

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.267 of 1997
M.A. No.251 of 1997

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

Sri Panchanan Dutta, S/o Late Surendranath
Dutta, Ex-Diesel Mechanic Gr.I, Beliaghata
Diesel Loco Under Divisional Mechanical
(Diesel), Eastern Railway Sealdah Division
residing at 188G, Narkeldanga, Railway
Quarter, Calcutta-11

... Applicant

VS

1. Union of India service through the
General Manager, Eastern Railway, 17,
N.S. Road, Fairlie Place, Calcutta

2. Divisional Railway Manager, Eastern
Railway, Sealdah Division, Sealdah,
Calcutta

3. Divisional Mechanical Enggineer, Diesel
Shed, Beliaghata, Eastern Railway, Sealdah
Division, Sealdah, Calcutta

... Respondents

For the Applicant : Mr.P. C. Das, counsel

For the Respondents : Mr. P. K. Arora, counsel

Heard on 21.7.1999

: : Date of order: 26.8.1999

O R D E R

The question is whether the respondents are justified to withhold the entire gratuity money of retired Railway servant for non-vacation of the Railway quarter after retirement. The case of the applicant, Shri Panchanan Dutta is that he retired from the Railway service on superannuation with effect from 30.9.1994 after rendering 40 years in the Department. After retirement all settlement and retirement benefits have been granted to the applicant including pension, but the respondents arbitrarily withheld the gratuity money payable to the applicant on retirement for non-vacating the official accommodation. According to the applicant, he could not vacate the official accommodation since he has not been able to build any house for not getting the above retirement benefit. He is getting only pension which is not sufficient for maintaining his family during these hard days. But the Railway

respondents withheld the above retirement benefits in violation of the principle of natural justice and order of the Hon'ble Apex Court passed in R. Kapoor vs Director of Inspection (Printing & Publication), Income Tax and another, reported in 1994(2) ATJ 679. Hence the applicant has filed this application before this Tribunal for directing the respondents to pay the DCRG money with interest at the rate of 18% per annum.

2. The respondents filed the written statement denying the claim of the applicant. It is stated by the respondents that the application is not maintainable since the applicant did not vacate the quarter after retirement from service in accordance with the prescribed rules applicable to him and the applicant did not pray to the competent authority for retention of the Railway quarter for certain period as per rules and thereby the quarter is under possession of the applicant and therefore, he was declared unauthorised occupant of the Railway accommodation punder the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Railway authority took necessary steps to evict the same in accordance with the law.

3. The applicant has also filed another MA for setting aside the order of eviction contained in the letter dated 21.2.1997 annexed with the MA, by which the applicant was asked to show cause on or before 15.3.1997 as to why should not be evicted from the said premises. Mr. Das, learned advocate appearing on behalf of the applicant submits that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement and the respondents have no authority to withheld the entire DCRG money payable to the applicant on his retirement from superannuation from service. In the instant case the applicant could not vacate the quarter since the respondents withheld the DCRG arbitrarily in violation of the principle of natural justice and he relied on the decision in the case of State of Kerala & Ors. vs. M. Padmanabhavan Nair, reported in AIR 1985 SC 356 and he also relied on the judgment of R. Kapur referred to above and submits that the entire action of the respondents are arbitrary and thereby the respondents be directed to pay the gratuity money with interest at the rate of Rs.18% per annum.

4. Mr. Arora, learned advocate appearing on behalf of the respondents submits that the applicant is on unauthorised occupation of the

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quarter since he did not vacate the quarter after permissible limit of retention of the quarter under the rules and the applicant was asked to vacate the quarter repeatedly by the respondents and ultimately the respondents issued a notice on 21.2.1997 asking him to showcause why he should not be evicted from the quarter and the respondents were justified to withhold the DCRG money for nonvacation of the quarter.

5. In view of the divergent arguments advanced by both the parties it remains undisputed fact in this case that the applicant retired from service on superannuation with effect from 30.9.94 and he did not vacate the quarter after retirement and he is still in occupation of the quarter. In view of the aforesaid admitted position whether it will be justified on the part of the respondents to withhold the entire DCRG money which is payable to the applicant on retirement on superannuation. In the case of M. Padmanabhan Nair (Supra) the Hon'ble Supreme Court held as below:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and properties in their hands and culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till the actual payment."

So, admittedly the question of withholding the DCRG money comes for consideration by the Department when the applicant did not vacate the quarter after retirement from service. It is found that the employee has no right to retain the quarter after expiry of the permissible limit prescribed under the rule and no showcause notice was required to be issued on the Government servant for unauthorised occupation of the quarter after expiry of the permissible limit. In the instant case the applicant did not apply for retention of the quarter after retirement. Thereby after expiry of the permissible limit he shall be deemed to be on unauthorised occupation of the quarter and the respondents can take action for realising the penal or damage rent in accordance with the law. But at the same time it is found that the respondents have withheld the entire DCRG money for retention of the quarter unauthorisedly. Since the question of withholding the DCRG money comes for retention of the quarter after retirement of the applicant, thereby the entire action of the respondents to withhold the DCRG for indefinite period cannot be said to be justified on the ground that the applicant did not vacate the

quarter. In this connection I would like to refer to the case of Union of India and others vs. Sushil Bhattacharjee, [SLP(C) Nos.7707 & 7708 of 1994] wherein the Hon'ble Supreme Court held as below :

"....the appeal is disposed of with the direction that the respondent is liable to pay the normal licence fee for the occupation of the quarter till November 30, 1993 and that the appellants can recover penal rent/damages as per the relevant rules for the unauthorised occupation of the said Railway quarter from December 1, 1993. The appellants can also take steps to obtain possession of the quarter from the respondents in accordance with law. The appellants can adjust the amount of normal licence as well as penal rent/damages found payable by the respondent for his occupation of the Railway quarter against the amount of Gratuity payable to him. In case any amount is found payable to the respondent by way of Gratuity after such adjustment of the amount of licence fee and penal rent/damages the said amount shall be paid by the appellants to the respondent within one month of such determination and adjustment failing which the appellants shall be liable to pay interest on the balance amount at the rate of 12 per cent as directed by the Tribunal. In case the amount of licence fees and penal rent/damages found payable by the respondent is in excess of the Gratuity payable to the respondent, it will be open to the appellants to take steps to recover the excess amount in accordance with the law."

Since the respondents did not decide the quantum of penal or damage rent for unauthorised occupation of the quarter, thereby it would be appropriate on my part to direct the respondents to release the DCRG money after deduction of the normal licence fee or rent for unauthorised occupation of the quarter and the respondents would be at liberty to raise the damage or penal rent payable by the applicant to the respondents in accordance with the law and outstanding, if any, may be recovered by the respondents from the applicant in accordance with the rules by approaching the competent Court of law within one month from the date of communication of this order failing which the respondents shall have to pay interest on the DCRG money payable to the applicant after adjustment of rent or normal licence fee as ordered. It be mentioned that after adjustment of the normal licence fee or rent balance amount of gratuity payable to the applicant should be paid within one month as *at the rate B5/PA.*

