

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.3/2005
This, the 19th day of September 2008

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Smt. Subhadra Sharma, aged about 55 years, widow of late Atma Ram Sharma, resident of 208, Lekhraj Residency, Phase-I, Block-B, Rajajipuram. Lucknow.

...Applicant.

By Advocate:- Shri R.C. Saxena.

Versus.

1. Union of India through Secretary to the Government of India, Ministry of Communication & Information Technology, Sanchar Bhawan, Ashoka Road, New Delhi.
2. Chief General Manager, Telecom, U.P. (East) Circle, Lucknow.
3. Chief Managing Director, Corporate Office, Barakhamba Road, New Delhi.

... Respondents.

By Advocate:- Shri Rajendra Singh.


ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed the OA with a prayer to issue direction to the respondents to pay withheld gratuity amount of Rs. 1,75,000/- together with interest from February 2001 till the date of actual payment after deducting four months normal license fee and the water and electric charges.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that they have withheld 50% amount of the gratuity due to the late officer, as the applicant fell due of rent from 22.3.2003 to 31.7.2003 for 5 months 10 days for unauthorized occupation of the quarter.

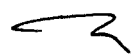
3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents for payment of rent as claimed by them and reiterated the pleas taken in the OA.



4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicants husband late Shri Atma Ram Sharma, while working as Class-I officer in the Circle office of Department of Telecommunication, Lucknow occupied the quarter bearing No. IV/5 Doorsanchar Colony, Rajajipuram, Lucknow. He died on 21.2.2001, leaving behind the applicant and one son and 5 daughters. The respondents have paid all terminal benefits of the deceased officer, except 50 % of gratuity of Rs 1,75,000/- which was withheld. On the request of the applicant, the respondent authorities have also conveyed the approval for retention of the quarter to the deceased family members on normal license fee under compassionate appointment for 2 years or till appointment of ward, whichever is earlier. Ann.-A-1 is the copy of such order Dt. 30.03.2001 issued by the Respondent No.2. After expiry of stipulated period of 2 years on 30.3.2003, the applicant did not vacated the quarter in anticipation of appointment of her son. Subsequently, she vacated the quarter on 01.08.2003 and made a representation to the authorities for release of gratuity amount of Rs. 1,75,000/- and Respondent No.3 also forwarded such representation of the applicant to 2nd respondent for permission to extend occupation of quarter with effect from 21st February, 2003 to 31st July, 2003 on normal rent on compassionate ground (Ann.-SCA-1). But the authorities passed a detailed order rejecting the claim of the applicant for grant of approval for retention of quarter for a period of 5 months 10 days w.e.f. 22nd February, 2003 to 31st July, 2003 and charged fee of 2 times of normal license fee + Departmental charges from 22.02.2003 to 21.4.2003 and 4 times the normal license fee + Departmental charges w.e.f. 22.04.2003 to 21.06.2003 and 6 times the normal license fee + Departmental charges w.e.f. 22.06.2003 to 31.07.2003 vide order Dt. 23.2.2005 (Ann.-SCA-2). It is an undisputed fact that the authorities have



paid Rs.1,20,134/- vide Cheque No. 029702 Dt. 5.1.2005 during the pendency of the OA. As per the claim of the applicant after adjustment of the rental due, the respondents are still due of Rs. 55,000/= with interest on the total amount of gratuity which was withheld illegally.

7. The applicants claim is mainly based on the following grounds:-

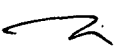
1). That the gratuity amount payable to the deceased officer shall not be withheld towards arrears of license fee, for occupation of the quarter by the deceased family members.

2). The applicant is liable to pay only license fee but not extra license fee as claimed by the respondents for the period of occupation after expiry of sanctioned period.

3). The applicant is entitled for interest on the withheld amount of gratuity.

8. Admittedly, on the representation of the applicant, respondent authorities have made approval for retention of the quarter occupied by the deceased family members on normal license fee under compassionate appointment for 2 years or till appointment of ward, whichever is earlier and Annexure -1 Dt. 30.03.2001. is the copy of the same. The husband of the applicant late Shri Atma Ram Sharma, died on 21.2.2001 and as such, the applicant was permitted to stay in the quarter for 2 years i.e. up to 20.03.2003. But she vacated the quarter on 01.08.2003, after expiry of sanctioned period of 2 years. After expiry of 2 years, the applicant did not make any representation for continuation of further period on normal rent. It is also not in dispute that even without ejection proceedings, the applicant herself vacated the quarter on 01.08.2003. Thus, the occupation of the quarter after expiry of sanctioned period, is nothing but unauthorized occupation from 22.2.2003 to 31.07.2003 for a period of 5 months and 10 days.

