

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.447 of 1996

Order dated 30-4-2002

Surendra Prasad, son of Late Soti Mandal, Mohalla Bari  
Ashokpur, PO Jamalpur, District Munger.

.. **Applicant**

-versus-

1. Union of India through G.M. Eastern Railway, 17 Subhash Chandra Road, Fairly Palace, Calcutta.
2. The Chief Personnel Officer, Eastern Railway, 17 Subhash Chandra Road, Fairly Palace, Calcutta.
3. The Divisional Railway Manager, Eastern Railway, Maldah
4. The Loco Foreman, Eastern Railway, Jamalpur.

.. **Respondents**

Counsel for the applicant .. Mr. Nawal Kishore Singh

Counsel for the respondents .. Mr. Gautam Bose

C O R A M : Hon'ble Mr. L.R.K.Prasad, Member (A)

Hon'ble Mrs. Shyama Dogra, Member (J)

O R D E R

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

1. This application has been filed with the prayer to direct the respondents to release the gratuity amount of the applicant along with penal interest.
2. Heard the learned counsel for the parties and perused the materials on record.
3. The applicant was working as a Railway employee, Driver (P) in Loco Shed, Jamalpur. He retired from service with effect from 30.9. 1995. While in service, he was

allotted Railway quarter No.225/C in Loco Colony, Jamalpur. He has stated that vide his letter dated 8.8.1994 (Annexure-1) he had requested Loco Foreman, Jamalpur, to take over possession of his quarter as he wanted to vacate the same. He has stated to have vacated the quarter on 8.9.1994 after locking the door and submitting the key in the office (Annexure-2). Subsequently, the said quarter was allotted to somebody else. The applicant retired from service with effect from 30.9.1995, but he has not been paid certain retiral benefits. Out of retiral dues, Rs.2,68,000/- he has been paid Rs.1,93,000/- towards provident fund, leave encashment and Life Insurance. An amount of Rs.74,842/- (gratuity amount) has been withheld by the railway respondents. He had been making representation for release of said amount specially in view of the fact that he had vacated the official quarter with intimation to concerned authority, but the same has not yet been released to him. Due to the aforesaid reason, he has filed the instant O.A. for release of gratuity amount along with penal interest.

4. ~~The~~ The above application has been opposed by the respondents on the ground that the same is hit by limitation under section 21 of A.T. Act and it is also not maintainable on merit. Quarter No.225/C in Loco colony, Jamalpur, was allotted to the applicant on 12.9.1992. It is alleged by the respondents that even though the applicant superannuated from service with effect from 30.9.1995, he has not vacated the said quarter so much so that

physical possession of the said quarter would not be taken since some outsiders were <sup>already</sup> living in the said quarter. The applicant had not given vacant possession of the said quarter to the respondents. It is the responsibility of the occupant of the quarter that when he vacate the same, he must hand over the quarter to concerned authority without any encumbrance meaning thereby that he must give the vacant possession of the quarter to concerned authority well in time. While it is submitted that the said quarter was allotted to one Mahesh Yadav, another railway employee at Jamaspur, but he could not get vacated the quarter as the same was occupied by outsiders. It was the responsibility of the applicant to ensure that he handed over vacant possession of the quarter. The Loco Foreman can never accept the key of the quarter. The only person to accept the same is I.O.W. in case of Engineering Department. As per the railway ~~rules and instructions~~, it is permissible to withhold gratuity amount of a retiring employee on account of his not giving to respondents vacant possession of the quarter allotted to him. Even though the applicant informed the respondents on 11.8.1995 that some outsiders are residing in the said quarter, he did not lodge a complaint with the police. No certificate or pass can be granted till the quarter is vacated and vacant physical possession is given.

5. Through rejoinder, the applicant has highlighted the fact that prior to his superannuation, he had requested the Loco Foreman (Annexure-1) to take over possession of quarter No.225/C and he had, in fact, vacated the same on 8.9.1994 and the key of the quarter was deposited in the office (Annexure- 2). According to applicant, it is the duty of the respondents to look after their property. As he had vacated the quarter and, in fact, intimated the office about it, the respondents have no right to withhold his gratuity. During the pendency of the case, State Bank of India, Jamalpur Railway Colony Branch, was requested by concerned respondent to recover damage rent of the said quarter for Rs. 41,988/- from the amount on dearness relief on pension payable to the applicant and the State Bank of India has already started recovering the said amount in instalment (Annexure-4). The applicant has already made a representation in this regard to D.R.M. on 4.10.2001 (Annexure- 5).

