

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 450 of 1996

Date of order 11.1.1996

Sri S.C. Sah Chandra s/o Late Phul Chand Sah, Retd.
Senior Accounts Officer (Com.), Eastern Railway, Malda at
present resident of Village Sikandarpur, PO Jamalpur, District
Munger.

Applicant

-VERSUS-

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Eastern Railway, 17, Netajee Subhash Road, Fairlie Place, Calcutta-1.
3. The Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Fairlie Place, Calcutta-1.
4. FA & CAO(C), Eastern Railway, New Koila Ghat Building, 14, Strand Road, Calcutta-1.
5. FA & CAO, Eastern Railway, Fairlie Place, Calcutta-1.
6. The Divisional Accounts Officer, Eastern Railway, Malda.

Respondents

CORAM: Hon'ble Shri L.R.K.Prasad, Member(A)

Counsel for the applicant .. Shri M.P.Dixit.

Counsel for the respondents .. Shri G.Bose.

O R D E R

Hon'ble Shri L.R.K.Prasad, Member(A):-

This application has been filed against non-payment of DCRG (Rs.65800/-), leave encashment (Rs.29419/-), dearness relief on pension (Rs.15906/-), regular salary bill (Rs.6500/-) etc. total amount being Rs.1,15,625/- which has been allegedly recovered by the respondents against peral

and damage rent of railway quarter in illegal and arbitrary manner.

2. The fact of the case is that the applicant retired on 30.11.1993 as a Senior Accounts Clerk, Eastern Railway, Malda. While working at Jamalpur, he had been allotted railway quarter where he continued to work till 27.1.1988, whereafter he was transferred to Malda as Accounts Officer. It is stated by the applicant that he sent representation to concerned Railway authorities for retention of his quarter at Jamalpur for his family. The applicant was permitted to retain the said quarter upto 26.9.1988 on rates mentioned in the order dated 17.5.1988 (Annexure-1). On 4.12.1989, the applicant represented for retention of his quarter at Jamalpur. Vide his representation dated 25.8.1992 (Annexure-4) addressed to Senior DGM, Eastern Railway, Calcutta, he requested the concerned authority to extend necessary permission for retention of his quarter at Jamalpur for the period from 27.8.1988 to 31.12.1992 on payment of penal rent, on the ground of sickness of his wife. His application was forwarded to the concerned authority for necessary action. The said quarter was allotted to one Shri J.L. Mukherjee vide order dated 31.12.1992 (Annexure-5). In pursuance of this order, the applicant vacated the said quarter on 1.1.1993. Vide letter dated 19.4.1993 (Annexure-7) the applicant was allowed to retain the said quarter for the period from 27.1.1988 to 26.1.1989 on payment of normal rent and for the period 27.1.1989 to 31.12.1992 on payment of penal rent and damage rent. It was also intimated that an amount of Rs.1,15,247/- became due to be recovered from the applicant for his unauthorised retention of the said Railway quarter. It was advised to recover the above amount in suitable instalments from the salary bills and the balance.

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if any, from his DCRG and leave salary after his retirement with effect from 30.11.1993. A calculation sheet in this regard was also attached with the letter dated 19.4.1993 (Annexure-7). Vide letter dated 2.7.1993 (Annexure-8) a revised calculation sheet was sent which indicated that the amount to be recoverable from the applicant was Rs.1,15,625/- only. Vide his letter dated 10.8.1993 (Annexure-10), the applicant sent a mercy appeal to Railway Board requesting them to permit him retention of the said Railway quarter at Jamalpur on payment of normal rent for the period from 27.1.1988 to 31.12.1992 on humanitarian ground as a special case. This mercy appeal petition was forwarded to Railway Board by Eastern Railway, Calcutta on 7.9.1993 (Annexure-11). The applicant sent a reminder in this regard to Railway Board in February, 1994 (Annexure-12). This was followed by subsequent representation to the Railway Board. Inspite of the fact that the matter was pending before the Railway Board, the recoveries on account of penal rent/damage rent were continued to be made. Vide his representation dated 20.10.1995 (Annexure-17) to FA and CAO, Eastern Railway, Calcutta, the applicant requested the concerned authority to refund the amount recovered in excess of normal rent during the period 27.1.1988 to 31.12.1992 from his regular salary bills, DCRG bill, leave encashment bill and pension relief. In the said representation he explained the background of the case. He also approached the Pension Adalat on 31.10.1995 but he did not get any favourable response from the concerned authority. According to the applicant, respondent no.4 passed an order on 28.12.1995 (Annexure-20) upholding his previous order for recovery of Rs.1,15,625/- from the salary and settlement bills without considering representations of the applicant as contained in

