

01
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.999 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Parimal Chandra Saha, S/o late J.C. Saha, Retd. as Office Supdt. Gr.II, Blacksmith Shop No.5, S.E. Rly., W/s, Kharagpur, now residing at 559A, Bejoypur, Road No.1, PO, Sodepur, Dist. 24-Parganas(North) Pin-743 178

... Applicant

VS

1. Union of India, service through General Manager, S.E. Railway, Garden Reach, Calcutta-43;

2. General Manager, S.E. Rly., Garden Reach, Calcutta-43

3. Chief Project Manager (W/M), S.E. Rly Kharagpur

4. Workshop Personnel Officer, S.E. Rly. Kharagpur

... Respondents

For the Applicant : Mr. B.C. Sinha, counsel

For the Respondents: Mr. S. Chowdhury, counsel

Heard on 18.6.1999

: : Date of order: 18.6.1999

O R D E R

The short question before me is whether the respondents were justified to withheld the DCRG money payable to the applicant on voluntary retirement from service with effect from 18.10.94. According to the applicant, on family grounds he exercised option to retire from service voluntarily and that voluntary retirement has been accepted by the authority with effect from 18.10.94. Thereafter all retirement benefits have been paid to him, but his DCRG money to the tune of Rs.36,270/as certified by the Officer for payment has not been paid to him on the ground that he had not vacated the Government quarter after expiry of four months of retention of the quarter, as extended by the authority. According to the applicant, by a letter dated 17.10.95 he intimated the General Manager (Pension Adalat), S.E. Railway, Garden Reach stating interalia that due to some family

troubles he opted for voluntary retirement. The applicant by a letter dated 25.2.95 (Annexure/A1 to the application) intimated the Dy. CME (D/W), Loco shop, S.E. Rly. Workshop, Kharagpur that after retirement he had to go to his native place at Sodepur along with his family and since the treatment will continue for a long period he has shifted his family along with all his belongings from the above quarter at Kharagpur to his native place at Sodepur and the said quarter is lying vacant and under lock and key and he requested the Dy. CME D/W at Loco Shop S.E. Railway for an early payment of all settlement dues including DCRG. ^{Though} ~~Since~~ he intimated the respondents regarding vacant position of the quarter, the respondents did not take any action and they withheld the DCRG money by writing a letter dated 9.7.97 (Annexure/A10 to the application) that DCRG money cannot be arranged unless he vacated the said quarter. Subsequently, by another letter dated 15.7.1997 (also Annexure/A10 to the application), the Workshop Personnel Officer, Kharagpur requested the applicant to submit clearance certificate from the concerned I.O.W. in support of the fact that he had already vacated the Railway accommodation, as he had mentioned in his application dated 18.3.1997 addressed to the Addl.G.M./GRC. That letter dated 15.7.1997 has been written on the basis of the representation made by the applicant to the Addl.G.M. vide his representation dated 18.3.97, Annexure/A11 to the application. Since the respondents did not release the DCRG money even after his voluntary retirement with effect from 18.10.1994 till date the applicant filed this application for a direction upon the respondents to release the DCRG money with interest.

2. The respondents have resisted the claim of the applicant by filing a written reply. It is stated by the respondents that the applicant did not vacate the quarter even after expiry of the permissible limit and even after extension of the retention period granted by the authority which has expired on 17.2.1995.

It is alleged by the respondents that the applicant inducted unauthorised persons in the same quarter and he did not hand over the said quarter till date. Thereby the respondents could not release the DCRG money payable to the applicant on his voluntary retirement.

3. Mr. Sinha, learned advocate appearing on behalf of the applicant submits that the respondents was not justified to withheld the DCRG money on the basis of some false allegation brought against the applicant for subletting the quarter allotted to him to some unauthorised persons. He had strongly relied on the letter dated 25.2.95, Annexure/A1 to the application written by him to the Dy.CME (D/W), Kharagpur intimating that he had already vacated the quarter keeping the said quarter under lock and key and it is also stated by Mr. Sinha that the applicant intimated the authorities the reason for which he was unable to proceed to Kharagpur for handing over the possession of the quarter. So, under the compelling circumstances, the respondents did not take any action for taking possession of the quarter from the applicant despite ^{he} ~~making~~ request to the authority. However, he submits that a portion of DCRG money can be withheld by the respondents for unauthorised possession of the quarter.

