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OA No.367 of 2007

A.Sanyasi Raju .... Applicant  
Versus  
Union of India & Others .... Respondents

Order dated: 19th February, 2010  
C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Fact of the matter is that while the Applicant was in service he was allotted with a Railway Quarters at Khurda Road. He retired voluntarily from Railway service on 15.07.1993. After his voluntary retirement, his son was provided with an appointment on compassionate ground as A.C. Mechanic Gr.III at Puri. The son of the Applicant sought posting at Khurda Road where his parents were staying. Accordingly, son of the applicant was transferred to Khurda Road on 25.4.1996 and on his request in terms of 'father and son' Rule, he was allotted the quarters which was in occupation of his father on 01.04.1998. In spite of the above, according to the Applicant, his gratuity amount to Rs.48,593.00 and annual complementary pass have been withheld by the Respondents in violation of the Rules and various judge made laws in this respect. Hence, by filing this Original Application, Applicant seeks direction to the Respondents to sanction and reimburse the DCRG amount of the applicant with 18% interest and to release the withheld annual complementary passes forthwith. Applicant also sought direction to the Respondents to award heavy cost for the mental agony he had under gone during these years for nonpayment of the gratuity amount and annual complementary passes to which he was entitled to under Rule and Law.

2. Respondents' filed their counter supporting their stand of non-release of the gratuity amount and annual complementary passes. According to the Respondents in terms of Rule 7 & 8 of Rule 16 of RSPR, 1993 (Annexure-R/1), the DCRG amount could not be released along with other settlement

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dues due to non-vacation of Railway accommodation bearing No.A/08-N at Loco Colony, Khurda Road. However, it has been admitted by the Respondents that the quarters in question was allowed in favour of the son of the Applicant on 01.04.1998. It has further been contended by the Respondents that after the voluntary retirement of the applicant he intended to retain the quarters for four months from 14.07.1993 to 1.11.1993 on payment of License Fees and another 4 months from 14.11.1993 to 13.3.1994 on payment of Special License Fees on medical ground. Thereafter, he unauthorizedly retained the said quarters for the period from 14.3.1994 to 01.04.1998 without any permission from the competent authority. For the retention of the quarters by the applicant from 14.3.1994 to 01.04.1998 as per the rules, he is liable to pay the damage rent for the aforesaid period. Though permissible period of retention of the quarters in terms of rule a retired employee can retain the quarters for four months on normal license fee and for next two months on special license fees. Accordingly, License fees for four months, Special License Fees for four months and damage rent from 14.3.1994 to 01.04.1998 came to be Rs.38,816.00, Electricity charges was Rs.3243.00 and excess payment Rs.5237.00 all total Rs.47,296.00. By placing copy of the rules, respondents denied the plea of the applicant that no recovery is permissible from the gratuity amount of a retired railway servant. Similarly, by placing copy of the rule under Annexure-R/5 it has been stated by the Respondents that withholding of annual post retirement complimentary passes for unauthorized occupation of railway quarters after retirement to the applicant was in no way irregular or illegal; as rule clearly authorized the authority to disallow one set of post retirement complimentary passes for every one month of unauthorized occupation of railway quarter after

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retirement. Accordingly, Respondents have prayed for dismissal of this OA being devoid of any merit.

3. Heard Learned Counsel for both sides and perused the materials placed on record. It is the contention of the Learned Counsel for the Applicant that son of the applicant was provided with appointment on compassionate ground owing to the voluntary retirement of the applicant on medical invalidation on 7.12.1994. The son of the applicant having been transferred and posted to Puri on 25.4.1994, he sought allotment of the quarters which was in occupation of his father and finally the said quarters was allotted in his favour on 1.4.1998. By drawing my notice to the copy of the Railway Board letter No.F(E)III/97/PN1/14 (Amendment) dated 24.5.2000 it was contended by the Learned Counsel for the Applicant that Rule 16(8) relied on by the Respondents has been amended meanwhile by providing therein that recovery of damages or rent from the ex railway employee shall be subject to adjudication by the concerned EO appointed but the Respondents withheld the DCRG of the applicant illegally without following the aforesaid provisions. Further by drawing my notice to the copy of the Railway Board's letter No. E (W)99PS 5-1/41 dated 03.11.1999 it was submitted by Learned Counsel for the Applicant that withholding of annual complimentary passes without following/complying with the principles of natural justice as envisaged in the aforesaid letter of the Railway Board was fully unjustified. In support of the above stand that the entire action for withholding DCRG or complimentary passes of the Respondents was wholly unjustified being contrary to Rules/instructions, he has also placed into service the decisions rendered by Hon'ble Supreme Court, Hon'ble High Court and other Benches of the Tribunal in the following cases:

1. **Union of India & Others v Madan Mohan Prasad, 2003 (1) ATJ 246 (SC);**

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"Non-vacation of railway quarters after retirement cannot be a ground to withhold DCRG and the leave encashment. Further penal rent/damages does not fall under the term 'admitted' or 'obvious' dues within the meaning of Rule 323. Tribunal rightly allowed the claim of respondent for payment of DCRG and leave encashment with interest. However, the amount towards normal rent, electricity and water charges which are admitted and obvious dues can be deducted by the authorities, if still due."