9. Subsequently, the applicant made a representation for recovery of rent on normal rent for such unauthorized period but the respondents did not

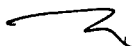


consider the same and passed orders covered under Ann-SCA-2 Dt. 23.2.2005 and granted approval for retention of quarter for a period of 5 months 10 days w.e.f. 22nd February, 2003 to 31st July, 2003 and charged normal License fee for 2 times of normal license fee + Departmental charges from 22.02.2003 to 21.4.2003 and 4 times the normal license fee + Departmental charges w.e.f. 22.04.2003 to 21.06.2003 and 6 times the normal license fee + Departmental charges w.e.f. 22.06.2003 to 31.07.2003 vide order Dt. 23.2.2005 (Ann.-SCA-2) informing charges of license fee.

10. Rule-8.21 of allotment of quarters and retention thereof, Master Circular No.49 in respect of allotment of quarter and retention thereof of railway employees reveals that retention of quarter after expiry of permitted period will be treated as unauthorized. Thus, the respondent authorities charged the damage rent for unauthorized occupation of the applicant for 5 months and 10 days as under Ann.-SCA-2 is in accordance with rules but not at all illegal. Further, there are no such provision for charging of normal rent only, even after expiry of sanctioned period and in such circumstances, it is not open to the applicant to say that the charges leveled against the applicant for unauthorized occupation of the quarter is neither illegal nor against any of the rules.

11. It is also the case of the applicant that the respondents authorities are not justified for withholding of gratuity payable to the deceased officer family on the ground of dues on account of unauthorized occupation of the quarter.

12. Rule-9 of Master Circular No.49 also gives such authority to the respondents for withheld of gratuity for non-vacation of railway quarter. The learned counsel for the applicant argued that the respondents have no authority to withhold the payment of gratuity payable to the applicant on the ground of retention of Govt. Quarter, un-authorizedly and in support of it, he relied on the following decision.



(1). [2006 (2) LBESR 210 (ALL)] 210 Prem Krishna Srivastava Vs. State of U.P. & Ors.

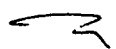
(2). (2006 (2) LBESR 819 (All)] Radhey Shyam Dixit Vs. State of U.P. through Secretary Ministry of Civil Supplies, Lucknow & Ors.

(3). [2006 (1) LBESR 789 (All)] Pyare Mohan Sinha Vs. Director of Education (Madhyamik) & Ors.

13. The above citations are in respect of withholding of gratuity payable to the retired State Govt. employee on the ground of pendency of disciplinary proceedings etc. But the present case is in respect of withholding the gratuity amount payable to the deceased employees for retention of Govt. quarter after expiry of allotted period and as such, facts of the both the cases are entirely different. Further, Master Circular No.49 in respect of Allotment of Quarter & Retention thereof on railway department clearly envisage such procedure for retention of the quarter after the death of the officers by his family members and in respect of the period after expiry of stipulated period and claiming of damage rent etc. and as such, the above citations are not applicable to the facts of this case.

14. The learned counsel for the applicant argued that the retention as indicated in the approval letter (Ann.-A-1), is different with that of extension of the occupation of the premises under allotment and by means of retention, a fresh contract was created to the applicant for retention of the quarter under compassionate ground and it has to do nothing to the previous allotment made to her deceased husband. But in support of such stand, no rules are available to show that a separate and fresh contract created to the applicant, without any attachment to the allotment made in favour of deceased employee. Thus, there are no merits in the arguments of the applicant.

15. Under the above circumstances, the claim of the applicant that the respondent authorities are not entitled for withholding the DCRG payable to the applicant on the ground of retention of the quarter even after expiry of sanctioned period and also questioning the validity of the damage rent



claimed for the unauthorized occupation of the quarter is not at all justified and thus, the applicant is not entitled for claiming interest on the ground of delayed payment of DCRG.

In the result, OA is dismissed. No costs.


(M. KANTHAIAH)
MEMBER (J)

19.09.08

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