

(1)

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

R.A.No. 14 OF 1993.

in

O.A. No. 122 OF 1991
Ex parte.

DATE OF DECISION 4-10-1993.

Union of India & Ors.

Petitioners
(Orig. Respondents)

Advocate for the Petitioner(s)

Versus

Chhaganlal Jivabhai Yadav,

Respondent
(Orig. Applicant)

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Union of India owning
and representing Western Railway
through General Manager,
Western Railway, Churchgate,
Bombay.

2. Works Manager, Western Railway,
Railway Workshop,
Bhavnagar Division,
Bhavnagar Para, Bhavnagar.

Applicants.
(Orig.Respondents)

Versus.

Chhaganlal Jivabhai Yadav
Retired Railway Employee,
residing at present in Railway
Quarter No. L/326-A Type-I
Railway Colony, Bhavnagar Para,
Bhavnagar.

..... Respondents.
(Orig. Applicant)

Decision by circulation.

O R D E R

R.A.No. 14 OF 1993
in
O.A.No. 122 OF 1991

Date: 4.10.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

This Review Application can be disposed of
by circulation.

2. The original respondents of O.A. 122/91 have
filed this Review Application for review or modification
of the order passed in O.A. 122/91 which was disposed
of on 1st December, 1992. We have examined all the
grounds mentioned in para 4 of the review application.
The original respondents have mentioned in the ground
No.1 that the original applicant ought to have brought
to the notice of the Tribunal, Railway Board's

directions about the withholding of gratuity amount as per the letter of 19th August, 1987, Annexure A-4. If this letter is not brought to the notice of the Tribunal by either side they can not be considered an error apparent on the face of the record in our judgment. So far ground No. 2 is concerned, the respondents have produced the copy of Rule 323 of the Manual of Railway Pension Rules 1950. It is contended that when there is a case of proposed recovery of dues on account of rent for non-vacation of quarters etc. the railway administration can take suitable action as per that Rule. It is important to note that this Tribunal in its order have referred to the Full Bench decision of the Tribunal in Wazir Chand's case in which it has been held that the payment of gratuity can not be postponed till vacation of Railway quarters by the retired employee because the gratuity is payable immediately on retirement and the payment should be made promptly and the payment should not be withheld for non-vacation of railway quarter. Therefore, we have in our judgment, negative^d the contention of the original respondents that unless and until the ex.employee vacates the railway quarters, his DCRG could not be released and paid to him. So far ground No. 3 & 4 are concerned, we find no substance in it in view of the above decision. So far ground No. 5 & 6 are concerned, we find that we have not committed

any error apparent on the face of the record. The respondents rely on the documents Ann. A-6 and they contend / the amount of Rs. 20,704.40 upto 31st December, 1992 is due from the original applicant because of his unauthorised occupation of the quarters. The O.A. was filed in 1991, the applicant had retired from service on 31st December, 1990 and the respondents have not released his DCRG. The grounds taken namely 5 & 6 can not be considered now as there is no error apparent on the face of the record. More over, none of the ingredients of Order XLVII Rule (1) are attracted. All the annexures which have been produced in this R.A. do not help the original respondents. The Full Bench has considered the legal position in Wazir Chand's case (supra), we have already held in the last para of the order portion that our order will not come in the way of the respondents in issuing showcause note to the applicant for taking action for his unauthorised occupation of the railway quarter according to law. Review Application is dismissed.

Rent

(R.C.Bhatt)
Member (J)

Shiv

(N.V.Krishnan)
Vice Chairman

9 of 1983

⑪

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 14/1983
IN
O.A.No. 122/1981

Placed below is a Review Petition filed by Sh. R.M. Vin

(Applicant/

Respondents in JA/PA No. 122/1981 seeking a review of the order dated 01/12/82 passed by this Tribunal in the above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the order and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to be issued to the opposite party.

The Review petition is therefore, submitted for orders of the Bench consisting of The Hon'ble Mr. N.V. Kelshna
Vice chairman & Hon'ble Mr. R.C. Bhatty, Member (C) which pronounced the Order sought to be reviewed.

KKM

Subcommittee

The APPT has been placed
in order & may be placed
before Hon'ble Member (JD) by
circulation as necessary
order.

~~18/6~~
18/6

~~S.O. (CJ)~~

↓ major condonate &
delay ~~if any~~ required.

Arrived
18/6/93

~~D.Y. Regd. (CJ) 18/6/93~~

~~Mohd~~
18/6/93

Hon. member (JD)

RAH 109/93
26/3/93

(21)
(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - AHMEDABAD.

REVIEW APPLICATION NO. 14 OF 1992 1983

In

C.A. 122 of 1991.

- 1) Union of India owning and representing Western Railway through General Manager, Western Railway, Churchgate - Bombay 400020.
- 2) Works Manager, Western Railway, Railway Workshop - Bhavnagar division, Bhavnagar para - Bhavnagar 364 003..... Applicants (Original Resp. in O.A.122/91.)

V/S

Chhaganlal Jivabhai Yadav,
Retired Railway employee,
residing at present in Railway
Quarter No. L/326-A type I
Railway colony,
Bhavnagar para
Bhavnagar - 364 003

Opponent
(Original Appli.
in OA 122 of 1991).