Annexures-16 series, 17 and previous representations. He also alleged that he did not get any reply from respondent no.1 with regard to his mercy petition addressed to the Railway Board. The applicant has also alleged that his representations have not been considered in right perspective. Instead of giving him the benefits available under law, the respondents have withheld illegally the amount of DCRG, leave encashment, salary bill and dearness relief on pension amounting to Rs.1,20977/-. While explaining the grounds for claiming relief, the applicant has sought following reliefs:-

- (a) To quash and set aside the orders as contained in Annexures-7,8, 9, 13, 20 and 21 dated 19.4.1993 2.7.1993, 7.8.1993, 11.7.1994, 28.12.1995 and 10.1.1996 respectively.
- (b) To direct the respondents to refund the entire amount of Rs.1,20,977/- which has been allegedly recovered from the salary bill, leave encashment bill, DCRG, dearness relief on pension,etc. of the applicant.
- (c) To direct the respondents to pay interest at the rate of 25 per cent per annum with effect from 30.11.1993.
- (d) To direct the respondents to pay litigation cost amount to Rs.10,000/-.

3. The respondents have filed written statement stating that this O.A. is not maintainable. The Railway Administration had allowed the applicant to retain the railway quarter No.5 (TY-IV), Gloucester Road, Jamalpur (said quarter) on normal rent from 27.1.1988 to 26.3.1988 in accordance with the Railway Board's circulars. From 27.3.1988 to 26.9.1988 was assessed as the double rent or 10% of the

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emoluments whichever is higher on the ground of education of the son of the applicant. Even though the respondents tried to get him allotted a quarter at his place of posting, the applicant was not justified in retaining the said quarter at Jamalpur after expiry of permissible period as per law. Normally a Railway employee is allowed to retain his quarter at normal rent upto two months after his transfer/superannuation and thereafter the retention becomes unauthorised in absence of any permission from the competent authority for retention of such quarter beyond the said period. After the expiry of permissible period the allotment stands automatically cancelled. As no permission was accorded, the retention of the said quarter after 26.1.1989 became unauthorised. Accordingly, penal/damage rent was imposed on the applicant for retention of the quarter from 27.1.1989 to 31.12.1992 in an unauthorised manner. The respondents have also stated that the order as contained at Annexure-7 had been passed correctly. It was claimed that Railway Administration had authority to recover penal/damage rent from a Railway employee for unauthorised occupation of Railway quarter which could be deducted from the gratuity. No notice,etc. is required to be served upon the Railway employees for deduction of penal/damage rent. With reference to para 4.12 of the application, it has been stated that even though the applicant was advised to send a representation to Railway Board, there is no provision for statutory appeal in such cases. The respondents have asserted that it is settled principle of law that such deductions can be made from DCRG and leave encashment.

4. Through rejoinder to written statement, the applicant has asserted that he never retained the said

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quarter in an unauthorised manner in view of the direction as contained in Annexures-2, 3 and 4(b) which normally show that matter regarding his accommodation problem was under consideration of the competent authority. It was pointed out that the impugned order (Annexure-7) was totally against the decision of the Hon'ble Supreme Court in case of Union of India vs. Sachida Nand Pandey. It is not fair for the Railway for an officer to retire and then leave damages and withhold pension and DCRG towards adjustment of dues. The applicant also stated that in the case of Union of India vs. Shiv Charan reported in 1992 ATC(19) page 129, the Hon'ble Supreme Court has laid down that the respondents should proceed against the delinquent employee under the P.P. Act, 1971 and from the amount of DCRG, deductions should not be made. The applicant has further stated that in view of certain judicial pronouncements as given in the rejoinder, no recovery should be made from DCRG, leave encashment, dearness relief on pension, etc. for adjustment of outstanding dues on account of penal/damage rent. As the concerned authority had advised the applicant to file an appeal before the Railway Board, they should have waited till the final outcome of the mercy petition sent by the applicant to the Railway Board. Instead of doing so, the concerned Railway authorities decided to recover the alleged damage/penal rent from the salary bill, DCRG, dearness relief on pension, leave encashment, etc. which was done in arbitrary and illegal manner. It was also pointed out that the respondent authorities have not charged the damage rent from one similarly situated employee Shri M.S. Khan but the applicant was deprived of the same relief in

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discriminatory manner. The said Shri Khan was allowed to retain the quarter beyond the permissible period but in the case of the applicant, no such permission was given even when his wife was suffering from heart disease.

