

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.433/97

Tuesday, this the 22nd day of July, 1997.

C O R A M

HON'BLE SHRI AV HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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PS Velayudhan, Pulikkal House,
Erattupuzha, PO) Blangad,
District Trichur, Kerala.
Retired as Office Superintendent
(OS (P) 1) from the Office of the Senior
Divisional Electrical Engineer (Tractor
Rolling Stock) Central Railway,
Kalyan, Mumbai.

....Applicant

By Advocate Shri M Rajagopalan.

vs

1. The Senior Divisional Personnel Officer,
Central Railway (CST), Mumbai.
2. Union of India represented by the Secretary,
Ministry of Railways, Rail Bhavan,
New Delhi.

....Respondents

By Advocate Shri PA Mohammed.

The application having been heard on 11th July, 1997,
the Tribunal delivered the following on 22nd July, 97:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is a retired Office Superintendent, Central Railway, Mumbai, was occupying railway quarters type RB/II, Kalyan, on the date of his retirement on 30.6.92. His son was also employed as a Khalasi Helper at Kalyan. By A.1 order dated 16.10.92, applicant was informed that a fresh approval had been obtained by the Divisional Railway Manager (DRM) for allotment of a RB/I quarter instead of K type in the name of his son on out of turn father to son basis in lieu of the father's quarters.

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Applicant submits that inspite of Al, his son was not given a quarters and he and his son continued to stay in the quarters occupied by him at the time of his retirement. His death-cum-retirement gratuity (DCRG) was withheld by the Railways on the ground that he did not vacate the quarters. Thereupon, applicant filed OA 963/93 before the Bombay Bench of the Tribunal and the Tribunal directed on 20.12.93 that a quarters be made available to the applicant's son within four weeks. The Railways, however, did not hand over the quarters stating that it was under repair. Finally, applicant's son was allotted a quarters during 1995 and applicant and his son shifted on 30.3.95. Applicant's grievance is that his DCRG, packing and transfer grant and travelling allowance have not been paid to him. Applicant contends that his son was entitled in terms of the existing rules to get a quarters allotted to him and that delay in such allotment was due to the fault of the Railways and that applicant has shifted as soon as the quarters was given to him on 30.3.95. Therefore, applicant submits that withholding of DCRG and other dues is not in order and prays for a direction to the respondents to pay the DCRG, packing and transfer grant and travelling allowance due to the applicant with 18% interest from the date of his retirement.

2. Respondents submit that according to Railway Service Rules, they are entitled to withhold DCRG till the retired railway employee vacates the quarters occupied by him. They state that applicant retired on 30.6.92 and he was permitted to retain the quarters for a period of four months, which was extended for a further period of four months till 1.3.93. Applicant was bound to vacate the quarters on 1.3.93 and occupation of the quarters after that date was unauthorised for which they were entitled to charge damage rent in accordance with the rules. For recovery of the damage rent dues, respondents were also empowered to withhold the DCRG

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in accordance with the Railway Board's letter dated 31.12.90 (R.1). Respondents further state that the son of a retiring railway employee, who is in the railway service and sharing the quarters with his father with the permission of the competent authority for a period of six months or more and not drawing House Rent Allowance, is entitled to out of turn allotment of a quarters. Railway Board's letter dated 15.1.90 (R.II) provides that the same residence can be regularised in the name of the son if he was eligible for the same residence at that time or a higher type. In other cases, the eligible type or type below is to be allotted. Applicant's son was not entitled to type II quarter occupied by his father. He was sanctioned a K type quarter against which applicant made a representation dated 13.10.92 requesting for RB/I type of quarter on account of his large family. On this representation, a decision was taken with the approval of the Divisional Railway Manager for allotment of a type I quarter in the name of the applicant's son and applicant cannot rely on A.1 for justifying his occupation of a type II quarters beyond 1.3.93. The type K quarter is similar to type I quarter except for a small difference in the overall area of a flat. Applicant, in his representation dated 13.10.92 had himself admitted that after the period of occupation sanctioned by the competent authority he is liable to pay damage rent and, therefore, applicant was aware of his liability to pay market rent or damage rent in accordance with the rules. After the judgement of the Bombay Bench of the Tribunal, applicant's son was allotted a type I quarters on 8.2.94. But even after this, the applicant did not vacate the quarters and continued to occupy it. Applicant vacated his quarters only on 30.3.95 and since he deliberately continued to stay in a higher type quarters even after 8.2.94, he was liable to pay damage rent and his DCRG was withheld in full since the amount due from the applicant exceeds the DCRG payable to him. The total amount

