

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 452/92

Transfer Application No:

DATE OF DECISION 26.8.1994.

Bhupinder Singh Petitioner

Shri G.S.Walia. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri M.S.Ramamurthy. Advocate for the Respondent(s)

COHAM:

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

The Hon'ble Shri

1. Whether Reporters of Local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ? M.

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ? M.

  
(M.S. DESHPANDE)  
VICE-CHAIRMAN

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Original Application No.452/92.

Bhupinder Singh,

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

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

Appearances:-

Applicant by Shri G.S.Walia.

Respondents by Shri M.S.Ramamurthy.

JUDGMENT :-

¶Per Shri M.S.Deshpande, Vice-Chairman Dt. 26.8.1994.

Three prayers have been made by this application viz. (1) a direction to the Respondents to charge normal rent for the whole period of retention of Railway Quarter from 9.11.1988 to 20.4.1991, *26-9-1990* *7-4-1991*  
(2) Payment of D.C.R.G. to the applicant after deducting normal rent with interest at 12% p.a. and  
(3) a declaration that the deduction of market/damage rent from D.C.R.G. of the applicant is illegal and arbitrary as no notice under section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has been given to the applicant.

2. The applicant was employed as Chief Claims Officer, Western Railway, Bombay and was prematurely retired on 6th July, 1988 after attaining the age of 56 years. He challenged this order by filing O.A. No.528/88 as the order was based on un-communicated adverse remarks, but that application was rejected on 29.8.1991. The applicant was in posession of Railway Quarter which was vacated on April *26-9-1990* *20-4-1991*. He had also brought OA No.568/90 making a grievance that the entire amount of D.C.R.G. had been withheld

by the Respondents and a direction was sought against the Respondents to pay the D.C.R.G. with 18 % interest from 18.7.1988 and also a direction that he should not be asked to vacate the Railway Quarter until his D.C.R.G. was paid. All these prayers were rejected by the order dt. 8.8.1990 and a direction was issued to the applicant to vacate the Quarter by 21.8.1990 failing which he was to be proceeded with for Contempt of the Orders of the Tribunal. The applicant filed an S.L.P. before the Supreme Court and the Supreme Court in S.L.P. No.11562 of 1990 passed an order on 21.1.1990 which reads as follows :

"We do not find any ground to entertain this Special Leave Petition. However, if the Petitioner renews his prayer for a direction to pay Death-cum-Retirement-Gratuity after vacating the Government accommodation, then the Tribunal may consider that prayer and decide it on merits without being influenced by refusal of the same at this stage. Subject to these observations the S.L.P. is dismissed."

3. The applicant's contention is that the applicant had been permitted to retain the Quarter from 6.7.1988 to 8.11.1988 on normal rent and from 9.11.1988 to 6.3.1989 on payment of total assessed/normal rent or 10% either emoluments whichever was higher, by the order dt. 29.11.1989. His D.C.R.G. amounting to Rs.1 lac had become due immediately upon his retirement 6.7.1988, but the Respondents adjusted the entire amount towards the penal/damage rent on account of retention of the Quarters and this was impermissible because no notice under section 7 of the Public Premises (Eviction of Unauthorised Occupants)Act, 1971 had been given to the applicant and the proceedings under section 7 thereof had not been taken.

4. The learned counsel for the Respondents urged that in view of the observations made by the Tribunal in the earlier applications, the applicant was not entitled to payment of D.C.R.G. or interest thereon without vacating the Quarter in view of the Rules which enabled the Respondents to charge penal and rent, therefore they were within their rights to adjust the amount of D.C.R.G. <sup>towards</sup> the amount of penal/damage rent due and the applicant would not be entitled to any relief.

5. The legal position in this respect, is however, well settled by the decision of the Full Bench of this Tribunal in Wazir Chand V/s. Union of India & Ors. [Full Bench Judgments of CAT (1989-1991)] VOL.II Page. 287I [Para 27 thereof reads :

"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 of the facts and circumstances of the case before it.

The question of payment of penal/damage rent cannot therefore be linked with the payment of DCRG to the applicant and since the DCRG became payable to the applicant he would be entitled to interest under Rule 68 of the CCS(Pension) Rules.

6. The learned counsel for the Respondents urged that in view of the earlier decisions of the Tribunal the applicant was not entitled to claim D.C.R.G. In OA No.525/88 the Tribunal had passed an interim order on 15.11.1989 upon the statement made on behalf of the applicant that he would not ask for the D.C.R.G. till the disposal of the case, that the respondents shall charge the said licence fee/rent in the Railway Flat which is in occupation of the applicant which they were charging prior to his premature retirement by 6.7.1988 and this was ordered subject to the final outcome of the case, that is in case the applicant fails the Respondents are entitled to charge licence fee/rent according to rules and no order was made about the payment of the DCRG in view of the statement made on his behalf. The OA No.525/88 was dismissed on 29.8.1991. The learned counsel for the Respondents relied on the order passed on Misc. Petition No.920/90 in OA No.525/88 by which the applicant had sought a direction to the Respondents to pay the DCRG and issue post-retirement passes. It was observed in the order that what was ordered by proceedings dt. 6.3.1989 was only that the order of the eviction shall not be implemented without the permission of the Tribunal and by subsequent orders the applicant

had been specifically directed to vacate the quarter within a prescribed period and the applicant had rendered himself liable for eviction. Nothing turns upon those observations in the present case except that the applicant had sought the intervention of the Tribunal from being evicted from quarter.

