of granting complimentary passes, the respondents shall consider the same and pass an appropriate order on the same in accordance with law.

In view of the above discussion, I do not find any merit in the O.A. However, it is made clear that in case the



application gets a certificate from the Magistrate to hold the affairs of the employee as stated in the Counter affidavit, she would be at liberty to give a representation to the authorities along with the said certificate for any dues which are pending against the applicant's husband and if she files the same, the respondents shall pass an appropriate order in accordance with law within a reasonable period. With the above observations, the O.A. is disposed off with no order as to costs."

8. As far as the claim of leave encashment of applicant is concerned, in order dated 03.1.2003, passed in OA No. 579/1999, a finding is recorded that no earned leave were due to the applicant, thus leave encashment was not payable to him. On the issue of pension commutation also, finding is recorded in the said order in as much as that the husband of the applicant had not asked for commutation of pension. The relevant portion on aforementioned order passed in OA No. 579/99 viewed as under:-

"Since the husband of the applicant is still alive, she would not be entitled to any family pension and since the husband of the applicant never applied for commuted value of pension, which were required under rules, naturally, the respondents could not have paid the same to the applicant or her husband. As far as the leave encashment is concerned, the respondents have categorically stated that no leave was due for payment on the date of retirement i.e., 28.2.95, therefore, she is not entitled to get any leave encashment. "

9. Regarding other claims, the Tribunal had taken view that such dues could be claimed by husband of applicant and if she was to claim the same on the ground that her husband was mentally disabled, she should obtain a certificate from Magistrate and to the said effect and make a representation to the authorities along with

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certificate, for release such dues which were payable to her husband. Taking such view, the learned Tribunal disposed of OA, finding no merit in the same but making it clear that in case of getting a certificate from the Magistrate to the effect of her husband was mentally disable she could make a representation along with certificate for any dues which were payable to her husband and on filing of such representation, respondents were to pass appropriate order in the same. In compliance of the said order passed by learned Tribunal respondents have passed the impugned order. In the said order respondents have viewed that the amount of DCRG, Gratuity payable to husband of the applicant could be adjusted against the damage rent, excess payment of salary, electric charges recoverable from him. In the impugned order respondents also stated that amount of PF and GIS has already been paid by respondents. Regarding commuted value, it is stated by the respondents that the husband of the applicant had not applied for the same. As far as the claim for leave encashment is concerned, respondents have stated that no such leave was due to him. It is the case of the respondents in the impugned order that on account of over staying in the normal accommodation by the applicant, for 48 months 48 set of complimentary passes are withheld and packing allowance is adjusted against the Government dues. As it is noted herein above, regarding claim of gratuity of applicant, this tribunal has already come to conclusion that the respondents are justified in adjusting the same against the damage rent.

10. The view taken by this Tribunal is based on decision of Hon'ble Supreme Court in the case of Wazir Chand Vs. Union of India &



Others (2001 SC (L&S) 1038) so far as the reliance placed by the applicant on the judgment of Hon'ble Supreme Court R. Kapoor Vs. Director Printing and Publication Income Tax and other is concerned, in the said case Hon'ble Court has ruled that the DCRG could not be withheld for the reason that Railway employee had not vacated accommodation. In the said order it is nowhere ruled that the gratuity cannot be adjusted against the damages to be recovered from Government employee on account of over staying, electric charges and excess payment, rather in Para 7 it is held that the recovery of damage could be made under FR 48. The position - (i) withholding of gratuity during stay of accommodation and (ii) the adjustment of gratuity against damages are different. Moreover, the judgment of in the case of Wazir Chand Vs. Union of India & Others (2001 SC (L&S) 1038) which is point of time is specific on the issue. Said judgment reads as under :-

"These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired railway servant. Admittedly, the appellant even after superannuation continued to occupy the government quarters, though being placed under hard circumstances. For such continuance, the Government, in accordance with rules, has charged penal rent from the retired government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellant's 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 dismissed as withdrawn, it was the bounden duty of the Union of India not to withhold any gratuity amount and, therefore, the appellant

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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 unauthorizedly occupied the government quarters was liable to pay the penal rent in accordance with rules and, 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."