2. **N.C.Sharma v UOI and others, 2004 (1) ATJ 481-Bombay High Court;**

"(A) Railway Services (Pension) Rules, 1993 -Rule 15-Residential Accommodation-Penal Rent-Terminal Benefits-DCRG-Recovery of penal rent on account of non-vacation of Govt. accommodation after permissible period of retention or after the retirement of the employee concerned-Whether recovery of penal rent can be made from DCRG or terminal benefits-No-Direction given to refund the amount so deducted along with interest @ 9% per annum.

(B) Penal rent-Residential accommodation-recovery of penal rent for unauthorized occupation of Govt. accommodation-Amount of penal rent can be recovered by institution of proceedings under section 7 of PP (Eviction of unauthorized occupant) Act if the premises partake the character of public premises and in case of doubt about the occupancy and the character of premises, civil suit is the other remedy."

3. **Rattan Lal v Union of India and others, 1992 (2) ATJ 231-PB, New Delhi;**

"(a) The respondents are directed to pay the amount of DCRG due to the applicant after deducting from it the normal license fee of the occupied allotted quarter to the applicant along with electricity and water charges upto the date of vacation with a right to recover damages under law under Public Premises (Eviction of unauthorized Occupants) Act, 1971. This amount shall be paid with interest @ 10% at the very moment when the applicant vacates the allotted house and delivers the possession to the respondents."

4. **R.Kapur v Director of Inspection (Printing & Publication) I.Tax and Anr, 1994 (2) ATJ 679 (SC);**

"Gratuity withheld on account of non-receipt of 'no demand certificate' from the Directorate of Estates-Tribunal found that the DCRG cannot be withheld because of the pendency of the claim for damages for unauthorized occupation-Supreme Court held that right to gratuity is not dependent upon the appellant vacating the official accommodation-Direction given to pay the gratuity with interest @ 18% per annum-However, respondents are free to proceed for recovery of damages under rule 48-A.

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5. **Gorakhpur University & Ors v Dr.Shitla Prasad Nagendra & Ors, 2001 (2) SCLJ 247 (SC):**

"Penal rent cannot be recovered from the pension and provident fund amount."

6. **Union of India and others v Shiv Charan, 1992 Vol. 19 ATC 129(SC):**

"The payment of gratuity cannot be linked with the unauthorized possession of the allotted premises by a retiree. The employee has a right to get the DCRG while administration can recover damages for unauthorized occupation of the allotted quarter after retirement. However, in a case where gratuity is being paid, only normal license fee can be deducted from the same along with electric and water charges with the right to the administration to proceed under PP (EUO) Act, 1971 for eviction as well as for recovery and realization of rent/damages as per extant rules."

4. I have gone through the decisions relied on by Learned Counsel for the Applicant. But I see that factual aspects involved in those cases are totally different to this case. As such it is held that the decisions relied by Learned Counsel for the Applicant has no bearing to the present case. Admittedly, applicant remained in unauthorized occupation in the quarters w.e.f. 14.3.1994 to 01.04.1998. Therefore, the Respondents calculated the damage rent for the unauthorized period and deducted the same from the DCRG amount of the Applicant in terms of the rules prevailing then. By relying on the Railway Boards instructions No.F (E) III/97/PN1/14 (Amendment) dated 24.5.2000; the Applicant's counsel contends that recovery of damages or rent from the ex railway employee shall be subject to adjudication by the concerned Estate Officer. The said provision having not been followed, the recovery of damage rent from DCRG is bad in law. I do not agree to the proposition advanced by Learned Counsel for the Applicant as it is settled law that Rules prevailing at the time of incident should be the guiding factor (vide **Y.V.Rangaiah and others -V- J.Sreenivasa Rao and others** - AIR 1983 SC 852, **P.Mahendran and others -V- State of Karnataka and others** - AIR 1990 SC 405, by the High Court of Orissa in

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OJC No. 811/1990 dated 26-04-1991-Gayadhar Sahoo -V- State of Orissa and others) and that amendment carried out in the rules shall have no retrospective application unless it is specifically provided in the amendment that the same has retrospective application. As such, I do not find any illegality in the decision making process of the matter of assessing the damage rent for the unauthorized occupation of the quarters and deduction of the amount from the DCRG. But I see some force in the contention of the Learned Counsel for the Applicant that passes of the applicant have been withheld without affording him reasonable opportunity. Hence, the Respondents are hereby directed to release the withheld complimentary passes of the applicant forthwith.

5. In the result, this OA stands allowed in part to the extent indicated above. No costs.

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)