5. I have heard the learned counsel for the parties and gone through the materials on record. The applicant was appointed initially on 17.4.1956 as Accounts Clerk Grade II. He retired from service on 30.11.1993 as a Senior Accounts Officer, Eastern Railway, Calcutta. While posted at Jamalpur he had been allotted a Railway quarter No.5 (Type IV) at Gloucester Road. The applicant was transferred to Malda Town as an Accounts Officer (C) with effect from 27.1.1988. Subsequently, he was transferred to Eastern Railway. Thereafter he sent an application to concerned authorities for retention of the said quarter at Jamalpur on the ground of mid-academic session of school. The applicant was permitted to retain the said quarter from 27.1.1988 to 26.9.1988. Thereafter he sent another application to Chief Accounts Officer on 18.7.1989 praying for his transfer from Calcutta to Jamalpur or allotment of a quarter in Calcutta. Vide letter dated 9.8.1989 (Annexure-2) the applicant was informed that his request for transfer to Jamalpur cannot be acceded to. However, regarding accommodation problem of the applicant at Calcutta, Secretary has been requested to allow a quarter at Howrah or Sealdah area as a special case. Thereafter the applicant sent a number of representations to concerned Railway authorities. Vide his representation dated 25.8.1992, the applicant requested for extension of retention period of his said quarter at Jamalpur on the ground of sickness of his wife. He also sent a medical certificate in this regard. However, this quarter was finally allotted to one Shri J.L. Mukherjee vide letter dated 31.12.1992 (Annexure-5). The applicant vacated the

quarter on 1.1.1993. Vide letter dated 19.4.1993 (Annexure-7) with a copy to the applicant, the concerned authority was informed that the applicant may be allowed to retain the said Railway quarter in question for the period from 27.1.1988 to 26.1.1989 on payment of normal rent and from 27.1.1989 to 31.12.1992 on payment of penal rent and damage rent. A calculation sheet was also attached showing an amount of Rs.1,15,247/- recoverable from the applicant for his unauthorised retention of Railway quarter from 27.1.1989 to 31.12.1992. The total figure was subsequently revised to Rs.1,15,625/- and the same was to be recovered in suitable instalments from the salary bills and the balance, if any, from the DCRG and leave salary of the applicant. The applicant has alleged that this order of recovery was passed in arbitrary and illegal manner and without proper consideration of his representations sent to concerned authorities from time to time. Moreover, such an order should not have been passed in view of the fact that the applicant had sent a mercy petition to Railway Board vide his representation dated 10.8.1993 (Annexure-10) which has not yet been disposed of. The applicant also asserted that no recovery on account of alleged damage/penal rent for alleged unauthorised occupation of the said Railway quarter at Jamalpur could be made from his pensionary benefits, such as, DCRG, leave encashment, dearness relief on pension, etc. If the concerned authorities had any grievance against the applicant, they should have taken action against him under the P.P. Act, 1971 before his retirement. On the other hand, the respondents have clarified that the applicant, even though had made several representations, was never given permission to retain the said Railway quarter at Jamalpur beyond 26.1.1989. Therefore, the Railway Administration had no alternative but to impose penal/damage rent as per law and Railway circulars for the period from 27.1.1989 to 31.12.1992. They have also clarified that the

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applicant during this period was occupying the said Railway quarter at Jamalpur in an unauthorised manner. As the decision to impose the damage rent was conveyed in April, 1993 and the recovery was to be made in suitable instalments, it would not have been possible to recover the entire damage/penal rent as assessed within a short period because the applicant was to retire from service in November, 1993. It was made clear in the order dated 19.4.1993 (Annexure-7) that the amount was to be recovered in suitable instalments from the salary of the applicant and the balance, if any, to be recovered from his DCRG and leave salary.