Application for Review.

The humble application of the applicants

abovenamed most respectfully sheweth :-

1. That the applicant herein had filed an application

being O.A. No.122 of 1991 in this Hon'ble Tribunal
challenging ^{inter} ~~under~~ alia the action of the Works
Manager, Western Railway, Bhavnagar as per his
letter No.WM/E/58/9 vol.II of 8.1.91 refusing to
release the DCRG on his retirement and indicating
the decision that the same can only be released
when the opponent vacate the quarter and give
possession of the same to the authorities of the
Railway Administration.

*Copy of application
with annexures
Rev'd on 23/12/91
Sd/- B. B. Gogoi
Parolalal J. Vabna
Chhaganlal J. Vabna
in O.A. 122/91
on 26-12-92.
Xerox copy of
acknowledged
encl.*

1/2/1

R. M. V.
28.12.92

2. The opponent and his son Shri Hareshkumar Chhaganlal Yadav have filed another application being O.A.201/90 seeking direction to the Railway Administration to permit the opponent and his son to continue to occupy the Railway Quarter in their occupation viz quarter No.326/A and to allot the same in the name of applicant No.1. Shri Hareshkumar in terms of General Manager, Western Railway Bombay's letter dtd. 23.3.1990 at Annexure A/5 to that application. The said application is pending for disposal. In the said application this Hon'ble Tribunal was initially pleased to grant interim stay against the evictiomth of the quarter in dispute and the Hon'ble Tribunal was also pleased to order that if the application was ultimately dismissed, the applicants ~~shew~~ shall be liable to pay the rent at market rate. Annexed here to and marked Annex. 'A'

✓ is a true copy of the summons issued to the Railway Administration showing the order of the Tribunal re-interim relief passed on 2.5.90 relief. The said order of interim relief has been confirmed by two other orders dtd. 26.6.90 and 10.7.90. Annexed hereto and marked Annexure 'A', and A/2 respectively, the true copies of the said orders dtd. 26.6.90 and 10.7.90. The case of the Railway Administration has been that both the applicants including the opponent in this application are in unauthorised occupation of the quarter.

Ann. 'A'
Ann. 'A/2'

ANNX. A/3

3. The application O.A.No.122 of 1991 filed by the present opponent was however heard on 1/12/1992 and by a judgement and order of the same date this Hon'ble Tribunal has been pleased to direct the applicants to pay the DCRG amount to the applicant as per rules within four months from the date of the receipt of the order with interest at 10% p.a. commencing from the date three months after the date of retirement of the applicant and also an additional order re-passes Annexed hereto and marked Annx.A/3 is a true copy of the said judgement and order.

4. The applicants respectfully state that the order Annexure A/3 is based on error of jurisdiction and errors obvious and apparent on the face of the record and requires to be reviewed on the following amongst other grounds :-

i) The opponent i.e. the applicant in O.A.No.122 of 1991 ought to have brought to the notice of the Hon'ble Tribunal, Railway Board's directions re-withholding sufficient amount of gratuity to cover anticipated recoveries of rent on account of non-vacation of quarters as contained in the Railway Board's letter of 19.8.87 in cl.(ii)(b) Annexed hereto and marked Annexure A/4 is a true copy of the said letter of the Railway Board as contained in the letter of 23.2.88 of the General Manager Western Railway Bombay.

Ann.A/4

ii) It is submitted that in any event when there is a case of proposed recovery of dues on account of the rent for non-vacation of quarters etc. the Railway Administration can take suitable action as contained in rule 323 of the Mannual of Railway Pension rules 1950 appearing on page 12 of the printed book. Annexed hereto and marked Annexure A/5 is a true copy of the said rule.

Ann.A/5

iii) It is submitted that even if the Tribunal wanted to pass an order for payment of DCRG, ~~it~~ could have done so subject to the right of the Railway Administration that as per rule 323 Annexure A/5.

iv) In view of the facts stated above and as the DCRG was withheld in pursuance of Annexure A/4 and A/5. Payment of interest could not be ordered.

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v) The applicants respectfully submit that the total dues so far worked out on account of rent due before the opponents superannuation and on account of rent for which he is liable on account of his unauthorised occupation of the quarter in dispute ~~xxxexxxexxxx~~ comes to rupees 20704.40 upto 31.12.1992.

Ann.A/6.

Annexed herewith and marked Annexure A/6 is a true copy of the letter of applicant No.2 to Asstt. Accounts officer on 3.12.92 showing the dues. It is however, clarified that this amount does not include electric and water charges for which also, the opponent is liable. The said charges are still to be worked out. The amount of DCRG of the opponent is Rs. 31350/-

vi) So far as the applicants are able to gather information about the financial assets and effects of the opponent, he has no realisable property from which the dues of the Railway Administration can be recovered. It is therefore necessary and desirable to permit the Railway Administration to withhold the amount of gratuity or to release it on a condition requiring the opponent to furnish solvent security to ensure that the Railway dues can be recovered there from .

vii) In view of what is stated above, the judgement and order Annexure A/3. requires to be completely revised or suitably modified.