6. In brief, the factual position of the case is that the applicant, who was a railway employee, was allotted quarter No.225/C in Loco Colony, Jamalpur. Even though the applicant has claimed that he had vacated the quarter in September 1994 and deposited the key in office of Loco Foreman, he has not produced any certificate from a competent authority to the effect that he had given vacant possession of the quarter to authorised person. Excepting his letter dated 8.9.1994 (Annexure-2), he has not produced any evidence to the effect that he had handed over vacant possession of the quarter No.225/C to the railway authorities. Moreover, it is not clear to us as to why he vacated the quarter about a year before his

*W.C.R.P.*

retirement. On the other hand, the respondents have clearly stated that the applicant was allotted the said quarter but he failed to give vacant possession of the said quarter to authorised person in the Railways. It is not enough to inform Loco Foreman that he was vacating the quarter. It is alleged by the respondents that on inspection, it was found that some outsiders were already staying in the said quarter. It is suspected by the respondents that those outsiders must have got into the quarter in connivance with the applicant. Moreover, the applicant had not lodged any complaint with the ~~local~~ Police with regard to the unauthorised occupation of his quarter. Therefore, the respondents had no alternative but to impose damage rent, which are being recovered from the gratuity amount of the applicant as well as dearness relief on pension, ~~under~~ law/instructions of the Railway Board.

7. The applicant had been given <sup>enough</sup> due opportunity to produce vacation certificate duly issued by the authorised person of the Railway Department but the applicant failed to do so. It is categorically stated by the respondents that the applicant had not given vacant possession of the said quarter to concerned respondent and the applicant has failed to submit ~~documentary~~ evidence in support of his claim that he had given vacant possession of the quarter to authorised person of Railways as such, the respondents had no alternative but to impose damage rent being recoverable from his gratuity as well as dearness relief on pension, which are permissible under law.

*the end*

8. while the applicant has failed to submit any documentary evidence in support of his claim that he has given vacant possession of the quarter to the authorised persons of the Railways, the fact remains that he retired from service with effect from 30th September 1995, which is about 7 years from now. The respondents have imposed penal/damage rent on the applicant on the ground that the quarter in question is still occupied by unauthorised persons, who must have entered into the said quarter in connivance with the applicant.

9. As it is a railway property, the respondents should have taken action well in time when such a fact came to their notice to get the unauthorised person from the <sup>said</sup> quarter evicted in accordance with law, but there is nothing on record to suggest whether any such steps were taken earlier. However, vide letter dated 13.3.2002 addressed to Shri G.Bose (learned counsel for the respondents), a copy of which is placed in file, the respondents have informed that railway quarter No.225/C in Loco colony, Jamalpur, is still unauthorisedly occupied by an outsider, as per the report of the Welfare Inspector. The Railway Administration ~~has~~ initiated eviction process. There are prescribed rules/instructions for imposition of penal/damage rent for unauthorised occupant and same can be imposed in normal circumstances, if it is found that the occupant of the quarter is intentionally retaining the same in an unauthorised manner. But in the instant case, we find that the applicant had informed the Loco foreman, Eastern Railway, Jamalpur, with regard to his intention to

vacate the quarter on 7.9.1994 (Annexure-A/2). He had also indicated that he had deposited the key of the quarter also in the office on 8.9.1994 after vacating the said quarter. However, ~~position has not~~ been clarified by the respondents whether the key of the quarter was received by Loco foreman or not. It is also not clear to us whether the same was received in the office of Loco foreman or not, if received, what action was taken by him. In the normal circumstances, the applicant should have handed over the vacant possession of the quarter to authorised person of the Railways, which, we were informed during the course of argument, is I.O.W. while it is permissible under law for the respondents to take a decision/view regarding imposition of penal/damage rent for unauthorised possession of the quarter, but in the instant case, on inquiry, it is found that the same is still in ~~unauthorised~~ possession of outsider, against whom the railway authorities should have taken action immediately when it came to their notice that the applicant is going to vacate the quarter but the same has not been done in time. As the owner of the property, it is <sup>the</sup> also responsibility of the respondents to take action well in time for eviction of unauthorised person from the quarter. It is not the case of the respondents that the applicant is still in possession of the said quarter. As the applicant has already retired from service with effect from 30.9.1995, a sympathetic/compassionate view can be taken by the respondents with regard to imposition of penal/damage

rent so far as ~~to grant~~ permissible benefits to the applicant by exercising discretion of their own. A person cannot be penalised for ever.

10. In view of the <sup>peculiar</sup> facts and circumstances of the case, as stated above, respondent no.3 ( D.R.M., Eastern Railway, Malda ) is directed to make necessary inquiry into the matter and consider the case of the applicant in the light of observations made by us at para 9 above and the representation of the applicant dated 4.10.1995 (Annexure-A/5 attached with rejoinder) and thereafter to pass reasoned order in accordance with law within three months from the date of communication of this order.

11. This O.A. stands disposed of in terms of above directions. No order as to the costs.

*Shyama Dogra*  
30.4.02  
(Shyama Dogra)  
Member (J)

*30.4.02*  
30.4.02  
(L.R.K.Prasad)  
Member (A)

Mahto