6. On behalf of the applicant, questions have been raised regarding occupation status (whether authorised or unauthorised) of the Railway quarter under his occupation at Jamalpur from 27.1.1989 to 31.12.1992, recovery of damage/penal rent without following P.P. Act, 1971 and recovery of damage/penal rent from DCRG, leave salary, dearness relief on pension. The applicant has also raised the question whether the decision of Full Bench in Ram Pujan's case is per incuriam or whether the decision of earlier Full Bench in Wazir Chand's case is binding precedent over the Ram Pujan's case.

7. The above questions have been examined and considered together in the light of materials on record and submissions made on behalf of both the parties.

8. The applicant was working at Jamalpur till 27.1.1988. Thereafter he was transferred to Malda and then to Eastern Railway. At Jamalpur he was in possession of a Railway quarter which had been allotted to him. Even though he made representations to the authorities concerned for retention of his Railway quarter at Jamalpur beyond 27.1.1988 on one ~~reason~~

or another, he was ~~permitted~~ by the concerned Railway authorities to retain the said Railway quarter at Jamalpur for a period of eight months from 27.1.1988 to 26.9.1988, on ~~payment~~ of rent at the rate prescribed in the letter dated 17.5.1988 (Annexure-1). By letter dated 19.4.1993 (Annexure-7) the applicant was allowed to retain the said quarter for the period from 27.1.1988 to 26.1.1989 on payment of normal rent. Even though the applicant made representation for allowing him to retain the said quarter beyond 27.1.1989, there is nothing on record to show that his prayer was allowed in this regard. Therefore, letter dated 19.4.1993 (Annexure-7) was issued imposing ~~penal~~ rent and damage rent from 27.1.1989 to 31.12.1992. The retention of an official quarter beyond permissible limit is not automatic. Therefore, if any person stays in an official quarter beyond permissible limit without the order of the competent authority, such retention cannot be termed as authorised. In such cases the competent authority can follow the prescribed procedure for imposition of rent as per rules/Government ~~circulars~~. In the instant case, the applicant was in unauthorised occupation of the Railway quarter in question at Jamalpur from 27.1.1989 to 31.12.1992.

However, it is observed from letter dated 7.9.1993 (Annexure-11) that the Eastern Railway had forwarded the representation (mercy appeal) dated 10.8.1993 of the applicant to the Railway Board regarding his request for grant of permission for retention of his Railway quarter at Jamalpur on the ground of his wife's illness. Through his representation dated 10.8.1993 the ~~had~~ applicant requested the Railway Board to permit him to retain the Railway quarter in question at Jamalpur on payment of normal rent for the period 27.1.1988 to 31.12.1992 on humanitarian ground as a

special case so that he was not charged penal/damage rent during the said period. It has been brought to my notice that his mercy petition has not yet been disposed of by the Railway Board, i.e., respondent no.1. It would be appropriate and fair that this pending representation of the applicant is disposed of by respondent no.1 in accordance with law and relevant circulars as soon as possible.

It has been stated on behalf of the applicant that damage rent/penal rent cannot be recovered by the respondents without resorting to the course of Section 7 of P.P. Act, 1971. In support of this argument, the learned counsel for the applicant has referred to certain judicial pronouncements such as case of Shiv Sagar Tiwary v. Union of India reported in AIR 1997 SC 2725 para 70, Union of India and others v. Shiv Charan reported in 1992 (19) ATC page 129 SC, CAT Full Bench (Volume 2), page 287, Wazir Chand v. Union of India & others (paras 18, 21 and 22).

In the case of Shiv Sagar Tiwary v. Union of India decided on 23.12.1996 by the Hon'ble Supreme Court related to over-stayal in a Government accommodation by Government servant and the rent for over-stayal to be deducted from dues payable to Government servant on his handing over the possession.

The observation of the Hon'ble Supreme Court in para 70 of its order dated 23.12.1996 in Shiv Sagar Tiwary's case regarding P.P. Act, 1971 is reproduced below:-

"The penalty which becomes payable by those who have either continued to occupy premises ~~beyond the~~ permitted period or have not vacated the premises despite cancellation of allotment, has to be as per the rules holding the ~~field~~ to which we have already referred. We may refer in this connection to S.7 of the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 also, which deals with payment of rent or damages in respect of public premises. Its sub-section (2) has provided that where any person is, or has at any time been in unauthorised occupation of any public premises, the Estate Officer may, having regard to such principle of assessment of damages as may be prescribed, assess the damages on account of the use of the occupation. Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 has mentioned about the factors to be taken into consideration in assessing the damage."