5. The copy of Annexure A/3, the judgement and order under review was given to our Advocate Shri R.M. Vin by this Hon'ble Tribunals office on 17.12.90 who gave it to the Officer of the Railway Administration on the same day - This application filed today is therefore in time.

1/5/1

(8)
(10)

6. In view of the above, the applicants pray.

- That this application be allowed.
- That the judgement and order Annexed A/3 be completely revised, reviewed or suitably modified so as to order withholding of DCRG of the opponent to the extent of dues incurred by the opponent to the Railway Administration to this date as per Annexure A/6 and the amount that may become due hereafter.
- That till the hearing and final disposal of this application execution implementation and operation of the order Annexure A/3 be stayed.
- That pending the hearing and final disposal, the applicants be allowed to initiate and conduct proceedings against the applicant as per rule 323 Annexure A/5.
- That such other and further relief be granted as may be deemed just and proper in the facts and circumstances of this case.

And for this act of kindness and justice, the applicants shall every pray.

Date : 23. 12. 92.

D. Ramchandran
Works Manager,
Western Railway,
Bhavnagar para.

I M. Ramchandran, Works Manager, W.Railway, Bhavnagar para, do state on solemn affirmation that I am conversant with the facts and circumstances of the case and the record pertaining thereto and as such I say that what is stated in paras 1 to 6 is true partly to my knowledge, partly to my information and partly to my belief and I believe the same to be true.

Date : 23. 12. 92.

D. Ramchandran

Works Manager,
Western Railway,
Bhavnagar para.



Filed by Mr. R. M. N. J.
Advocate for Petitioners
set & served to
y served/last served to

24/12/92
By Registrar C.A.T.O
A. Bad Banch
C. Bhavagar

Solemnly affirmed before me
by M. Ramchandran
who is identified before me
by Shri D. K. Vyas
whom I personally know.

Bhavnagar, Court of the Sub
Dt. 23/12/92
Date of this Court
Bhavnagar

23/12/92

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Annex. A

✓
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NOTICE AFTER ADMISSION

WITH INTERIM RELIEF

JUDL- I

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

B.D. PATEL HOUSE,
NR. SARDAR PATEL COLONY,
P. O. NAVJIVAN,
AJMEDIBAD- 380 014.

Issued on the 2nd day of May 1990.
REGN. NO. O.A/ 201 / 1990.

Shri Hareshkumar Chhaganlal

APPLICANT (S)
ADV. MR. B.B.Gogia

V/S.

Union of India & Ors.

RESPONDENT (S)
ADV. MR. R. M. VIN

T₀,

01. Union of India, through: The General Manager,
Western Railway, Churchgate, Bombay-400 020.

02, Works Manager, Western Railway Work Shop,
Bhavnagar Para.

Whereas Shri Hareshkumar Chhaganlal applicant, had made an application under Section 19 of the Administrative Tribunals Act, 1985, to this Tribunal, And also prayed for interim relief (copy alongwith relevant annexures enclosed) hearing Regn. No. OA/ 201 / 1990, and whereas the same matter is put up for hearing on 02.05.90. The Hon'ble Tribunal has passed the order as mentioned below. *

Whereas the Tribunal is of opinion that a reply of the application is called for :

1. ✓ That you, Respondent No. 2, do file three complete sets of the duly verified reply to the application, alongwith documents in a paper-book from by 30 days.

2. That you should simultaneously endorse a copy of the reply alongwith documents as mentioned at S.No. (1) above to the application.

You are also directed to produce the record(s) noted below for the perusal of the Hon'ble Bench of the Tribunal on the date fixed for hearing.

NO
7/15/90

215
51

TRUE-COPY
R. 171/Jan
सहायक कार्यिक अधिकारी (का),
प. रे. भावनगर परा.
ASSTT. PERSONNEL OFFICER, (W) ;
W. B. B. BHAVNAGAR PADA.

(I)

(II)

(III)

4. The above application has been fixed for hearing on 12.06.90 at 10.30 A.M. However, the application for interim relief has been fixed for hearing on 12.06.90 at 10.30 A.M. Should you wish to argue anything against the issue of interim order, you are at liberty to do so on 12.06.90 or so any other date to which the case may be adjourned, either in person, or through an advocate appointed by you for this purpose. Also take notice that in default of your appearance on the date fixed, the case will be heard *ex parte*.

5. A copy of the order Dated 02.05.90 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad is typed overleaf for immediate compliance/information/necessary action.

WITNESS the Hon'ble Vice Chairman, Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad this 2nd day of May in the year 1990.

DATE : 04.05.90

CSB
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Annex A
ORDER PASSED ON : 02.05.90

Heard Mr. B.B. Gogia, learned counsel for the applicant. The respondents are opposing the admission. In view of the averments contained in the application, we are inclined to admit it. The application admitted. The respondents to file reply statement within one month. With regard to the interim relief, we find that the applicant has made out a *prima facie* case for grant of interim relief and the respondents are restrained from evicting the applicant from Quarter No. 326/A. This order will be effective for two weeks. But it is made clear that if the application is ultimately dismissed, the applicant shall be liable to pay the rent at market rate. Registry to post the case after two weeks.

