

O.A. No. 498/86

Shri WALAITI RAM DANDONA
Block No. 25, Bldg. no.3
Shri Chintamani Cooperative
Housing Society, Chandani
Koliwada
Thane (E)

APPLICANT

V/s.

1. Union of India
through Ministry of
Railways, New Delhi
2. General Manager
Central Railway
Bombay V.T. 400001

RESPONDENTS

O.A. No. 9/1987

Shri HENRY D'SOUZA
Shivshankar Apartments
3rd Floor, Flat No.14
Bhusar Ali Vikram Nagar
Kalva (West)
Thana

APPLICANT

V/s.

1. Union of India through
Ministry of Railways
New Delhi
2. General Manager
Central Railway
Bombay V.T.

RESPONDENTS

O.A. No. 374/87

Shri GOVINDBHAI GOSAIBHAI SURTI
Railwaymen's Apan Ghar Society
Flat No. C-II, 301 Jogeshwari (East)
Bombay - 400 060

APPLICANT

V/s.

1. Union of India through
the Secretary
Ministry of Railways
Railway Bhavan, New Delhi
2. General Manager
Central Railway
Bombay V.T.

RESPONDENTS

Coram : Hon'ble Member (A) J. G. Rajadhyaksha
Hon'ble Member (J) M. B. Mujumdar

APPEARANCES:

O.A. No. 314/86

Shri D.B. Dave
Advocate
for the Applicant

Shri D.C. Shah
Advocate
for the Respondents

O.A. 345/86

Shri D.B. Dave
Advocate
for the Applicant

Shri D.C. Shah
Advocate
for the Respondents

O.A. No.498/86

Mr. E.K. Thomas &
Mrs. Indu Eapen
Advocates
for the Applicant

Mr. R.K. Shetty
Advocate
for the Respondents

O.A. No. 9/1987

Mr. E.K. Thomas & Mrs.
Indu Eapen
Advocates
for the Applicant

Mr. R.K. Shetty
Advocate
for the Respondents

O.A. No. 374/87

Mr. E.K. Thomas &
Mrs. Indu Eapen
Advocates
for the Applicant

Mr. G.K. Nilkanth
Advocate
for the Respondents

JUDGMENT

(PER: J G Rajadhyaksha, Member(A))

Dated : 2.2.1988

These five identical applications can be conveniently disposed of by a common judgment. The applicants in all the cases are retired employees of the Railways. When they were in service they had been occupying Railway Quarters allotted to them. The dispute has arisen because they continued in occupation after retirement and were treated by the Railways as unauthorised occupants when they exceeded the period allowed by the rules or extended by the Management. Therefore, in all these cases the Railways resorted to holding back the entire amount of Death cum Retirement Gratuity and withholding or disallowing complimentary passes to which even retired personnel are eligible. The applicants, therefore, filed these applications before this Tribunal for redressal of their grievances. Except in the case of applicant in O.A. No. 374/87, the Railways released the DCRG amounts soon after the retired employees vacated the railway quarters. In their applications, the applicants have contested the Railways' action to hold back their DCRG and disallow the complimentary passes. Their case is that the department has no authority to withhold the DCRG and therefore their action is unconstitutional and illegal. They also claim interest on the delayed payment of DCRG. As for the complimentary passes they allege that this is a minor penalty which cannot be inflicted by the Railways without following the proper procedure of issue of a show cause notice in terms of the orders issued by the Railway Board on 24.4.1982 and even thereafter. The applicants rely on the Manual of Railway Pension Rules, 1950 and the Indian Railway Establishment Manual in the matter of complimentary passes. The IREM is a compilation of administrative

orders (vide preface) as is the Manual of Railway Pension Rules 1950.

2. The dispute would become clearer if information pertaining to the applicants in these five applications is tabulated as follows:

Sr. No.	Name of applicant	Date of superannuation	Date of vacation of quarter	Whether DCRG was released
1	2	3	4	5
1.	R.P. Wahi	28.2.1982	9.6.1984	Yes
2.	B.N. Kapoor	31.8.1981	31.10.1983	Yes
3.	W.R. Dandona	31.12.1983	30.09.1985	Yes
4.	Henry D'Souza	31.10.1984	15.05.1986	Yes
5.	G.G. Surti	30.09.1984	30.05.1987	Not yet released as applicant did not complete formalities.

Apart from the merits of each case the question of constitutionality of the action taken by the Railway has also been raised alleging that such action is in derogation of the Railway Pension Rules and the Indian Railway Establishment Manual. It is also their contention that administrative instructions cannot be issued for nullifying or modifying the statutory rules to the disadvantage of the applicants.

3. The respondents had filed their replies to resist the applications saying that the orders issued by the Railway Board on 24.4.1982 were constitutional and legal

and within the powers conferred upon them statutorily by the President of India. They have also stated that the unauthorised occupation of quarters by the employees for long periods after their retirement was causing grave inconvenience to the railways and their serving employees. In order to curb this tendency Railway Board issued instructions for holding back the DCRG and ~~with~~^{allowing} drawing passes at a specified rate against each month of unauthorised occupation. The applicants had, therefore, no case and the applications deserved to be dismissed.

