

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 19 OF 1996.

Proven, this the 31st day of July, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Mrs. Margaret Nazreth,
Rly. Quarter No.83/4, Matunga,
Bombay.

... Applicant.

(By Advocate Shri H.A.Sawant)

V/s.

1. The Divisional Railway Manager,
Bombay Central Division,
Divisional Office,
Western Rly., Bombay Central,
Bombay - 400 008.

2. The General Manager,
Western Railway,
H.Q. Office,
Churchgate,
Bombay - 400 020.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

This O.A. was initially filed by two applicants viz. Mr.Alex Nazreth and Mrs.Margarett Nazreth husband and wife jointly. In terms of Court's directions, this O.A. is confined to the case of Mrs.Margarett Nazreth. The husband's application viz. O.A. 611/96 ~~which~~ has come to be disposed of on 19.12.1996. In the present O.A. the facts are that the applicant who retired from Railway Service on 31.10.1991 was in Type-II, occupation of Railway Quarter No. 83/4, Matunga Road. She was given permission for retention of the Quarter for a period of 4 months from 1.11.1991 to 29.02.1992. The applicant did not vacate the quarters. The gratuity amount is Rs.47,000/- and the same was withheld. The applicant eventually ~~was~~ vacated ~~from~~ the Quarter

...2.

on 17.1.1996. The applicant claims the relief of releasing the full amount of gratuity along with interest and to issue post-retirement complimentary passess.

2. The respondents contend that an amount of Rs.1,16,992.30 is due from her as penal rent. In addition, an amount of Rs.22,275/- is also due as Electricity Charges.

3. According to the respondents, as the amount is to be recovered from her is more than that of gratuity due to her, the question of payment of gratuity does not arise and the question of payment of interest does not survive. According to Respondents under Rule 15 of the Railway Servants (Pension) Rules, 1993 recovery of dues pertaining to Railway Administration including the arrears of licence fee, if any, are recoverable from retirement/death/terminal/service gratuity even without obtaining consent. The respondents had also proceeded to recover balance amount from the applicant's dearness relief. In this connection, F.A. & C.A.O. by his letter dt. 4.3.1997 had issued certain orders and this Tribunal had an occasion to pass some orders on 15.4.1997 in the context of its earlier orders staying further recovery.

4. The counsel for the applicant relies on the Full Bench Judgment in Wazir Chand, whereas, the Respondents rely on the Judgment of the Tribunal in M.P. Kanai's case which reviews all the case law on this point.

5.^A At the argument stage the only point on which the counsel for the applicant addressed me was regarding the legality of the action of the department in recovering arrears of penal rent from the dearness relief.

6. On this point, I am required to take note of the decision of the Full Bench in O.A. No.519/94 and 689/94 decided on 27.6.1997(Sriniwas B.Kulkarni V/s. Union of India and R.G.Sagwekar V/s. Union of India) The Full Bench answered the question referred to it in the following terms "dearness relief does not form part of pension, hence recovery can be made from it." The Full Bench also overruled the decisions of this Tribunal contrary to the above finding.

7. The contention of the counsel for the applicant, therefore, that arrears of penal rent cannot be recovered from the dearness relief cannot be accepted.

8. Since no other reliefs were sought, the O.A. stands dismissed with no orders as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

B.