

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 238/92

Transfar Application No:

DATE OF DECISION: 29.11.1994

Shri J.L.Soni

Petitioner

Shri G.S.Walia

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.L.Kasturey

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)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 238/92

Shri J.L.Soni

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri G.S.Walia
Advocate
for the Applicant

Shri A.L.Kasturey
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 29.11.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant seeks a declaration that with-holding of DCRG from 30.9.1989 was illegal and arbitrary, that adjustment of commuted value of pension to the extent of Rs.69,347/- against penal or damage rent was wrong and unauthorised insisting the respondents liability to pay interest @ 18% p.a. thereon, that the applicant is entitled to interest on Rs.73,043/- as leave encashment amount and interest thereon @ 18% p.a. from 1.10.1989 to 1.10.1991, that charging of the penal rent @ Rs.16/- per sq.mtr was illegal and as such the applicant was entitled to refund of Rs.51,608/- with 18% interest thereon. The learned counsel for the applicant did not press reliefs (e) and (f) regarding telephone charges and diet charges recovered from him.

2. The applicant retired from Railway service on 30.9.1989 and at that time the following amounts were due to him:-

(a) DCRG	Rs. 30,000/-
(b) Commutation	Rs. 1,56,900/-
(c) Leave encashment	Rs. 73,043/-
(d) Amount of annual increment paid extra by way of interest.	Rs. 653/-

Rs.2,60,596/-

However, by letter dated 7.11.1989 he was paid Rs.87,553/- by retaining the deposit of Rs.1,00,000/- out of these only Rs.87,553/- was paid to the applicant and the applicant was not paid the amount of Rs.1,73,043/-. The applicant vacated the Railway quarter which was in his occupation on 31.4.1991. Later leave encashment amount of Rs.73,043/- was paid to the applicant by cheque on 27.9.1991 and Rs.244/- the increment amount on 1.10.1991. According to him, the balance wrongfully withheld was Rs.73,287/- and that was from 1.10.1989 to 1.10.1991 for a period of two years and the applicant therefore claims interest on this amount at 18%. It was urged that since penal rent was charged and withheld from the amounts outstanding without approaching the competent authority under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the recovery of damage rent to the extent of Rs.58,608/- from the settlement dues was unauthorised.

3. The contention of the respondents^{is} that the amount of Rs.69,347/- was adjusted against the recovery of House Building Advance of the applicant with his consent as

contained in the letter dated 26.10.1989. With regard to this adjustment, even the learned counsel for the applicant Shri Walia did not have any grievance because he ~~has~~ agreed that this amount should be adjusted against DCRG as per the Railway Board's letter dated 27.7.1987. According to the learned counsel for the respondents, the amount of Rs.1,00,000/- was held back for retention of Railway accommodation after retirement and this was on the basis of the statement of the applicant in the letter dated 26.10.1989 that there was no objection ^{to} of holding back the amount from various settlement dues payable to him and that the amount so held back shall be paid to him immediately after the vacation of the Railway accommodation. The contention of Shri Walia for the applicant was that the amount of Rs.1,00,000/- could be held back only if it was permissible to do so on account of retention of Railway accommodation and it was never ~~considered~~ ^{conceded} that the applicant would forego the claim for interest because of the concession to hold back Rs.1,00,000/-.

4. The only question which arises for consideration is whether it would be permissible to the respondents without initiating proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to charge penal rent and whether the applicant would be entitled to claim interest on the amount of Rs.73,043/- which remained unpaid because it was illegally withheld from 1.10.1989 to 1.10.1991.

5. Shri Walia for the applicant relied on the decision of the Full Bench of this Tribunal in Wazir Chand vs. Union of India & Ors. Full Bench Judgements of Central Administrative Tribunals (1989-1991) page 287, Para 27 thereon reads :-

"27. Summing up, our conclusions on the issues referred to the Full Bench are :-

Issue No. 1 :

- (i) Withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible.
- (ii) Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted.

Issue No. 2 :

- (i) 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.
- (ii) 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 decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant.
- (iii) 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.

The question of interest on delayed payment of DCRG cannot therefore be linked to the applicant and since the DCRG was withheld, he is entitled to interest under Rule 68 of the CCS (Pension) Rules or ~~at~~ the equivalent ^{of} to the Railway Rules on the point. In Union of India & Anr. vs. Wing Commander R.R.Hingorani (1987) 2 ATC 939, the Supreme Court pointed out that under Section 11 of the Pensions Act, 1871 no pension granted or continued by government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any

such court and directed the refund to the pensioners. In that case also the Supreme Court gave liberty to the government to initiate proceedings under Section 7 (2) read with Section 14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of an amount due on account of damages for unauthorised use and occupation of the flat in question. In the present case, admittedly, proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 have not been initiated against the applicant, unless an order is obtained, it will not be open to the respondents to levy penal/damage rent against the applicant.

6. The learned counsel for the applicant pointed out that the Special Leave Petition filed against the decision of the Wazir Chand was dismissed by the Supreme Court in SLP 12305/93 of 1.11.1993. In OA.NO. 452/92, Bhupinder Singh vs. Union of India & Ors. decided on 26.3.1994, this Tribunal passed an order following the decision in Wazir Chand and Hingorani's cases and in SLP No. 13827/94 decided on 8.8.1994 Union of India vs. D.G.Advani, where an identical view was taken, ^{and} the Supreme Court did not intervene because the prayer for condonation of delay was not granted.

7. Shri Kasturey, learned counsel for the respondents pointed out that in view of the letter dated 26.10.1989 the applicant would not be entitled to claim interest on the amount outstanding. As I have pointed out earlier the applicant did not give up his claim for interest and if there was a delay in making the payment, the applicant cannot by virtue of the contents of this letter be deprived of interest if he would otherwise be entitled on the various settlement dues payable to him. It is also contended on behalf of the respondents that the applicant vacated the

Railway quarter only when he was ^{asked} ~~held for his~~ vacating the quarter ^{by} in City Civil Court pursuant to the eviction proceedings. Short time was granted on the basis of the undertaking given by the applicant and he vacated the quarters in view of the undertaking but the claim for damage rent was not decided in those proceedings.

8. In view of the clear position in law that the amount of damage rent cannot be linked up with the claims, the applicant cannot be deprived for the claim of interest in the present case.

9. The respondents are directed to pay interest on the amount of ⁽ⁱ⁾ Rs.73,043/- from 1.10.1989 to 1.10.1991 @ 10% p.a., (ii) Rs.51,608/- @ Rs.10% p.a. from 1.10.1989 till it is paid together with the amount Rs.51,608/- which is deducted as damage rent and (iii) Rs.30,000/- balance of DCRG with interest @ 7% p.a. from 1.12.1989 for the first 9 months and thereafter @ 10% p.a. until payment of amount to the applicant, since all these amounts have been deducted towards market damage rent.

10. The respondents would be at liberty to pursue their remedy provided by the Public Premises Eviction Act if it is available to them. Since no action has been initiated under Section 7 of the Act, the respondents would not be entitled to recover damage rent for the aforesaid period until such remedy is availed of except in the manner provided in the Act. The respondents would, however, be at liberty to deduct the normal rent for the period during which the applicant had been in occupation from the amount which would become payable to the applicant. No order as to costs.

(M.S.DESHPANDE)
VICE CHAIRMAN