4. Before we proceed we may discuss briefly what Article 309 of the Constitution lays down. It reads as follows:

"309: Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President for such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of such Act."

5. Undisputedly, the Indian Railway Establishment Code has been issued by the President in exercise of his powers under the proviso to article 309. The two rules which should be relevant for these cases before us are Rules 157 and 158. They are as follows :

"157. The Railway Board have full powers to make rules of a general application to non-gazetted railway servants under their control.

"158. The General Managers of Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control, provided they are not inconsistent with any rules made by the President or the Railway Board."

6. The impugned orders issued by the Railway Board by their letter No.E(G)B-1/QR/1-51 dated 24.4.1982 can also be reproduced for ready reference.

"On the Rlys there is an acute shortage of Rly. Quarters for officers and staff. This shortage is further accentuated by unauthorised retention of the Qrs. by officers and staff after their retirement. Eviction proceedings, for getting the quarters vacated, are normally protracted. As a result, a large number of officers and staff is deprived of the privilege of Rly. Quarters. The Ministry of Rlys. have viewed this situation with concern and have decided that the Rly. Admin. should take the following steps to discourage unauthorised retention of Rly. Quarters by retired officers and staff:-

- i) 'No claim' certificate should not be given unless the employee after retirement has vacated the Rly. Quarters and cleared all his arrears of rent, electricity and other charges etc;
- ii) Settlement dues of the employees should be finalised with an appropriate 'hold back' amount from DCRG/Spl. contribution to PF as the case may be, for rent recoveries, as permissible under extant rules;
- iii) For every one month of unauthorised retention of Rly. Quarters, one set of post retirement passes should be disallowed. A show cause notice to this effect may be issued to the retired employee before disallowing the pass.

The above stipulations apply to officers/staff occupying transit Railway Houses, Railway leased houses and Rly. Quarters temporarily transferred to Directorate of Estates Pool, but do not apply to officers and staff occupying houses owned by the Directorate of Estates."

7. It also appears that to remove any ambiguity about the term "settlement dues" the Railway Gazette dated 1.5.1985 contained an extract of certain orders issued by the Railway Board. The reference No. HPB-655/T-V and Paragraph 2 and 3 thereof are reproduced below:

"2. It has, therefore, been decided that with immediate effect the following course of action be taken in their cases in regard to payment of their settlement dues:-

- (A) (i) they may be paid their own contribution to S.R.P.F.
- (ii) they may be sanctioned the monthly pension as due under the Railway Pension Rules;
- (B) Payment of the following dues should not, however, be effected until after these employees have vacated the railway quarters and handed over complete vacant possession of the railway quarters to the Administration:
 - i) Death-cum-retirement gratuity;
 - ii) Leave salary due on account of encashment of leave on average pay at credit at the time of demission of service;
 - iii) amount payable under the Group Insurance Scheme, 1980 (Savings Fund balance)

"3. In addition to the above such employees will not be eligible for post-retirement passes as laid down in Railway Board's letter No. E(G)81-QR-1-51 dt. 4.6.1983, copy forwarded under this office memo No. W/602/HPB/R/Policy/O dtd. 7.7.1983 (Circular No. 148/83).

[Part A of these orders is definitely beneficial to a retiring employee, even if he incurs coercive action under Part B thereof.]

8. This, therefore, is the legal position about the action contemplated by the Railways against retired employees who continued to occupy railway quarters unauthorisedly.

He has sent in his written argument

9. Mr. D.B. Dave, the learned advocate gave the facts pertaining to the applicants in O.A.314/86 and O.A. 345/86. He admits that only the DCRG and the complimentary passes were held back and the rest of the dues such as Provident Fund, encashment of leave and Group Insurance amounts were released in the case of applicant in O.A. 314/86. In the case of applicant in O.A. 345/86, DCRG and encashment of leave were withheld. Passes were initially allowed until 1983, disallowed in the year 1983, re-allowed in 1985 and 1986 and thereafter the passes were disallowed. He argues that Railway Board's letter dtd. 24.4.1982 cannot be described as statutory rules issued with the sanction of the President; the Respondents had admitted this position in their reply and had stated that Railway Board could issue administrative instructions for such purposes. As for the disallowance of passes, he ~~xxx~~ argues that proper procedure was not followed. In the remaining three applications, Mr. E.K. Thomas and Mrs. Indu Eapen appearing for the applicants challenged the instructions dated 24.4.1982 as being unconstitutional. They objected to withholding of the entire DCRG in contravention of Railway Pension Rules as can be read in the Manual at paragraph 323 and its sub-paragraphs. They argued that the estimated dues plus 25% thereof can be held in cash deposit from the Railway employee, and nothing more. Only 10% of the DCRG or Rs. 1,000/- whichever less could be held back. The Railways are at liberty to file prosecution under the Public Premises (Eviction of unauthorised occupants) Act. But cannot withhold the DCRG and other dues. Even for passes,

there can be no disallowance without issue of a show cause notice. They further argued that complimentary passes can be withheld as a minor penalty under the Railway Servant's Discipline & Appeal Rules, but that must be preceded by an enquiry. They drew our attention to (3)1987 Statutes Section of the Volume of Administrative Tribunals Cases at page 58 where Pass Rules 1986 have been reproduced. They explained that old rules in this respect had been made in 1920. We do not find old rules anywhere and cannot, therefore, see if they were in any way statutory in nature.