11. Moreover, the judgment in the case of R. Kapoor is of an employee of Directorate of Inspection Printing and Publication and I am not aware, whether in the said department there was any such provision as is contained Railway Board letter placed on record as Annexure to counter reply. Perusal of the order of Hon'ble Supreme Court does not indicate that there was such provision. In the present case I find that as per clause C of sub-rule 8 of Rule 16 of Railway service pensions rules 1993 contained in the Railway Board's letter placed as record in counter reply there is specific provision providing that in case the accommodation is not vacated by Rly. Employee even after the permissible period of retention after superannuation/retirement from services as the case may be, the Railway administration shall have right to recover from the death retirement gratuity the normal rent subject for damage rent as may be due from ex-railway employee and return the balance, if any.

12. In aforementioned letter of Railway Board, in Para 7(iii), it is further mentioned one set of post retirement pass should be disallowed for every month of unauthorized retention of Rly. Quarter

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by retired officer/Staff. The said provision as noted in Railway Board's letter reads as under:-

"One set of post-retirement pass should be disallowed for every month of unauthorized retention of Rly. Quarters by retired officers/staff. The concerned retired officer/staff may be allowed the privilege of post retirement passes after the period during which the forfeited passes would have been admissible, is over, a show cause notice to this effect may be issued to the retired employee before disallowing the passes."

13. It is contended by learned counsel for the applicant that before withholding the passes in terms of aforementioned letter of Railway Board, a show cause notice was required to be given to retired Railway employee.

14. Prima facie the plea of natural justice raised by the applicant appeared to be convincing and appealing. However, at this stage I have an order passed by this Tribunal in OA 579/99 before me. In terms of the order passed in the OA, applicant was given liberty to make representation to the respondents. Only after considering the representation, respondents have passed the impugned order. Thus, it cannot be contended that the stand of the applicant was not taken in to consideration by the respondents before passing the impugned order.

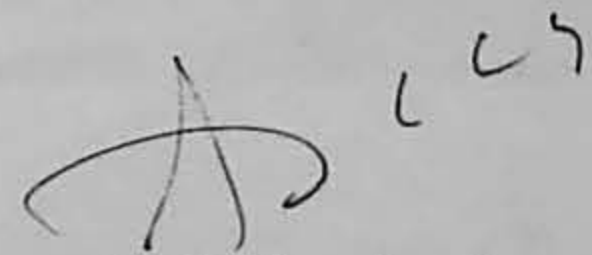
15. I find it no where even the amount of the excess salary paid to a government servant can also be recovered from his salary. I do not

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find any basis of calculation made by respondents in arriving at sum of Rs. 7,800/-. Even if the total amount was Rs. 78012/- it is not understood that how even after adjusting the amount of gratuity, the respondents directed the applicant to deposit Rs. 78012/- to Railway cash counter. Moreover, the total amount of damage rent excess payment recovery and electric charges as noted by this Tribunal in order dated 03.1.2003 as Rs. 46032/-. Thus, it is not understood how the respondents came to the conclusion the said amount was Rs.78012/-. Perusal of impugned order passed by respondents it is revealed that there is non application of mind by them inasmuch as the total amount of recovery as calculated is irrational and the direction given by them to the applicant to deposit the amount of Rs. 78012/- in Railway Cash is not supported by any reasoning. No reason is recorded to justify the adjustment of packing allowance against excess salary damage rent. Accordingly, the impugned order dated 01.5.2003 is quashed and set aside. Respondents are directed to pass a fresh order in terms of order dated 03.1.2003 passed by this Tribunal in OA No. 579/1999. Before passing their order, respondents would give an opportunity of hearing to applicant in perusing. Needful shall be done within three months.

16. No order as to costs.

Shashi


(A.K.Bhardwaj)
Member (J)