This case was basically related to large scale out of turn allotment of quarters to those who had not become entitled to get the said allotment in turn, etc. The P.P. Act, 1971 was not the basic issue which was discussed in this case. As the facts and circumstances of the instant case is different, the order of Hon'ble Supreme Court in Shiv Sagar Tewari's case is not very much relevant. It may also be stated that each case has to be considered on its own merit, keeping in view the facts and circumstances of the case and in accordance with prescribed rules and instructions applicable to such case. The matter has to be considered in that context. In Ram Poonjani's case (O.A. 936/93-decided on 22.2.1996 by Larger Bench at Central Administrative Tribunal, Allahabad) the matter relating to automatic cancellation of quarter allotment and charging of damage rent for the period of unauthorised occupation were considered in detail. In paras 38 and 39 of the order, the Larger Bench held as follows:-

"38. In the light of the discussion hereinabove, our answer to the two questions formulated for our consideration, in the reference order is as follows:

"(a) In respect of a railway employee in occupation of a railway accommodation, in our

considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/ permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied."

"(b) Our answer is that retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorised occupation and there would be an automatic cancellation of an allotment and penal rent/damages can be levied according to the rates prescribed from time to time in the Railway Board's circular."

39. We further hold that it would be open to the Railway authorities to recover penal/damage rent by deducting the same from salary of the Railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. We also hold that resort to proceedings under the said Act is only an alternative procedure which does not debar recovery as per the provisions of the Railway Board's circulars. List O.A. No. 936/93 for final hearing before a Division Bench on 8.3.1996."

9. The letter No. E(G)83-RN2-6 dated 17.12.1983 of Ministry of Railway (Railway Board) prescribes following provisions on the subject of retention of railway quarter by railway employees on occurrence of various events such as transfer, retirement, etc.

"i) A Railway servant on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent. On request by the employee on educational ground or ground of sickness the period of retention of railway accommodation may be extended for a further period of six months on payment of double the assessed rent or double the normal rent or 10% of the emoluments, whichever is highest.

(ii) If a Railway employee requests for retention of the Railway quarters at the former station on the ground of sickness of self or a member of the family, retention of the quarter at the former station of posting can be permitted for a total period of upto six months-first two months on payment of normal rent and the next four months or till recovery, whichever is earlier, on payment of double the assessed or double the normal or 10% of the emoluments, whichever is the highest. The Railway employee will be required to produce requisite medical certificate from the recognised Medical Attendant for this purpose.

(iii) In the event of transfer during the mid-school/college academic session, an employee may be permitted to retain the railway quarters at the former place of posting for a total period of upto 8 months-the first two months on payment of normal rent and the next 6 months or till the current academic session ends,whichever is earlier on payment of double the assessed rent or double the normal rent or 10% of the emoluments,whichever is the higher.

In para 17 of the said letter it was provied as follows:-

On expiry of the permissible period indicated in all the above cases, the allotment of quarters in the name of the employee at the old station will be automatically terminated. Retention of quarters by the employee after expiry of the permissible period will be treated as unauthorised. During the period of unauthorised occupation the employee should be required to pay market rent in respect of the railway quarters. Realisation of market rent should not be pending on the ground that employee has appealed, or the case of the employee has been referred to the Ministry of Railways for regularisation of the excess period of retention. If the appeal of the employee succeeds he will be allowed refund as due."

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The Railway Board's letter dated 15.1.1990 provides as follows in respect of permanent transfer:-

- "(i) A railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee rent on request by the employees on educational or sickness account the period of retention of railway accommodation may be extended for a further period of six months on payment of special licence fee, i.e. double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.
- (ii) Where the request made for retention of railway quarter is on grounds of sickness of self or a dependent member of the family of the railway employee, he will be required to produce the requisite Medical Certificate from the authorised Railway Medical Officer for the purpose.
- (iii) In the event of transfer during the mid school/college academic session, the permission to be granted by the Competent Authority for retention of railway accommodation in terms of item (i) above will be subject to his production of the necessary certificates from the concerned school/college authority.*

The Railway Board's letters have been issued pursuant to the provision of Rule 1711(b) of Indian Railway Establishment Manual.

