

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.20/1993

DATE OF DECISION : 10.08.1993

K.Bhaskaran,  
Chirayil Veedu,  
Arunooti Mangalam,  
Mangad PO, Quilon.

.. Applicant

Mr.P.Sivan Pillai

.. Adv. for applicant

V/s

1. Union of India through  
The General Manager,  
SR, Madras-3.

2. The Divisional Personnel Officer,  
SR, Trivandrum-14.

.. Respondents

Mr.Thomas Mathew Nellimoottil

.. Adv. for respondents

CORAM : The Hon'ble Mr. N.Dharmadan, Judicial Member

JUDGEMENT

MR.N.DHARMADAN, JUDICIAL MEMBER

A Harijan employee who tendered voluntary retirement on 16.12.91 filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging Annexure-A3 <sup>prayer</sup> ~~with the~~ for a direction to the respondents to refund his DCRG fixed as Rs.36,759/- with 18% interest from 16.12.1991.

2. The facts are as follows: The applicant while working at Quilon was allotted a Railway quarters for his family accommodation. He was transferred to Nagercoil with effect from 3.4.1986. Notwithstanding the transfer, he continued occupation of the quarters at Quilon agreeing to pay three times the normal rent, which was also recovered from his salary. Later, he was again transferred from Nagercoil to Trivandrum in 1987. Even during the period of

his work at Trivandrum he continued occupation of the quarters at Quilon after paying penal rent. He was not allotted quarters either at Nagercoil or at Trivandrum. No HRA was also paid to him while working at those places. Hence, he bonafide believed that the Railway authorities have granted permission to occupy the quarters at Quilon by making penal rent as stated above. He tendered 'voluntary retirement' on account of his family difficulties with effect from 16.12.1991. Considering his request to continue the occupation of the quarters at Quilon, Annexure-A1 order was passed on 31.12.1992. It reads as follows:-

" Sri. K.Bhaskaran, Retired Shunter, ALF(R)/O/TVC is permitted to retain Railway Qrs. No.129-B at QLN for a period of 3 months from 17.12.1991 to 16.3.1992 on payment of normal rent.

He should vacate the Qrs. on 17.3.1992 certain.

This has the approval of the competent authority.

Sd/-

for Divisional Personnel Officer. "

Thereafter he vacated the quarters as could be seen from Annexure-A2, with effect from 15.3.1992. Annexure-A4 is the pension payment advice. It contains the following details:-

" DCRG	Rs.36759-	Deduction	Balance Rs.8117
Com	Rs.50294-		Rent/OP
	Rs.87053	Rs.20150 OP	Rs.3365/SRECCS/QLN
Less	Rs.36759-	Rs. 240 FA	to be recovered from
	Rs.50294	Rs. 50 Dret	the employee. "
		Rs. 1440 EE	
		Rs.14879 Rent	
		Rs.36759	

Immediately before Annexure-A4, applicant received a communication, Annexure-A3, from the DPO, Trivandrum, which is challenged in this application. It reads as follows:-

" Since Shri K.Bhaskaran, Retired Shunter, ALF(R)/O/TVC is on unauthorised occupation of Rly. Qrs. No.129-B at QLN, the memorandum under reference issued, granting him permission for retention of quarters for a period of 3 months from 17.12.91 to 16.3.92 on payment of normal rent is treated as cancelled.

This has the approval of the competent authority. "

According to the applicant, withholding of the DCRG is an illegal and arbitrary action. Since the applicant was permitted to continue occupation of the quarter No.129-B at Quilon from 1986 to the date of his voluntary retirement notwithstanding the transfers and deduction of penal rate of rent, his occupation of the quarters cannot be termed as an unauthorised occupation and he is not liable to pay any penal or higher rate of rent. Before issuing Annexure-A4, threatening recovery treating his occupation of the quarters at Quailon as unauthorised occupation, <sup>there was</sup> /no prior notice, or fixation of the liability in accordance with law. Hence the O.A. is to be allowed directing the respondents to disburse the DCRG in full.

