

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, ODHPUR

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Date of order :27.2.2001.

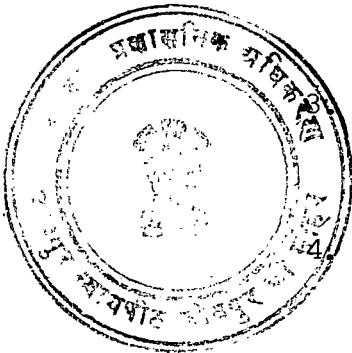
O.A.NO.92/1997

Bhim Sen S/o Shri Mewa Ram, aged about 62 years R/o C/o Sh. Budhi Prakash, Madhava Vilash, Hathi Ram Ka Odda, odhpur, last employed on the post of Chief Clerk in the office of Divisional Railway Manager, Jaipur, Western Railway.

.....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.



The Senior Divisional Personnel Officer, Western Railway, Jaipur Division, Jaipur.

Sr. Divisional Accounts Officer, Western Railway, Jaipur Division, Jaipur.

.....Respondents.

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CORAM :

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN
HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER

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Mr. J.K. Kaushik, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

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PER HON'BLE MR. JUSTICE B.S. RAIKOTE :

This application is filed for the following reliefs:-

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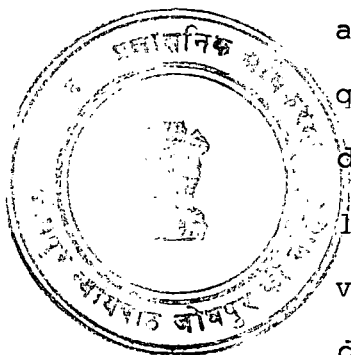
"(i) That the Respondents may be directed to release the amount of withheld gratuity and also refund the amount which was deducted from his salary on account of alleged damage rent and the same may be directed to be refunded alongwith interest at market rate.

(ii) That any other order/direction/reliefs may be passed in favour of applicant which may be deemed fit and proper under the facts and circumstances of this case.

(iii) That the cost of this application may be awarded."

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It is a case of the applicant that no doubt applicant was transferred from Bharatpur to Mathura in the month of March 1982, but he was permitted to stay in the quarter allotted to him till he vacated on 29.2.1992 and accordingly, he is not required to pay any damage rent, as claimed by the respondents. The applicant further contended that it was illegal on the part of the respondents to with-hold the gratuity and the gratuity amount so with-held, shall be directed to be refunded to the applicant. The applicant contended that since he was permitted to stay in the quarter right from the date of his transfer in the year 1982 to the date of his vacating the quarter on 29.2.1992, he would not be liable to pay any penal rent or damages. He stated that the very fact that the authorities have collected the normal rent during that period would give a presumption or inference that applicant's stay in the said quarter was with permission. The learned counsel for the applicant submitted that when the applicant was permitted to stay in the quarter between March 1982 to 29.02.1992, he is not required to pay any damage rent as assessed by the authorities. Therefore, the authorities have illegally with-held the gratuity payable to him towards the alleged damage rent and, therefore, there should be a direction to refund the same. On the other hand, the learned counsel for the



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respondents contended that admittedly, the applicant was transferred from Bharatpur to Mathura in the month of March, 1982 and it was his duty to vacate the quarter immediately. He cannot retain the quarter at Bharatpur when he was actually serving at Mathura. However, the department has shown him some leniency and the penal rent was not levied on him for a period of eight months and the penal rent/damage rent has been levied only from the month of November 1982 till the date he vacated the quarter on 29.2.92. The learned counsel appearing for the respondents further contended that the penal rent, whatever that has been assessed, is in accordance with law. He further submitted that the allegation of the applicant that there was a oral permission to the applicant to stay in the quarter, is incorrect. The applicant has not produced any order of the department to show that he has been permitted to stay in the quarter in question at any point of time. In this view of the matter, there are no merits in this application. When the applicant did not pay the damage rent, the same has been rightly with-held and adjusted out of the gratuity amount payable to him.