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10. In view of the orders of the Full Bench in Ram Poojan's case that no specific order cancelling the allotment of accommodation on expiry of the permissible period of retention of the quarter on transfer/retirement or otherwise, is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied according to rates prescribed from time to time by the Railway Board, no notice is required to be given for recovery of damage/penal rent. I am of the opinion that the Full Bench judgment pronounced by three Members is ~~applicable in the present Bench.~~

11. The Wazir Chand's case (O.A.2573 of 1989, decided on 25.10.1990 by Central Administrative Tribunal-Principal Bench), reported in Full Bench Judgment of CAT Vol.II, page 287, the basic issues related to withholding of gratuity for non-vacation of railway quarter, application of Railway Establishment Code and circulars of Railway Board, issuance of post-retirement Railway pass and related matter. In the aforesaid case, the conclusion of the Full Bench is that withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible. ^{Bench} The further concluded that a direction to pay normal rent for railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order. The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per applicable law, rules, instructions, etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. While this case was decided in 1990, the Ram Poojan's case was decided in 1996 by Full Bench.

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It has been argued on behalf of the applicant that even in case of unauthorised occupation, no recovery of damage rent/penal rent could be made from DCRG, leave salary, Dearness Relief on pension and monthly salary. In support of this argument, the orders of some Benches of Central Administrative Tribunal (CAT) have been cited including the orders in Wazir Chand's (supra) case and orders passed by Single Benches. It may be stated that the orders of Full Bench of CAT are binding on Single Bench. In support of above argument, the learned counsel for the applicant has cited the case of Wazir Chand vs. Union of India and others decided in O.A.2573 of 1989 on 25.10.1990 by Full Bench of CAT (reported in Full Bench Judgments of CAT 1999-91 Vol.II page 287). In this particular case, the conclusions reached by the Full Bench are as follows so far as it relates to unauthorised occupation of railway quarter after retirement :-

- (a) Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible.
- (b) A direction to pay normal rent for the railway quarter retained by a retired railway servant in a case where DCRG has not been paid to him would not be legally in order.
- (c) The quantum of rent/licence fee including penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delayed payment of DCRG is to be

in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.

(d) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it.

12. My attention has also been drawn to the case (R.Kapur vs. Director of Inspector, Income Tax) reported in (1994) 27 ATC 516. In this case decided on 29.9.1994 the Hon'ble Supreme Court held as follows:-

"The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs.

13. In Ram Poojan's case (supra) decided in 1996, the Larger Bench has already held that in respect of ~~a railway~~ employee in occupation of a railway accommodation, no specific order cancelling the allotment of accommodation on expiry of the permissible/permited period of retention of the quarters on transfer, retirement or otherwise is necessary and further ~~retention~~ of the accommodation by the railway ~~servant~~ would be unauthorised and penal/damages rent can be levied. Therefore, retention of accommodation ~~beyond the~~

permissible period would be deemed to be unauthorised occupation in view of Railway Board's circular and there would be an automatic cancellation of allotment and penal rent/ damages can be levied according to the prescribed rates from time to time in the Railway Board's circular.

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Rule 16(1) of Railway Services (Pension) Rules, 1993, prescribes that:-

"The Directorate of Estates on receipt of intimation from the Head Of Office under sub-rule (1) or rule 98 regarding the issue of No Demand Certificate shall scrutinise its records and inform the Head of Office eight months before the date of retirement of the allottee, if any licence fee was recoverable from him in respect of the period prior to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement."

Rule 16(3) prescribes that :-

"Where the Directorate of Estates intimates the amount of licence fee recoverable in respect of the period mentioned in sub-rule(1), the Head of Office shall ensure that outstanding licence fee is recovered in instalments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorised."

Rule 85(2) provides that:-

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The amount of gratuity as determined by the Accounts Officer under clause (a) of sub-rule(1) shall be intimated to the Head of Office with the remarks that the amount of gratuity may be drawn for disbursement to the retired railway servant after adjusting the Government dues, if any, referred to in rule 15 which also includes dues pertaining

to railway or Government accommodation including arrears of licence fee, if any.