Now the case is fixed on 12.06.90 for further direction on I.R.

25
TRUE-COPY

K. J. Patel
कर्मचारी विभाग (III)
7. विभाग नं. 941
ASSTT. REGISTRAR & CLERK, (W)
W. B. Govt. of India, Ahmedabad

ANNEX - A-1

5b

NOTICE AFTER ADMISSION
WITH INTERIM RELIEF

Copy B. A. No. 5)

13

JUDL-X

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

पंचायत बैठो - ११/८८८. १. १८८७
 जारी. चूर्णित, H.Q. OFFICE, CHURCHGATE
 रुपया/110,000.00/- 104,600.00/-
 - 6 JUL 1887
 एच. डाक दे दिये प्राप्त नं. for Board, F.
 दि. शिव. ग. लियिक (दा. शिव. ग. लियिक)
 Head Clerk (A. & I.)

B. D. PATEL HOUSE
NR. SARDAR PATEL COLONY
P. O. NAVJIVAN
AHMEDABAD-380 014.

the 26th day of June 1990.
REGN. NO. O.A. / 201 / 1990.

Shri Hareshkumar Chhaganlal APPLICANT (S)

ADV. MR. B.B.Gogia

Union of India & Ors.

RESPONDENT (s)

ADV. MR. R. M. VIN

To

01. Union of India, through: The General Manager,
Western Railway, Churchgate, Bombay-400 020.

02. Works Manager, Western Railway, Work Shop,
Bhavnagar Para.

Whereas Shri Hareshkumar Chhaganlal

applicant, had made an application under Section 19 of the Administrative Tribunals Act, 1985, to this Tribunal, and also prayed for interim relief (~~Copy along with relevant annexures enclosed~~) hearing Regn. No. O.A./ 201 / 1990, and whereas the same matter is put up for hearing on 26.06.90. The Hon'ble Tribunal has passed the order as mentioned below.*

Whereas the Tribunal is of opinion that a reply of the application is called for :

1. That you, Respondent No. 4, do file three complete sets of the duly verified reply to the application, alongwith documents in a paper-book form by _____
2. That you should simultaneously endorse a copy of the reply alongwith documents as mentioned at S.No. (1) above to the application.
3. You are also directed to produce the record(s) noted below for the perusal of the Hon'ble Bench of the Tribunal on the date fixed for hearing.

STYLICHE / AL / HÖL / EPPDAHL.

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सहायक वाक्य विविधता (का)

4. 2. 1903. 100.

(I)
(II)
(III)

4. The above application has been fixed for hearing on 10.07.90 at 10.30 A.M. However, the application for interim relief has been fixed for hearing on 10.07.90 at 10.30 A.M. Should you wish to argue anything against the issue of interim order, you are at liberty to do so on 10.07.90 or so any other date to which the case may be adjourned, either in person, or through an advocate appointed by you for this purpose. Also take notice that in default of your appearance on the date fixed, the case will be heard ex-parte.

5. A copy of the order dated 26.06.90 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad is typed overleaf for immediate compliance/information/necessary action.

WITNESS the Hon'ble Vice Chairman, Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad this the 26th day of June in the year 1990.

DATE : 27.06.90

BB
ON DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

In continuation of Notice dtd. 02.05.90
ORDER PASSED ON : 26.06.90

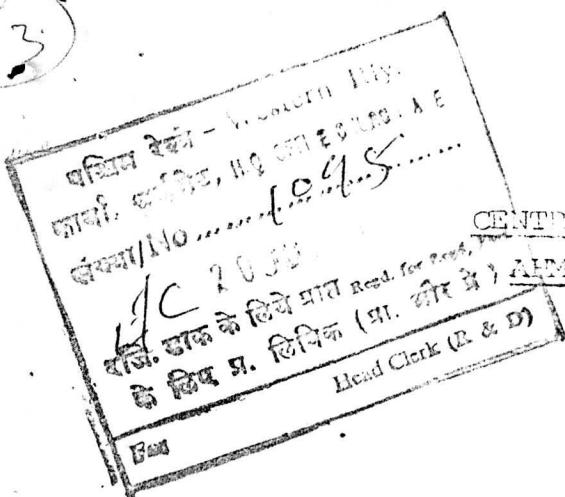
9/17-6

Present: Counsel for the applicant
Mr. N.S. Shevde proxy counsel for the respondents.

Rejoinder be filed within 10 days with advance copy to the counsel for the respondent. To come up for final hearing on 10.07.90. In the meantime interim order dated 02.05.90 will remain operative.

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KV *lani*
सहायक कार्यिक विविधाती (म)
प. ए. भावनगाम पाटा
ASST. PERSONNEL OFFICER (M)
W. BAY. BHAVNAGAR PATA.

NOTICE AFTER ADMISSION
WITH INTERIM RELIEF

JUDL-I

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.B.D. PATEL HOUSE
MR. SARDAR PATEL COLONY
P.O. NAVJIVAN
AHMEDABAD-380 014.

Issued on the 10th day of July 1990.