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recoverable from the applicant comes to Rs.38,183.00 (R.III), including electricity charges (as corrected by MA 777/97) and the total amount of DCRG payable being only Rs.33,000.00, an amount of Rs.5,183.00 is recoverable from the applicant. Therefore, the applicant is not entitled to payment of any amount towards DCRG, submit respondents.

3. As regards travelling allowance and transfer grant, respondents state that as the applicant did not leave station after his retirement within one year from the date of superannuation, he is not entitled to grant of transfer grant and travelling allowance. The very fact that his son had been allotted an out of turn quarters to enable the applicant to reside with him in the same station shows that the applicant is not entitled to any travel or packing allowance. Respondents submit that in terms of the direction of the Tribunal in Liaquat Ali and Others vs Union of India and Others, 1995 (2) ATJ 161, the grant of out of turn quarters on father to son basis is a concession and not a vested right which can be enforced by a Tribunal and the employee cannot compel the authorities to grant him a quarters on out of turn basis at his convenience. Therefore, the applicant was bound to vacate the quarters on 1.3.93 on expiry of the authorised period and, therefore, he would have to pay damage rent according to the rules if he continued to occupy the quarter unauthorisedly thereafter.

4. We shall first consider whether the DCRG can be withheld on account of the applicant not vacating the quarters allotted to him on his retirement. R.I order clearly specifies that retirement or death gratuity or special contribution to provident fund should be withheld in full for non-vacation of railway quarters after superannuation. It also states that the gratuity should be released

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as soon as the quarters is vacated. In Union of India and Others vs Shiv Charan, (1992) 19 ATC 129, the Supreme Court in a case of overstaying by a government servant in government accommodation has held that the rent for overstaying can be deducted from the dues payable to the government servant on handing over of vacant possession. Rule 15 (2) of the Railway Services (Pension) Rules, 1993 provides that the Railway or Government dues which remain outstanding on the date of retirement shall be adjusted against the amount of DCRG becoming payable. Rule 15 (3) (a) says that the expression "Railway or Government dues" includes the dues pertaining to railway or government accommodation including arrears of licence fee, if any. Learned counsel for applicant submitted that in R Kapur vs Director of Inspection (Painting and Publication) Income Tax and Another, (1994) 6 SCC 589, the Supreme Court held that the DCRG should not be withheld merely because the employee had not vacated the allotted premises during the course of his employment. That was a case of non-vacation of quarters prior to the retirement and facts in that case are totally different and the decision in that case will not have any application in this case. We hold, therefore, that the instructions R.I are to be followed and the action of the respondents in having withheld the DCRG cannot be faulted.