15. The item-wise break up of recovery made by the respondents against penal and damage rent of the railway quarter in question is given below (A/17, page 59) :-

D.C.R.G. - Rs.65,800/-

Leave encashment - Rs.29,419/-

Dearness relief on pension. - Rs1.5,906/-

Regular salary - Rs. 4,500/-

Total Rs.1,15,625/-

The above break is confirmed by letter at Annexure-20. Some indication about it is also given in calculation sheet at page 73. The applicant has already stated that his entire gratuity amount (Rs.65800/-) has been adjusted against panel/damage rent of quarter in question. Therefore, he has not been paid any amount out of gratuity dues.

In para 4.18 of the O.A., the applicant has stated that the respondents illegally deducted an amount of Rs.1,15,675/- from the DCRG, leave encashment and other reliefs. In his representation dated 6.7.1995 (Annexure-15), addressed to the Chief Personnel Officer, Eastern Railway, Calcutta, the applicant has stated that a deduction of Rs.1,15,625/- has been made from his salary bills, DCRG bill, leave encashment bill and D.R. on pension on account of damage rent for the period from 27.1.1989 to 31.12.1992. He has further stated that railway authorities are not entitled to deduct any amount in excess of normal rent although they are entitled to recover the excess rent whether penal or damage, etc., by resorting to legal procedure

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in the appropriate forum. In the aforesaid representation, his prayer was to regularise the period of his stay in the railway quarter in question at Jamalpur from 27.1.1989 to 31.12.1992 on payment of normal rent on the ground that his wife was unwell.

16. My attention has also been drawn to the case (Union of India vs. G.Ganayutham) reported in AIR 1997 SC 3387. This case had arisen on account of a show cause issued under rule 9 of CCS (Pension) Rules, 1972, proposing withdrawal of full pension and gratuity admissible to the respondent on the ground that Government suffered substantial loss of revenue due to the misconduct of the respondent. On receipt of explanation from the respondent and on the advice of U.P.S.C., a penalty of withholding 50% pension and 50% of gratuity was awarded to the respondent vide order dated 8.5.1984. Questioning the same, a writ petition was filed by the respondent in the High Court of Madras which was later on transferred to the Tribunal which held on 5.12.1986 that under rule 9 of the Rules, the competent authority could not withhold any part of the gratuity inasmuch as the said provision referred merely to withholding of pension and not gratuity. With regard to penalty of withholding 50% of the pension, it held that the punishment was too severe. It further held that it was a fit case where withholding of pension of 50% had to be restricted for a period of 10 years instead of on permanent basis. Aggrieved by the above decision of the Tribunal, the Union of India and Collector, Central Excise, preferred an appeal before the Hon'ble Supreme Court. In this case decided on 27.8.1997, the Hon'ble Supreme Court has held as follows:-

✓ "Therefore, the Tribunal was wrong in thinking that under rule 9, 50% gratuity could not be withheld. We accordingly set aside the finding of the Tribunal on this point."

On the question of quantum of punishment, the Hon'ble Supreme Court held as follows:-

"For the aforesaid reason, we set aside the order of the Tribunal which has interferred with the quantum of punishment and which has also substituted its own view on the punishment. The punishment awarded by the departmental authorities is restored."

(para 32).

This case is not related to recovery made on account of unauthorised occupation of Government accommodation but it arose from departmental enquiry regarding loss of revenue due to misconduct of the respondent. This case has no direct bearing on the present case even though the matter relating to withholding of part of gratuity amount was considered.

17. In Wazir Chand's case(supra), the Full Bench had held that entire amount of gratuity cannot be withheld for non-vacation of railway quarter by a retired railway employee. In the instant case, the period of unauthorised occupation relates to the period when the applicant was in service.

18. According to rule 3(19) of Railway Service Pension Manual, pension includes gratuity except when the term pension is used in contradistinction to gratuity but does not include dearness relief. According to rule 3(14) gratuity includes (1) service gratuity payable under sub-rule(1) of rule 69, (2) retirement gratuity or death gratuity payable under sub-rule(1) of rule 70; and (3) residuary gratuity payable under sub-rule(2) of rule 70. Rate of gratuity depends upon length of service earned along with service. Rule 16 of the said Pension Rule is also relevant.