REGN. NO. O.A./ 201 / 1990.

Shri Hareshkumar Chhaganlal

APPLICANT (S)

ADV. MR. B.B. Gogia

V/s.
Union of India and ~~enr.~~

RESPONDENT (S)

ADV. MR. R.M. Vin

To

01. Union of India through The General Manager, Western Railway, Churchgate, Bombay-400 020.
02. Works Manager, ~~MR~~ W.Railway Works Shop, Bhavnagarpara.

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V.M. Gogia

Whereas Shri Hareshkumar Chhaganlal applicant, had made an application under Section 19 of the Administrative Tribunals Act, 1985, to this Tribunal, and also prayed for interim relief (Copy alongwith relevant annexures enclosed).

hearing Regn. No. O.A./ 201 / 1990, and whereas the same matter is put up for hearing on 10.07.90. The Hon'ble Tribunal has passed the order as mentioned below.*

Whereas the Tribunal is of opinion that a reply of the application is called for :

1. That you, Respondent No. 1 do file three complete sets of the duly verified reply to the application, alongwith documents in a paper-book form by
2. That you should simultaneously endorse a copy of the reply alongwith documents as mentioned at S.No. (1) above to the application.
3. You are also directed to produce the record(s) noted below for the perusal of the Hon'ble Bench of the Tribunal on the date fixed for hearing.

*Strikes off non-applicable.

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K. J. Patel

सहायक कालिका विविध (का)

प. दे. सहायक विविध

ASST. P. D. S. (W)

(I)
(II)
(III)

16
4. The above application has been fixed for hearing on 31.07.90 at 10.30 A.M. However, the application for interim relief has been fixed for hearing on 31.07.90 at 10.30 A.M. Should you wish to argue anything against the issue of interim order, you are at liberty to do so on 31.07.90 or so any other date to which the case may be adjourned, either in person, or through an advocate appointed by you for this purpose. Also take notice that in default of your appearance on the date fixed, the case will be heard ex-parte.

5. A copy of the order dated 10.07.90 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad is typed overleaf for immediate compliance/information/necessary action.

WITNESS the Hon'ble Vice Chairman, Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad this the 10th day of July in the year 19 90.

DATE : 12.07.90

Ch
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

In continuation of notice dtd. 26.06.90

Order passed on dtd. 10.07.90

9/19-6

At the request of the counsel for the respondents the matter stands adjourned by two weeks. The interim ~~order~~ order granted earlier be continued.

(Now the case be posted on 31.07.90 For Order.

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KL *dan*
સાધ્યક કાર્યક અધિકારી (W)
7. મ. સાધ્યક પટેલ
ASSTT. PERSONNEL OFFICER (W)
W. M. S. BHAVNAGAR PARA.

Annex. A3.

(80)
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

150
Refinement

O.A. No. 122 OF 1991.
AixAxxBxx

DATE OF DECISION 1-12-1992

Shri Chhaganlal Jiwanbhai Yadav, Petitioner

Mr. B.B. Gogia,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Mr. R.M. Vin,

Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

TRUE-COPY

R. M. Vin
અધ્યક્ષ કાર્યાલય (કા)
W. R. ભાવનગર પદ્ધ.
ASST. SECY. GENERAL OFFICER, (W)
W. R. R. ભાવનગર પાંચ.

Shri Chhaganlal Jiwabhai Yadav,
Hindu, Adult, Ocfu: Retd.Rly.Employee,
Age about 59 years,
Address: Rly.Qr.No.L/326-A, Type I
Railway Colony,
Bhavnagar Para.

Applicant.

(Advocate:Mr. B.B.Gogia)

Versus.

1. Union of India,
Owning & Representing
Western Railway, through
General Manager,
Western Railway,
Churchgate, Bombay.

2. Works Manager,
Railway Workshop,
Bhavnagar Para.

.... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A. 122 OF 1991

Date: 1-12-1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. B.B.Gogia, learned advocate for the
applicant and Mr. R.M. Vin, learned advocate for the
respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by a
Chargeman, who was working in the Western Railway
Workshop at Bhavnagar Para, under Respondent No. 2
and was retired from service on 31st December, 1990,
seeking the relief that the respondents be directed
and ordered to release forthwith the DCRG amount
withheld from him along with interest at the rate of

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lani 18% per annum from the date of withholding of the

प्राप्त कार्यकारी (का)

प्राप्त कार्यकारी (का)

प्राप्त कार्यकारी (का)

प्राप्त कार्यकारी (का)

102
amount till the date of payment to the applicant.

The applicant has further prayed that the respondents be directed to release the post-retirement complimentary passes of the applicant withheld by the respondents on account of non-vacation of quarters and respondents be asked to give passes regularly as and when requested for.

3. The respondent No.2 has filed reply contending that the applicant has not vacated the railway quarter on or before his retirement date, but he applied for retention of the said quarter for four months by his application dated 12th September, 1989 and the said permission was granted by the Chief Works Manager, Western Railway with the intention that the ex-employee would vacate the said Railway quarter on or before 30th April, 1990 and give possession of the same to the Railway Administration, but the applicant kept the said quarter in his unauthorised possession from 1st May, 1990 onwards. The main contention of the respondents in the reply is that unless and until the ex employee vacates the railway quarters, his DCRG could not be released and paid to him. It is contended by the respondents that the railway passes also can not be given to the applicant so long as he is in unauthorised possession of the railway quarters.