5. We may now consider whether the respondents were justified in charging penal rent/damage rent for the period 1.3.93 to 30.3.95. It is not in dispute that the applicant was permitted to occupy Railway quarters with the permission of the competent authority only till 1.3.93. The stay of the applicant thereafter was unauthorised. Rules provide for the levy of damages for such unauthorised occupation. R.II produced by the respondents refers to regularisation of allotment of Railway quarters in the name of an eligible dependent of the Railway employee who retired from

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service. It states that the son of such an employee may be allotted Railway accommodation on out of turn basis subject to certain conditions. It is clearly stated in R.II that this ad hoc allotment is only a concession. It also states that licence fee/damages will have to be paid by the retired employee as per relevant rules/extant instructions, if there is any delay in allotment of alternate accommodation. A similar issue was considered in Amitabh Kumar and another vs Director of Estates and another, AIR 1997 SC 1308. In that case, the petitioner was unauthorisedly occupying accommodation. He was directed to pay penal rentals. It was held that an application made for an ad hoc allotment on the basis of the fact that his son was in service, would not make any difference and since the petitioner was in unauthorised occupation and as a consequence he was required to pay penal rentals under the rules. Another case (a Full Bench decision) in which R.II orders dated 15.1.90 were considered is Ram Poojan vs Union of India and another, (1996) 34 ATC 434 (FB). It was held that in the event of a Railway employee in occupation of a Railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on retirement is necessary and further retention of the accommodation by the Railway servant would be unauthorised and penal/damage rent can be levied. It was also held that retention of accommodation beyond the permissible period will be deemed to be unauthorised occupation and there would be automatic cancellation of allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular. It is, therefore, clear that the action of the respondents in levying the penal/damage rent for the period of unauthorised occupation after 1.3.93 is in order.

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6. Applicant has also prayed that interest at the rate of 18 per cent from the date of his retirement be paid to him on account of the delay in payment of DCRG. In Union of India vs Ujagar Lal, 1997 (1) SLJ 114, respondent was unauthorisedly in occupation of the quarters allotted to him and, therefore, he was not paid DCRG. The Supreme Court held that there is no entitlement to get interest for the delayed payment of DCRG as the delay in payment occurred due to the order passed on the basis of the circular of Railway Board and not on account of administrative lapse. We, therefore, hold that the applicant is not entitled to any interest for the delayed settlement of DCRG.

7. Learned counsel for applicant submitted that in terms of note 7 of R.II, a statement indicating the arrears due from the retired employee should have been furnished to the dependent and he should have been asked to furnish evidence regarding payment of licence fee/damages in case recovery had already been made or should have been asked to make payment of the amount due and it should be stipulated as a condition in the letter sanctioning ad hoc allotment and stated that this was not done. We consider that this would not make any material difference since the respondents have already withheld the entire DCRG payable to the applicant towards the arrears due. Besides, the arrears were not due from the retired Railway employee at the time of retirement, but arose subsequently due to unauthorised occupation of the quarters subsequent to his retirement and the quantum of damages could be known only when the applicant vacated the premises allotted to him and so cannot be estimated at the time when the ad hoc allotment was made. This contention of the applicant, therefore, does not merit consideration.

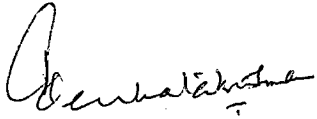
8. Since the applicant did not move out of his station after

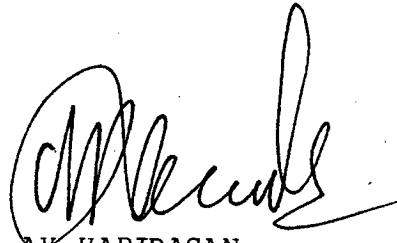
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retirement, no transfer grant or travelling allowance is payable to him.

9. In the result, the application is without merit and is dismissed. No costs.

Dated the 22nd July, 1997.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


AV HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

- Annexure A1: True copy of letter No.BB/P/606/Q/FXS dated 16-10-1992 issued by Divisional Personnel Officer, Central Railway, to Sr. D.E.E.(TRS) KYN.
- Annexure RI: Railway Board's letter No.E(G)90 Q.R 3-6 dated 31.12.1990.
- Annexure RII: Copy of extract of Railway Board's letter No:RBE No.7/90 dated 15.1.90.
- Annexure RIII: Copy of final settlement dues in favour of applicant issued by Accounts Department dated 16-5-1997.

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