3. Both, from the pleadings as well as the contention of both sides, we find that this is a second round of litigation. Earlier also, the applicant ^{had} challenged the with-holding of Gratuity and recovering the damage rent, before this Tribunal in O.A.No.294/93. This Tribunal, vide its Judgement and Order dated 6.9.94, disposed of the said O.A. with a direction to the respondents that they should give a regular notice to the applicant mentioning all such facts, to show cause as to why his arrears of rent should not be recovered from his gratuity and on receipt of such a notice the applicant should reply the same within a period of

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one month, mentioning as to how he is not in an unauthorised occupation of the Government quarter. This Tribunal further made it clear that the amount of gratuity could be refunded to the applicant provided the applicant executed a bank guarantee. This Tribunal also directed that the respondents shall make a proper assessment of the penal rent and then only pass an appropriate order in respect of the due arrears of rent from the applicant. It is not in dispute that after the disposal of the said O.A., a notice was given to the applicant and applicant replied the same. Thereafter, the department passed an order dated 23.10.96, stating therein, that out of the amount of Rs. 24,448/- of DCRG which has been with-held, an amount of Rs. 24,114/- is liable to be deducted and the balance amount of Rs. 334/- could be refunded to the applicant. Alongwith this letter of 23.10.96 addressed to the applicant, the respondents also enclosed a statement regarding assessment of the damage rent made. The learned counsel for the respondents contended that this letter was served on the applicant by registered post, but the learned counsel for applicant submitted that the said letter dated 23.10.96 was not served on the applicant. From the reading of the reply, we do not find a clear statement of the respondents that the said letter of 23.10.96 was received by the applicant. However, basing on that assessment, the contention of the respondents is that whatever the damage rent has been collected from the applicant, that has been collected according to law and regarding the balance amount of Rs. 334/- the applicant can receive the same by furnishing the form G-15. They have stated that the applicant has not filled-in the said form for claiming the balance amount. The respondents have also stated that applicant executed a Bank Guarantee in pursuance of the directions of the Tribunal in OA NO. 294/94 but the same was returned because



the Bank Guarantee was not legally valid. Again another Bank Guarantee was executed but this Bank Guarantee was also returned on account of the discrepancies found therein. Meanwhile, a assessment was made and an amount of Rs.24,114/- was deducted from the gratuity of the applicant and the department did not insist for any fresh bank guarantee. In substance, the respondents contended that the penal/damage rent collected from the applicant, has been in accordance with law and the amount of Rs. 24,114/- has been deducted out of applicant's gratuity of Rs.24,448/- and Rs.334/- is lying with the department and the applicant may receive the same after furnishing Form G-15.

4. From the stand taken both by the applicant as well as the respondents, we have to see whether applicant's stay in the quarter for the months of March 1982 to November 1982, is unauthorised and accordingly, the applicant was liable to pay damage rent. Admittedly, the applicant was transferred from Bharatpur to Mathura in the month of March 1982. He was allotted a quarter at Bharatpur. It is not in dispute that according to the rules the quarter has got to be vacated immediately after the transfer order is passed. However, the department did not charge any penal rent from the applicant between March 1982 to November 1982. Thereafter, they have collected penal rent till the applicant vacated the quarter on 29.2.1992. The defence of the applicant is that he was orally permitted by the department to stay in the quarter between March 1982 to November 1982 but he has not produced any order. In these circumstances, it is difficult to give a finding in his favour that in fact he was permitted to live in the quarter between March 1982 to 29.02.1992.. The moment the

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applicant was transferred in the month of March 1982, he should have vacated the quarter and his further stay in the quarter would be un-authorised. Therefore, the applicant was liable to pay damage rent. The department has already given him concession in not recovering the damage rent from March 1982 to November 1982 for nearly eight months. At any rate, the applicant was bound to pay damage rent from November 1982 to 29.2.92 on which date he vacated the quarter and the department has rightly assessed the damage rent at Rs.24,114/-. We do not find any justification to defer with this finding. Consequently, it follows that if this amount is deducted from applicant's gratuity amount i.e. 24,448/-, we do not find that any illegality is committed on the part of the department. A sum of Rs. 334/- is still lying with the department and the applicant may collect the same by submitting the prescribed form G-15 for claiming the said amount. For the above reasons, we do not find any merit in this application. Accordingly, the application is dismissed but in the circumstances, without costs.




(A.P.NAGRATH)
Adm.Member


(B.S.RAIKOTE)
Vice Chairman

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Part II and IM destroyed
in my presence on 2-2-3-07
under the supervision of
section officer (1) as per
order dated 1/9/21/8-7

Section officer (Record)

RLC
on 13/3
2/12

Recd Copy
15/3/2001