4. Both the points regarding the release of DCRG of the retired railway employee and

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W. H. BHAVNAGAR PARA

12/20

regarding post-retirement passes have been considered by the Full Bench of the Tribunal in the decision in Wazir Chand v/s. Union of India & Ors., reported in Full Bench judgment of Central Administrative Tribunal (1989-1991) at page 287. The Full Bench has held that the right to gratuity can be correctly stated to be a right to property within the meaning of Article 300-A of the Constitution and the right to hold, acquire and dispose of property was a fundamental right guaranteed to every citizen by Article 19(1)(f) of the Constitution. It is held that the aforesaid fundamental right has since been

omitted by the Constitutional amendment Act 1978. It is held that even though the right to property has been brought down to the level of an ordinary legal right which can be taken away only by authority of law, even so such law has to pass the touch-stone of Article 14. It was further held by the Full Bench that the payment of gratuity can not be postponed till vacation of Railway quarters by the retired employee because the gratuity is payable immediately on retirement and the payment should be made promptly and the payment should not be withheld for non-vacation of railway quarter. So far the delayed payment is concerned, it is held that the payment beyond three months entail interest at the rate of 10% per annum. Therefore, in this view of the matter

law
the respondents were not legally justified in

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withholding the gratuity amount till the vacation of railway quarter by the applicant. The applicant would thus be entitled to his DCRG amount with interest at the rate of 10% per annum from the date of three months after his date of retirement.

5. So far the question of post retirement passes are concerned, it has been held by the Full Bench that the requirement of issuing a show cause notice prior to withholding the post-retirement passes is a sine qua non to the taking of action envisaged by clause (iii) of para 1 of 1982 circular. The Full Bench held that the 1982 circular infracts Article 14 of the Constitution, therefore, action to withhold post-retirement passes on the basis of this Circular was held unsustainable. It is not necessary to us to go into the question about the circular being violative of Article 14 of the Constitution, but as per the above decision of the Full Bench, the post-retirement passes could not be withheld on the ground of alleged unauthorised occupation of the railway quarter by the applicant unless and until the showcause notice has been issued to the applicant and then till he held to be in has been unauthorised occupation of railway quarter.

Therefore, the action of the respondents of withholding the post-retirement passes on account of non-vacation of quarters can not be held as legal and the applicant would be entitled to the post-retirement

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प. ए भाष्यकार नाय
9/101, BESOONI CIRCLE, (W)
MUMBAI 400001, INDIA

passes according to rules. The respondents would be at liberty to give show-cause notice to the applicant about his alleged unauthorised occupation of the railway quarters and take necessary action, but till then the respondents would not be justified in withholding the post-retirement passes which the applicant would be entitled to as per the rules.

O R D E R

(i) The respondents are directed to pay the DCRG amount to the applicant as per rules within four months from the date of the receipt of the order of this Tribunal with interest at the rate of 10% per annum commencing from the date, three months after the date of retirement of the applicant, till the payment is made.

(ii) The respondents are also directed not to withhold the post-retirement passes to the applicant and they are directed to issue the passes according to the rules. However, this would not come in the way of the respondents in issuing showcause notice to the applicant for taking action for his unauthorised occupation of the railway quarter according to law.

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ASSISTANT SECRETARY OF STATE
W. H. DODD, DODD, DODD.



Application is accordingly disposed of

with no orders as to cost.

Sd/-.
(R.C. Bhatt)
Member (J)

Sd/-.
(N.V. Krishnan)
Vice Chairman

Prepared by : H / 15/1/72
Compared by :

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CMW/An/

Section Officer (J)

Central Administrative Tribunal
Ahmedabad Bench

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सहायक कार्यालय अधिकारी (मा)
प. ए. भावनगर परा.
ASSIST. PERSONNEL OFFICER (W)
W. B. BHAVNAGAR P. O.

Annex A4.

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A copy of GM/E/CCG's letter No.E(s)789/6 vol.XIV of 23.2.88 to all concerned

Sub:- Pension policy.

Ref:- This office D.O. letter of even No.dtd.15/16.10.87.

A copy of Rly.Bd's letter No.F(E)III-87/PN1/2 of 19.8.87, is sent herewith for inf. guidance and n/action.

Hindi version of Board's letter will follow.

Encl.: As above.

Sd/-
for GM/E.

Copy of Rly. Bd&s letter No. F(E) III-87 PN 1/2 of 19.8.87 addressed to the GMS, All Indian Rlys. and others.

Sub :- Prompt payment of pension and Gratuity to the superannuating Railway employees.

Attention is invited to this Ministry's letter of even No.dtd.6.3.87 requiring strict compliance of the instructions that the amount of pension and Gratuity due to the retiring Rly.employee should be assessed well in time so as to ensure that pension payment order and the order for payment of Gratuity are issued on or before the date of retirement of the Rly.employee. It has further been stressed that if delay in issuing the final pension payment order is unavoidable, the benefit of provisional pension and provisional gratuity should atleast as prescribed in the rules, be given.