3. The respondents filed a detailed reply statement in which they have stated that a sum of Rs.36,759/- due to the applicant as DCRG has been adjusted <sup>towards the amount</sup> /to be recovered from the applicant (being) his liability. According to them, a sum of Rs.11,482/- (Rent Rs.8117/- and Rs.3365/- towards other dues) is still outstanding from the applicant. The respondents have admitted the other facts stated by the applicant but taken the definite stand that the applicant was in unauthorised occupation of the quarters at Quilon ever since his transfer to Nagercoil on 3.4.86 till his voluntary retirement.

4. The learned counsel, Shri P.Sivan Pillai, appearing for the applicant relied on the Full Bench judgment of this Tribunal in Wazir Chand vs. Union of India & Ors., Full Bench Judgments of CAT, Vol. II, Page 287. He submitted that the DCRG of a retired employee cannot be withheld in an arbitrary manner as has been done in this case. I have gone through the Full Bench judgment. A question, more or less same, arose for consideration and the Full Bench considered the issue and held as follows:-

"14. Another reason which inclines us to favour the view that the entire gratuity cannot be withheld in the case of a retired railway servant who continues to retain the railway accommodation is that gratuity is payable immediately upon retirement in lieu of the services rendered by the retiring railway servants. The instructions issued by the Railway Board and also the judge-made-law require that the gratuity should be paid with due despatch and promptitude and within a specific period of three months....

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The point raised in your letter No.342 E/O-Policy/Pension dated 4.2.83 are clarified as under:-

- (i) With the deletion of Rule 2534-RII withholding of DCRG under this Rule in the pending cases is not permissible;
- (ii) Para 1(a) & (b) DCRG may be withheld or withdrawn under Rule 2308-RII. It is clarified that the term pension used in this Rule includes DCRG; "

The relevant portion of para 2308 referred to in the aforesaid decision reads as follows:-

"2308 (C.S.R.351-A) - The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. "

Para 2308 as considered in the Full Bench judgment indicates that the gratuity payable to a retired employee is to be promptly paid to such employee after retirement unless the liability, if any, of such employee towards the Department has been fairly and properly decided by the competent authority making it as a "pecuniary loss caused to the Government" so as to come within the ambit of the said paragraph.

5. It is an admitted fact that even after the transfer of the applicant from Quilon in the year 1986 he was permitted to occupy the quarters by the competent authority having control over the allotment of the quarters. The fact that he was also made liable to pay penal rent three times the normal rent also indicates that he can occupy the quarters notwithstanding the fact that the applicant was transferred from Quilon. The attitude of the Railway in


regard to the applicant's occupation of the quarters at Quilon has been made clear from Annexure-A1. It is an Office Memorandum issued by the Divisional Personnel Officer after accepting the voluntary retirement of the applicant with effect from 16.12.1991. By the said order he has been permitted to occupy the quarters with normal rent for three months. Before his voluntary retirement no action was taken against the applicant treating him as an employee unauthorisedly occupying the quarters at Quilon. Hence, the conclusion in Annexure-A3 that the applicant was in unauthorised occupation of the railway quarters cannot be accepted. Hence, Annexure-A3 cannot be sustained. Accordingly, I quash the same.

6. No satisfactory and convincing explanation has been given by the respondents regarding the <sup>breakup of figures indicating</sup> liability of the applicant as stated in para 7 of the reply. However, the learned counsel for the respondents contended that amounts are due from the applicant on various accounts but no records have been produced before me to sustain such contention or to establish the applicant's liability. However, since the Railway is claiming that large amounts are due from the applicant on various accounts, it would not be proper for me at this moment to grant the second prayer of the applicant without giving an opportunity to the Railway to establish their claim by resorting to legal or other provisions as provided under the law.

7. Hence, having regard to the facts and circumstances of the case, while setting aside Annexure-A3 and allowing the application in part, I direct the second respondent to take appropriate action against the applicant for fixing <sup>if any,</sup> his liability, <sup>if any,</sup> in accordance with law. This shall be done within a period of three months from the date of receipt of a copy of this judgment. All the proceedings should be

completed within a period of three months thereafter. If the respondents are not able to establish the liability of the applicant within the aforesaid period, it goes without saying that the DCRG shall be disbursed to the applicant with interest as provided under the law.

8. The application is disposed of as above. No costs.

  
( N.DHARMADAN )  
JUDICIAL MEMBER  
10.08.1993

v/-