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Rule 9 of the said Pension Rule prescribes that the President reserves to himself the right of withholding or withdrawing a pension or gratuity or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the way, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. It may be pointed out that the said provision is relating to departmental/judicial proceedings in which the pensioner has been found guilty of grave misconduct or negligence. Therefore, this rule will not apply in the instant case, because it did not arise from either departmental proceeding or judicial proceeding on charge of misconduct. In the Wazir Chand's case(supra) the Full Bench of the Central Administrative Tribunal has already held that withholding of entire amount of gratuity of a retired servant so long he does not vacate railway quarter is legally impermissible. In the instant case, the applicant vacated the official accommodation before his retirement. However, as he was occupying the official accommodation from 27.1.1989 to 31.12.1992 in an unauthorised manner and without permission from the competent authority, the necessary recoveries were made from his salary, leave encashment, etc. as mentioned at para 13 above. It also appears that the entire amount of DCRG(Rs.65800/-) of the applicant was adjusted against the damage/penal rent of the quarter in question which goes against the decision in Wazir Chand's case(supra). In R.Kapur's case(supra)

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the Hon'ble Supreme Court has already held that right to gratuity is not dependant upon the appellant vacating the official accommodation. It may be stated that in case of Shri R.Kapur, other central rules were applicable on the subject.

19. It may be stated that Railways have framed their own rules regarding unauthorised occupation of official accommodation and recovery of damage rent, etc.

20. From the analysis of the case, as stated above, it appears that in case of Railway employee in occupation of Railway accommodation, no specific order cancelling the allotment of accommodation on expiry of permissible/permitted period of retention of the quarter on transfer, retirement or otherwise is necessary and further retention of the accommodation by the Railway servant would be unauthorised and penal/damage rent can be levied as per prescribed rules/circulars of the Ministry of Railways/Railway Board. In the instant case, the respondents have made it clear that no permission was granted to the applicant for retaining the quarter at Jamalpur beyond 26.9.1989. In that view of the matter, concerned Railway authorities had levied damage/penal rent for the unauthorised period of occupation of Railway quarter in question by the applicant. Recoveries were accordingly made from the salary, leave encashment, DCRG, etc. of the applicant, as stated in para 15 above.

21. While going through the case, I ~~have~~ not come across ~~any provisions~~ to indicate that no recovery can be made from salary, leave encashment and D.R. on pension for adjusting Government dues on account of imposition of penal/damage rent for unauthorised period of

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occupation of a Govt. quarter. As the adjustment/recovery from the aforesaid source of income is not barred, such recovery is permissible. I find that no deduction has been made from pension account of the applicant. However, an amount of Rs.65800/- (which is the entire amount of gratuity of the applicant) was withheld and adjusted against the penal/damage rent imposed upon the applicant for unauthorised occupation of quarter in question. The applicant was not paid any amount out of his gratuity dues after his retirement.

22. In the light of the facts and circumstances and rulings of the Central Administrative Tribunal and the Hon'ble Supreme Court, as already explained earlier, on withholding of gratuity amount, I have reached conclusion that withholding of entire amount of gratuity of the applicant for the purpose of adjusting the outstanding dues arising from the imposition of penal/damage rent for unauthorised occupation of Railway quarter in question from 27.9.1989 to 31.12.1992 was not proper specially when it was not a case of Government suffering substantial loss of revenue due to misconduct of the applicant proved in a disciplinary/judicial proceeding and when there are ways provided for recovery of such outstanding dues on account of unauthorised occupation. In view of the aforesaid position the gratuity amount, as stated above, is required to be refunded to the applicant. The prayer of the applicant for awarding 25% per annum as interest with effect from 30.11.19 is not allowed because the recovery from gratuity amount of the applicant was made by the respondents under the cover of departmental rules/instructions and not due to any administrative lapse.



23. After careful consideration of the entire matter and in view of the facts and circumstances of the case explained above, this D.A. is disposed of with the following directions:-

- (i) The respondents are directed to refund the gratuity amount of Rs.65800/- to the applicant within a period of three months from the date of receipt of the order.
- (ii) The respondents shall be at liberty to recover the outstanding balance of penal/damage rent from the applicant in accordance with law as admissible. There shall be no order as to the costs.


(L.R.K. Prasad)
Member (A)

11.1.1999

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