2. It is now reiterated that prompt payment of settlement dues to the retiring employees should be accorded highest priority and strict compliance the aforesaid instructions should be ensured in all cases excepting the involving disciplinary proceedings attracting provisions of rules 2308/2308 R-II.

3. Board desire that effective steps be taken for ensuring timely payment of pensionary benefits. Necessary directives in this regard may be issued to all concerned to strictly follow the following guidelines :-

1) Payment of pension and Gratuity be authorised to the superannuating staff on the day following the date of retirement as per prescribed procedure in all cases which are free from disciplinary proceeding and where dues staff can be assessed and recovered.

ii) Where the recovery of the Railway dues can not be assed for reason of non-vacation of Railway quarters and unadjusted commercial debits or other Railway dues, the following procedures will apply :-

a) Pension/provisional pension, as the case may be shall be paid in each case .

b) Regarding Gratuity, sufficient amount to cover the anticipated recoveries may be withheld and the balance paid to the employee regarding non-vacation of quarters, an appropriate " hold-back " amount from the Contribution to PF was authorised vide Board's letter No.E(G)81 (51) dtd. 24.4.82. It is clarified that if local conditions so warrant, the entire amount of DCRG/SC to PF may be withheld till the quarters are vacated.

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The dues withheld as above, should be released soon after the quarters are vacated and/or the outstanding railway dues are assessed and in any case not later than one month of such vacation/assessment.

iii) Where-unavoidable delay is envisaged in determining the final pension and Gratuity of the retiring railway employee, expeditious steps to sanction upto 100% of pension and upto 100% of Gratuity as provisional in accordance with the rules, should be taken.

iv) Payment of interest on delayed payment of DCRG arising out of administrative lapses is an avoidable loss to the Railway revenues. If the prescribed procedure is strictly followed, there should be no occasion for delay in arranging such payments. Each case involving payment of interest therefore should be viewed seriously and the reasons analysed so that such lapses do not occur.

v) A quarterly review of all pending cases should be made and the General Managers who are competent to authorise payment of interest on delayed payment of DCRG should be apprised. The heads of departments and the Accounts Officers should take special care to ensure that the prescribed procedure is strictly followed. Accountability in this regard will rest with the head of office concerned.

4. As the Railways are aware, delay in payment of pension and Gratuity is viewed seriously by the Government and repeated instructions are being received from the department of pension and pensioners' Welfare to ensure prompt payment thereof. Railways should evolve a suitable system to monitor the progress of pending cases so that no retiring employees should have any case of complaint against the Railways for delay in payment of his pensionary due.

5. Receipt of this letter may please be acknowledged.

* as provisional pension.

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R. K. Deo

राजपक्ष आधिकारी (व)

प. ए. दास्तावंशी
ASST. PROSECUTING OFFICER, (W)
W. B. M. U. LALNAGAR PABA.

Manual of Railway Pension Rules,

1950.

(Rule No. 323)

F. Recovery of Government dues from pensionary benefits

323. (i) A claim against the Railway servant may be on account of one or the other of the following :—

- (a) losses (including short collection in freight charges shortage in stores) caused to the Government 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 admitted and obvious dues such as house rent, Post Office Life Insurance premia, outstanding advance, etc. ;
- (c) non-Government dues.

(ii) Recovery from recurring pensions as also commuted value thereof, which are governed by the Pensions Act, 1871, can be made only in terms of Para 315 : accordingly, a recovery of only item (a) may be made from these provided the conditions laid down in Para 315 are fulfilled. A recovery on account of item (a) which cannot be made in terms of Para 315, and any recovery on account of items (b) and (c), cannot be made from these even with the consent of the Railway servant. The amount due on account of item (a) which cannot be recovered from these and/or on account of item (b), can, however, be recovered from ordinary/terminal/death/death-cum-retirement gratuity which are not subject to the Pensions Act, 1871. It is permissible to make recovery of Government dues from the ordinary/terminal/death/death-cum-retirement gratuity due 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 should not be delayed pending recovery of any outstanding Government dues. If at the time of sanction any dues remain unassessed and unrealized, the following courses should be adopted :—

(a) In respect of the dues as mentioned in item (a) of sub-para (i) above.—A suitable cash deposit may be taken from the Railway servant or only such portion of the death-cum-retirement gratuity as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted.

(b) In respect of the dues as mentioned in item (b) of sub-para (i) above.—(1) The retiring Railway servant may be asked to furnish a surety of 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., and the issue of last pay certificate should not be withheld.

The surety should be required to sign a bond in Form No. 22.

(2) If the retiring Railway servant is unable or unwilling to furnish a surety, then action should be taken as in (a) of this sub-para above.

(3) The authority sanctioning pension in each case shall be competent to accept the surety bond in Form No. 22 on behalf of the President.