4. Mr.S. Chowdhury, learned advocate appearing on behalf of the respondents submits that the applicant did not vacate the quarter which is apparent from the representation made by him for handing over the physical possession of the quarter to the authority. It is admitted by the applicant that the key of the lock of the said quarter remains with him. So, it cannot be said that the applicant had vacated the quarter physically in accordance with the rules. Since he did not hand over the quarter physically to the competent authority, thereby he ^{retained} ~~remained~~ in possession of the quarter unauthorisedly even after expiry of the extended period and an eviction proceeding ^{was} started in the year 1995 vide eviction case No.E/65/95/L-III which would

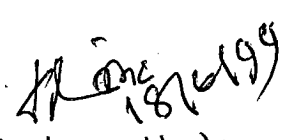
be evident from the letter marked Annexure/R2 to the reply and Mr. Chowdhury further submits that the applicant, inducted *some* persons in the said quarter unauthorisedly without vacating the quarter and handing over the key of the quarter to the authorities. Thereby the respondents have started eviction proceeding against the applicant. So, the DCRG money was rightly withheld by the respondents for non-vacation of the quarter since the applicant would be liable to pay damage rent for unauthorised occupation of the quarter beyond permissible limit.

5. In view of the divergent arguments advanced by the learned advocates of both the parties it is ~~the~~ admitted fact that the applicant's voluntary retirement has been accepted by the authority on sickness of the family members with effect from 18.10.94. It is also ~~the~~ admitted fact that the applicant did not hand over the key of lock put to the said quarter by him before leaving the said quarter after voluntary retirement. It is admitted by the respondents that the applicant was allowed to stay in the said quarter upto the period of 17.2.1995. The applicant could not explain as to why he did not surrender the vacant *possession* ~~quarter~~ before leaving Kharagpur. So, it is the obligation on the part of the applicant to surrender the vacant quarter to the competent authority from whom he took possession after getting allotment ~~from the competent authority~~. However, it is found that an eviction proceeding has been started against the applicant for unauthorised occupation of the quarter. It is also found that the applicant was not found physically in possession of the said quarter on 18.6.97 as Annexure/R2 to the reply. *A lone person was in possession of the said quarter* However, law will take its own course for the purpose of eviction and realisation of damage or penal rent if the applicant is found to be on unauthorised occupation of the quarter, *So* ~~and~~ the respondents are at liberty to take action for the realisation of the damage or penal rent whatever it may be, in accordance with the rules. But it is to be considered by me whether the

respondents are justified to withhold the DCRG money in this case for non-vacation of the quarter after expiry of the permissible limit. Rule 16 of the Railway Services (Pension) Rules, 1993 deals with the adjustment and recovery of dues pertaining to Government or Railway accommodation. Rule 16, Sub-rule (5) of the said rules says "if in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information." As per Sub-rule (6) of Rule 16 "the recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement of allottee shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made." On a perusal of the said rules it is found that the respondents can realise any licence fee for retention of the quarter beyond four months after retirement from the dearness relief of the applicant. But the DCRG money is not dearness relief under the pension rules and the respondents can withhold only 10 per cent of the gratuity or Rs.1000/- whichever is less, from the gratuity money for unauthorised occupation of the quarter and if any amount remains unpaid towards licence fee and not the entire amount of gratuity. Here the applicant raised the grievance that the respondents withheld the DCRG money after his retirement, which is payable to him under the pension rules on the date of retirement. I am not going to opine anything regarding the

dispute of handing over or taking over the possession of the quarter from the applicant after retirement, as alleged by the authorities. It will be decided by the competent authority in accordance with the rules. But I am of the view that the respondents cannot withhold the entire DCRG money as it is done in this case,—in view of Rule 16(5) of the RS(Pension) Rules, 1993 and thereby, I am of the view that withholding of the entire DCRG money for unauthorised occupation of the Railway quarter after retirement is not wholly justified. Thereby the applicant is entitled to get interest at the rate of Rs.10% per annum on the DCRG on the expiry of two months from the date of voluntary retirement on 18.10.94 till the date of actual payment ^{but} and the respondents would be at liberty to deduct 10% of the gratuity or Rs.1000/- whichever is less from the said DCRG money for further adjustment. It may be mentioned here if any amount is found to be realised either by way of penal rent or damage rent that can be realised by the Estate Officer after taking recourse to the law as applicable to the applicant.

6. With the above observation I allow the application and direct the respondents to release the DCRG money within two months from the date of communication of this order. Accordingly the application is disposed of awarding no cost.


(D. Purkayastha)

MEMBER (J)