

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1365/94

Transfer Application No. --

Date of Decision : 13-10-95

Kessu Thadharam Dudani

Petitioner

Mr. H. A. Sawant

Advocate for the  
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. N. K. Srinivasan

Advocate for the  
respondents

C O R A M :

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

The Hon'ble Shri

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? X

M.R. Kolhatkar  
(M.R. KOLHATKAR)  
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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O.A.1365/94

Kessu Thadharam Dudani

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

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

Appearances:

1. Mr.H.A.Sawant  
counsel for the  
applicant.
2. Mr.N.K.Srinivasan  
counsel for the  
respondents.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 13-10-94

In this O.A. filed u/s.19 of the A.T.  
Act the relief claimed is regarding release of  
balance amount of gratuity viz. difference between  
Rs.56,100/- the gratuity payable and the amount  
actually disbursed viz. Rs.36,307/- and secondly  
for release of post retirement passes.

2. The applicant retired on 31-8-1993.  
He was permitted to retain the railway quarter  
upto 30-4-1994 but he actually vacated <sup>it</sup> on 26-10-1994.  
According to the respondents the difference between  
the DCRG claimed by the applicant and the DCRG  
actually released by the railway administration is  
accounted for by the penal rent due for unauthorised  
occupation of the quarters by the applicant. So far  
as the release of post retirement <sup>passes</sup> is concerned,  
according to the respondents, since he had remained  
in unauthorised occupation of railway quarters for  
about six months and since under the rules one set of  
passes is required to be withheld for one month of  
unauthorised occupation of quarter, six sets of  
complimentary passes are required to be withheld  
and he will be entitled for post retirement  
complimentary passes only in 1997.

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3. The applicant contended that the action of the railway administration is in violation of the law laid down by the Full Bench judgment in Wazir Chand vs. U.O.I. & Ors. vide page 287 of Full Bench Judgment Vol.II, Bahri Brothers. According to him deduction of penal rent as well as withholding of passes is against the binding ratio of Wazir Chand.

4. The respondents, however, contend that Wazir Chand's case and other decisions of the Supreme Court viz. Union of India v. Shiv Charan (1992)19 ATC 129 and Raj Pal Wahi & Ors. vs. Union of India & Ors, SLP No.7688-91 of 1988 decided on 27-11-1989 as also the division bench decision in Shanker vs. Union of India(1994)26 ATC 278 were <sup>all</sup> considered by a single bench of Principal Bench in Sushil Chander Bhatnagar vs. U.O.I. & another,(1995)30 ATC 332 in which it has been conclusively held that recovery of penal rent can be made by invoking departmental rules. He therefore contends that the decision of the railway administration is entirely legal.

5. We therefore consider what was decided by Wazir Chand's case. In summing up in para 27 of the Wazir Chand's case under Issue No.1,item (ii) it was decided that "Disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted." Under Issue No.2,item (ii) it was decided that "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

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servant. The question of interest of 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. " In para 22 of the Wazir Chand's case, referring to decision in Shiv Charan's case the Full Bench observed that the Apex Court treated the two matters viz. the payment of rent including penal rent etc. and the claim for compensation for the delayed payment of gratuity as distinct and separate. The main issue here is whether the penal rent can be deducted from the DCRG. On this point even in Sushil Chander Bhatnagar's case in summarizing Shiv Charan's case it is very clearly mentioned that Supreme Court only permitted recovery of normal rent and it was held that Railway Administration would be entitled to make claim in accordance with law to which they were entitled for any excess or penal rent. So far as Raj Pal Wahi's case is concerned the case proceeded on the admission that passes were released as well as the amount of DCRG which was withheld <sup>was</sup> also released. The only point for decision in Raj Pal Wahi's case was regarding interest in respect of amount which was withheld and the Supreme Court held that they are unable to hold that the petitioners are liable to get interest on the delayed payment of DCRG as the delay in payment occurred due to the order passed on the basis of the circular of the Railway Board. According to us, therefore, <sup>in the face of Wazir Chand</sup> neither Sushil Chander Bhatnagar's case nor Raj Pal Wahi's case help the respondents in their contention that penal rent can be deducted from the DCRG.

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6. Sushil Chander Bhatnagar's case appears to have relied on the division bench decision (Calcutta) in Shanker vs. Union of India in which it was conclusively held that no notice is required to be issued before initiating recovery proceedings, where the applicant was aware of the administrative instructions laying down the consequences of unauthorised occupation.

7. We do not feel bound by the ratio of decision of Calcutta Bench in Shankar's case because that matter was discussed at length in a division bench decision of this Tribunal vide C.A. No.439/1995 decided on 25th July, 1995 (Urman Singh vs. U.O.I.). On the point of applicability of Shankar's judgment, the Tribunal in para 6 of its judgment observed that:

"There was no occasion to consider Section 15 of the 1971 Act in Kaluram's case nor was this position considered by the Division Bench in Shankar vs. U.O.I. (1994(26) ATC 278). In Suda Iswar Rao vs. Union of India (1994(2) ATJ 539) the learned members referred in para 22 of the decision to their own decision in Shankar vs. Union of India without considering the provisions of section 15 and since the material provision was not ~~even~~ considered, the decision would not bind us as it would also be a decision rendered per incuriam."

In para 8 the division bench has concluded that:

"It is, therefore, clear that section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, creates a bar for ~~recovering~~ anything in excess of the normal rent unless the remedy is sought under section 7 of the Act before the Estate Officer."

8. We may finally note that the present position, so far we are aware ~~is~~, that the Full Bench

judgment in Wazir Chand's case was affirmed by the Supreme Court, the SLP against the same, 12305/93 having been dismissed by the Hon'ble Supreme Court on merits as well as on the ground of delay on 22-2-91. We are, therefore, of the view that contrary to what has been held in Sushil Chander Bhatnagar's case, Full Bench decision in Wazir Chand's case still holds the field and the action of the respondents in withholding the railway passes and recovery of penal rent from DCRG<sup>is</sup> clearly illegal and unwarranted. We, therefore, dispose of this O.A. by passing the following order:

O R D E R

O.A. is allowed. Respondents are directed to issue post retirement complimentary passes for the year 1995 and subsequently subject to adjustment of any passes issued earlier in terms of interim relief irrespective of any contrary instructions. The railway administration is also directed to make the payment of balance amount of gratuity withheld on account of penal rent after, however, adjusting regular rent for the period of unauthorised occupation of the railway quarters for about six months.

We clarify that it is open to the railway administration to recover the penal rent by resorting to the provisions of Section 7 of PP(EOU) Act.

We are not inclined to grant any interest on the delayed amount<sup>of DCRG</sup> keeping in view ratio of Raj Pal Wahi's case.

There will be no order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)