

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 1104/92

Transfer Application No: --

DATE OF DECISION: 3-6-94

D.R.Jape \_\_\_\_\_ Petitioner

Mr.S.P.Kulkarni \_\_\_\_\_ Advocate for the Petitioners

Versus  
-----

U.O.I. & Ors. \_\_\_\_\_ Respondent

Mr.S.C.Dhavan \_\_\_\_\_ Advocate for the Respondent(s)

CORAM :  
-----

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri --

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

  
(M.S.DESHPANDE)  
V.C.

M

(P)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.1104/92

D.R.Jape

.. Applicant

-versus-

Union of India and Ors.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande  
Vice-Chairman

Appearances:

1. Mr.S.P.Kulkarni  
Counsel for the  
Applicant.

2. Mr.S.C.Dhavan  
Counsel for the  
Respondents.

ORAL JUDGMENT:  
(Per M.S.Deshpande, V.C.)

Date: 3-6-94

By this application the applicant prays for a direction to the respondents to pay interest on the amount of Gratuity of Rs.51,150/- from 1-2-1990 to 31-8-92 at the rate admissible as per rules.

2. The applicant, who was a railway employee, retired on 31-1-1990. DCRG amount of Rs.51,150/- was payable to him on 1-2-90. He was in occupation of the Railway Quarter No.F/227 at Kalyan since 1982. His son, Sunil, who was employed as Asstt. Shop Supdt. was residing with the applicant and applied for permission to share the quarters which came to be granted. After the retirement of the applicant he applied for transfer of quarter in the year 1990 in his son's name. That request was rejected and the son therefore moved the Tribunal for an order directing the allotment of the quarter to him, vide

(8)

O.A.776/90. By its judgment delivered on 1-1-1992 the Division Bench of the Tribunal held that the applicant's son Sunil is entitled to transfer of the quarter as prayed for by him. Since this order was not implemented contempt proceedings were taken out and at the hearing of the contempt petition the respondents passed an order on 29-7-92 to the effect that the quarter has been transferred in the name of applicant's son w.e.f. 1-2-90. According to the applicant since there was no wrongful occupation of the quarter by the applicant the respondents could not have withheld the gratuity and <sup>and</sup> therefore entitled to interest as per rules on the amount of gratuity as it has been wrongly withheld.

3. According to the respondents the applicant had been occupying the railway quarter till the date of his retirement on 31-1-90 and upon his application to retain the quarter after his retirement permission was granted upto 30-9-90 and since he failed to vacate the said quarter on or after 1-10-90 he was in unauthorised occupation of the quarter. Instead of vacating the said quarter he applied for transfer of the quarter in the name of his son Sunil on father-to-son basis and that application came to be rejected. It was only <sup>in</sup> pursuance of the direction given by the Tribunal that the order allotting the quarter to his son came to be passed and the respondents are therefore entitled to

9

withheld the gratuity and the applicant was not entitled to claim interest on the amount of gratuity.

4. The only question which arises for consideration is whether under the Government circular there could <sup>been</sup> have any administrative lapse on the part of the respondents in delaying the payment of gratuity.

5. The relevant portion of the circular dated 14-9-1984 reads as follows:

"The Government have had under consideration the question of raising the rate of interest payable to a Railway employee on delayed payment of gratuity where the delay occurs on account of Administrative lapse or for reasons beyond the control of the Government servant concerned. In partial modification dated 3.9.1979, the President is now pleased to decide that where the payment of DCRG has been delayed the rate of interest will be as follows :-

Beyond 3 months and upto one year	)	7% per annum
Beyond one year	:	10% per annum"

This circular came to be considered in Special Leave Petition No.7688-91 of 1986 decided by the Supreme Court on 27-11-89 in Raj Pal Wahi and Ors. vs. U.O.I. & Ors. and taking into consideration the circumstance of the case, their Lordship held that the petitioners were not entitled to claim interest. This decision was considered in Suraj Prakash Chopra vs. Union of India, AISLJ(IV)1992(1) 460, by the

Principal Bench of the Tribunal and in para 15 they explained that the principal question which was determined by the Supreme Court was whether any interest was liable to be paid to the applicant by the Railway administration? Their Lordships have clearly laid down that the payment of interest will depend on the facts and circumstances of the case. They had clearly held that because of the Railway Board circular dated 24-4-1982 they were unable to interfere in the matter. In other words, if it was not due to the administrative lapse on the part of the respondents, no interest was liable to be paid. Regarding passes, their Lordships held that the passes should be issued prospectively from the date of the order. The Tribunal therefore granted interest holding that there was ~~an~~ administrative lapse on the facts of that case. In Umanath Venkatrao Baindurkar vs. U.O.I. AISLJ 1992(3)(CAT)107 the Tribunal pointed out that Gratuity cannot be ~~withle~~ withheld for non vacation of quarter relying on Wazir Chand v. U.O.I., Full Bench Judgments (CAT)Vol.II,page 287, and directed to release the gratuity together with interest as permissible under the rules.

6. According to Shri Dhavan, learned counsel for the respondents, in the present case there is no administrative lapse on the part of the respondents because his request for regularisation was rejected by the department and it is only after the decision of the Tribunal on Sunil's petition the quarter came to be allotted w.e.f. 1-2-90 in Sunil's name. It is obvious that if the applicant

(W)

was not entitled to the occupation of the quarter after his retirement and when <sup>it</sup> came to be allotted to Sunil w.e.f. 1-2-90 albeit by the decision of the Tribunal, the basis for the decision in favour of Sunil was the administrative lapse on the part of the respondents in rejecting his application for allotment of quarter. The erroneous decision by the departmental authorities in rejecting his request for regularisation was corrected by the decision of the Tribunal. It is difficult to see how in the present case it can be said that there was no administrative lapse. In fact the decision and subsequent action on the part of the department pursuant to the decision of the Tribunal only highlight the position that there was an administrative lapse in not allotting the quarter in favour of Sunil w.e.f. 1-2-90 and the applicant ~~should~~ not have been said to be in unauthorised occupation of the railway quarter and gratuity could not have been withheld on ~~that~~ ground.

7. In view of this position I find that the applicant would be entitled to interest on the amount of Rs.51,150/- @ 7% p.a. for a period of nine months ~~xxxxxx~~ beyond the period of first three months and afterwards @ 10% p.a. until the date of actual payment of gratuity. Respondents may calculate the amount so due and pay to the applicant within



four months from the date of communication  
of this order. No order as to costs.



(M.S.DESHPANDE)  
Vice-Chairman

M