Mr. Dave supplements the arguments that the rules do not have any clause about disallowance of passes.

10. The learned advocates for the respondents have argued their cases. Mr. G.K. Nilkanth brings to our notice a copy of Railway Board's letter No. E(G)87-QRI-11 dated 16.10.1987 which refers to the earlier order and adds that the Central Administrative Tribunal, Guwahati Bench, had upheld the extant provisions authorising the Railway administration disallowing the passes of the retired employees at the rate of one set for every one month of unauthorised retention of railway accommodation by them. Then quoting AIR 1969 SC 118 i.e., Vadera's case he contends that all orders and notifications issued by the Railway Board or the General Manager of the Railway have statutory force because of the powers vested in them by Rules 157 and 158 of the Indian Railway Establishment Code. Further, that standing orders have the force of rules; that the instructions issued by the Railway Board are statutory rules binding the Railway administration and the railway employees. He adds further that

these rules and instructions have been issued for general application for the smooth functioning of the railways; and that if quarters are retained unauthorisedly, those in service and entitled to quarters suffer. If dues are released, recovery of rent and other dues from the retired employee will be practically impossible. He then adds that as the applicants in all these cases have retired from railway service they are not subject to Railway Servants Discipline & Appeal Rules. Therefore, what is done by the Railways is not imposition of penalty but in fact a beneficial act for favouring both the personnel in service who are entitled to quarters as also those who have retired by saving them from avoidable litigation for recovery of dues. As for the question of a show cause notice, he points out that in almost all the cases applicants are made aware that by retaining quarters unauthorisedly they are incurring action under the 'Public Premises (Eviction of Unauthorised Occupants) Act as well as under the rules and instructions issued by the Railway Board.

11. Mr. R.K. Shetty argues that in the cases of Mr. Dandona applicant in O.A. No. 499/86 and Mr. D'Souza applicant in O.A. No. 9/87, they had been given notices and by their replies they had permitted the railways to recover the outstanding amounts from their DCRG. They cannot now be allowed to go back on these undertakings. Mr. Shetty then points out, quoting the preface of the Manual, that the Manual of Railway Pension Rules is a digest or a compilation and, therefore, contains guidelines and instructions which are directory in nature and not mandatory. In cases of doubt original pension

rules should have to be seen. He supports Mr. Nilkanth's argument that a pragmatic view has to be taken in the interest of railway servants who are in service and are without quarters.

12. Mr. Dinesh Shah ~~mm~~ argues that whether the instructions are statutory or administrative, the changes brought about have to be viewed with reference to the original instructions. He adds that original administrative directions can be amended by further administrative directions. He supports the Railway Board's letter dated 24.4.1982 as being perfectly legal and constitutional. Referring to the wording of that letter he argues that issue of a show cause notice is in the discretion of the Railway authority and it is not mandatory.

13. Mr. Dave and Mr. E.K. Thomas have cited several rulings from judgments of the Supreme Court as well as the Central Administrative Tribunal. We have gone through them very carefully. There can be no dispute about certain principles discussed in those judgments and they are summarised as follows: An administrative order cannot overrule statutory provisions even with the approval of the President. This observation about "running allowance" for which provisions made in the Indian Railway Establishment Code are relevant only in so far as administrative instructions sought to modify them. In the case before us we do not find any attempt by the railways to modify statutory instructions by administrative orders. Read in the proper context, the letter dated 24.4.1982 is constitutional and has statutory force in our view. Even if they are administrative instructions they are still valid, inasmuch as they are not contradictory to any statutory or other administrative instructions.

14. There can also be no dispute about illegality involved in withholding pensionary benefits without taking other steps to recover losses caused to the railways by negligence of an employee. Such is not the case in the matter before us.

15. It is true that the Supreme Court has held that Gratuity is a right and not a bounty. therefore, Gratuity cannot be denied and that delayed payment would have to be accompanied by interest. But there is nothing to show that DCRG cannot be withheld where the employee owes some outstanding dues to the employer specially when he is not covered by the Gratuities Act, being a Government employee and Government issue direction for such hold back.

16. (4)1987 ATC 477 contains a ruling to the effect that misconduct cannot be retrospectively penalised. That was a case where there was no proof that the orders dated 24.4.1982 issued by the Railway Board after the retirement of an employee were brought to his notice in spite of clear directives to do so. Therefore, action after retirement was considered improper. In the cases before us the letter dated 24.4.1982 has been issued after the retirement of the applicants in S.A. 314/86 and S.A. 345/86. But these orders have been issued only a few months after the applicant's superannuation, and there is adequate material on record to show that the applicants were aware of these orders. In (2)1987 ATC page 939 Government's right to take action is acknowledged as absolute. If a Government servant continued occupying quarters without intimation he was required to face the consequences. We think that the other citation are not strictly relevant to the case before us.