6. Shri M.S.Ramamurthy, the learned counsel for the Respondents referred to the observations in the order dt. 8.8.1990 in OA No.568/90. At that time OA 525/88 by which the premature retirement was challenged was pending and the applicant's grievance was that the amount of DCRG had ~~been~~ been illegally withheld. The Tribunal took the view that the applicant's unauthorised occupation was over 17 months. The Tribunal said that the total dues calculated by the Respondents were about Rs.98,000/- and that would leave hardly any margin available from the DCRG which can be directed to be paid to the applicant. It was ultimately said that there was no justification for directing the Respondents to release the amount of DCRG to the applicant at that stage and ~~so~~ the prayer in the M.P. for relieving the applicant on the undertaking ~~to vacate the quarter~~ was rejected. This decision was superseded by the Supreme Court's Order dt. 21.9.1990 to which I have already ~~have~~ adverted and now that the applicant has vacated the Government Accommodation the Tribunal shall have to consider the prayer for payment of DCRG on its merits.

7. The Full Bench decision in Wazir Chand's case clearly says that the payment of penal rent has to be de-linked from payment of

D.C.R.G. All that the applicant had bound himself to do was not to take the amount of D.C.R.G. until the decision of the case. That would not mean that the Respondents would be absolved from paying interest on delayed payment of gratuity. Rule 68 of the C.C.S. (Pension) Rules requires the Respondents to pay interest at such rate as may be prescribed and in accordance with instructions issued from time to time if the delay in payment was not on account of the failure on the part of the government servant to comply with the processing of his pension papers. Under the Gl., Dept. of Per. & A.R., O.M. No.7/3/84-Pension Unit dt. 28.7.1984 the rate of interest will be Rs.7% beyond three months upto one year and 10% beyond one year and this is the rate at which the applicant would be entitled to interest on the amount of D.C.R.G.

8. xxxxxx In OA No.890/92 K.G.Kakade  
V/s. Union of India & Ors. decided on 6.7.1993  
 and OA No.635/93 B.I.Pandya V/s. UOI & Ors.  
 decided on 16.2.1994, this Tribunal referred to the decision of the Supreme Court Union of India V/s. Wing Commander R.R.Hingorani (Retd.), 1987(2) ATC 939 decided by the Supreme Court. There the Supreme Court pointed out that under Section 11 of the Pension Act, 1871, no pension granted or continued by the Government on political consideration, 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 that the amount of commuted value of pension ~~not~~ be refunded to the pensioner. In that case also the employee was in possession of Government accommodation and in view of the provisions of S.7(2) read with S.14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Supreme Court observed that the Government should consider the feasibility of dropping the proceedings for recovery of penal rent if the respondents were to forgo the claim of      interest. 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 under the said provision it would not be open to the Respondents to levy penal/damage rent against the applicant.

9. At the conclusion of the hearing the learned counsel for the applicant made an offer to the Respondents that if they are willing to accept normal rent, the applicant would forgo the interest on the amount of D.C.R.G. Shri Ramamurthy, the learned counsel for the Respondents took time for obtaining instructions, but made a statement later that the respondents were not prepared to forgo the penal/damage rent.

10. The learned counsel for the applicant, however, made a statement that the applicant would have no objection in paying normal rent for the entire period from 9.11.1988 to 20.4.1991, But the Respondents will not be entitled unless they take proceedings under Section 7 of the Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 to charge any market or damage rent from the D.C.R.G.

11. The Respondents are therefore directed to pay the amount of D.C.R.G. to the applicant after deducting the normal rent due. The applicant will be entitled to interest on the amount of D.C.R.G. at 7% p.a. from 6.10.1988 for 9 months and thereafter at 10% p.a. until payment of the amount to the applicant and without deducting any market/damage rent from that amount.

The Respondents will be at liberty to initiate proceedings against the applicant under Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in respect of the claim for damage/market rent. The above direction to pay the amount of D.C.R.G. with interest after deducting normal rent from 9.11.1988 to ~~20.4.1991~~ <sup>26-9-1990</sup> shall be carried out within three months from the ~~7-4-95~~ <sup>7-4-95</sup> date of communication of this order to the Respondents.

(M. S. DESHPANDE)  
VICE-CHAIRMAN

B.

*Conciliation made under  
to the order on m/s. 311/95*

*7-4-95*