(c) In respect of the dues as mentioned in item (c) of sub-para (i) above.—Quasi Government and non-Government dues, such as amounts payable by a Railway servant to Consumer Co-operative Societies/Consumer Credit Societies or the dues payable to an autonomous organization by a Railway servant while on deputation may be recovered from the death-cum-retirement gratuity which has become payable to the retiring Railway servant provided he gives his consent for doing so in writing to the administration.

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R. C. Rao

सहायक कार्यालय अधिकारी (का)

प. ए. एस. एस. एस.

ASSISTANT SECRETARY TO THE PRESIDENT, (W)
W. M. BHAVANAGAR RAILWAY

(iv) In all cases referred to in (a) and (b) of sub-para (i) it is desirable that the amounts which the retiring Railway servants are asked to deposit or those which are withheld from the gratuity payable to them are not disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods. To that end the following principles should be observed by all the concerned authorities :—

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus 25 per cent thereof. In cases where it is not possible to estimate the approximate amount recoverable from the retired Railway servant, the deposit to be taken or the portion of gratuity to be withheld should be limited to 10 per cent of the amount of death-cum-retirement gratuity or Rs. 1,000, whichever is less.

(b) Efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant concerned. In any case, it should be presumed that there is no claim against a Railway servant if none is made after his retirement within the period indicated below—

15 months, if commercial debits are involved ; and

6 months, if commercial debits are not involved.

In respect of dues on account of rent etc., of Government accommodation, the period of 15 months/6 months shall reckon from the date of retirement of the employee or the date of vacation of the Government accommodation, whichever is later. After the lapse of this period the cash deposit or surety or gratuity withheld for Government dues will be released. However, the dues themselves will not lapse and will be recoverable through legal procedure.

Note.—The time limit of 15 months and 6 months referred to above shall not apply to cases where finalization of outstanding dues is delayed by employee's own action i. e. litigation launched against the Government etc.

(c) In order to ensure that difficulties do not arise in observing the procedure indicated in sub-clause (b) above, action should be taken in the following directions :—

(1) every Railway servant should be informed of the outstanding Government dues (except Commercial debits) once a year within three months of the close of the financial year ;

(2) it should be brought to the notice of all Railway servants that it would be in their own interest to vacate the Government accommodation immediately after their retirement as any delay in vacating the same, may result in delays in settlement of their pensions.

In the case of employees in occupation of C. P. W. D. accommodation, the application for the issue of 'No Demand Certificate' from the Directorate of Estates should be sent to the Directorate one year before the date of retirement of the employee concerned.

(3) steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned with intimating and progressing of demands. 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 should be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(v) Para 313 cannot be utilized to recover any amount on account of items (a), (b) and (c) of clause (i) from any pensionary benefits of a Railway servant. The failure or refusal of a Railway servant to make good any pecuniary loss suffered by the Government/Government dues/non-Government dues cannot also be deemed to be misconduct within the meaning of Rule 319.

(vi) As soon as proceedings of the nature referred to in Rule 315 are instituted, the authority which institutes the proceedings should without delay intimate the fact to the Accounts Officer.

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K. V. Law

सहायक कार्यालय अधिकारी (व)

प. रे. कार्यालय अधिकारी

ASSTT. PERSONNEL OFFICER (W)

W. NO. BHAVSAGAR KAMAL

W... Railway

No. WM/E.58/9 vol. II.

WM's office, BVR.
Dt/- 3 /12/1992.

To,
AAO (W) EVP.

Sub:- Draft para - Non-recovery of damaged from retired railway employee for unauthorised occupation of quarter.

Ref:- Your letter No.W&S/BVP/PF/Sett/Audit/92/1 of 30.10.92.

As desired vide your above cited letter, the following information are sent herewith.

1. Shri Chhagan Jiva, Chargeman 'B' of BVP workshop.
2. 31.12.89 AN on superannuation.
3. Railway quarter No.326/A type I assessed rent Rs.32x4 = Rs.128/-
4. Period of retention of Rly. quarter from 1.1.90 to 30.4.90 granted by CWM AII vide his letter No.EW/58/18 vol.II of 9.1.90 on payment of normal rent.
5. No recovery has been made since date of retirement i.e. Dec.89.

The amount of recovery has been worked out to be recovered which is as under :-

i) The recovery towards rent to be recovered from DCRG.

Rs.810/- difference of rent from 1.7.87 to 31.12.89
i.e. 30 months $30 \times 27 =$ Rs.810/- as per
DRM (W) BVP 's No.M.488/42 of 23.3.90.

ii) Rs.128/- rent @ normal rate of Rs.32/- from 1.1.90 to 30.4.90 i.e. 4 months.

iii) Rs.617.70 x 32 = Rs.19766.40 damage charges from 1.5.90 to 31.10.92 i.e. 30 months for unauthorised occupation of Rly. quarter Plinth area 41.18 Sq.m. x 15 = 617.70 per month

Total Rs. 20704.40 upto 31.12.92.

6. No action as the matter is with judicial authority at with
CAT ADI and its final out come is awaited.

This is for your information and further necessary action.

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sd/-
WM/EVP

सहायक कार्मिक अधिकारी (आ)

प. दे. भावनगर परा.

ASSTT. PERSONNEL OFFICER, (W)

W. R. V. BHAVNAGAR PAKA.