

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 261/94

Transfar Application No:

DATE OF DECISION: 2.1.1995

Smt. Sandhya P. Bāptiwale Petitioner

Shri K.B. Talreja Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri S.C. Dhawan 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. 261/94

Smt.Sandhya P.Babtiwale

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri K.B.Talreja
Advocate
for the Applicant

Shri S.C.Dhawan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 2.1.1995

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

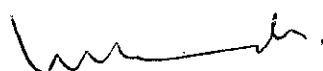
The only question which arises for consideration here is whether the respondents were entitled to refuse to pay the amount of DCRG to the applicant because the applicant was in occupation of Railway quarters for which penal rent became chargeable on account of her prolonged occupation. The applicant's husband who was a Railway employee died on 11.12.1988 and the applicant continued in occupation of Railway quarters after his death. A compassionate appointment was granted to the applicant on 14.8.1991. She vacated the Railway quarters on 27.5.1993. Under the rules, the applicant could have retained Railway quarters only for a period of three months. However, the respondents refused to pay to the applicant the amount of gratuity on the plea that they were entitled to deduct the amount of penal rent from the amount of gratuity.

2. Admittedly, an amount of Rs.22,200/- as gratuity became payable on account of applicant's husband's death on 11.12.1988. According to the respondents, an amount of Rs.35,166.20 became due on account of penal rent payable in respect of occupation of quarters and if the amount Rs.22,200/- were to be deducted from the amount of penal rent, the balance to be recovered from the applicant was Rs.12,966.20.

3. It is apparent from the decision of the Full Bench in Wazir Chand vs. Union of India & Ors. Full Bench Judgements of Central Administrative Tribunals decided on 25.10.1990 at page 287, that withholding of entire amount of gratuity of a retired Railway servant so long as he does not vacate the railway quarter is legally impermissible and so is 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. 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. A Special Leave Petition against this decision was filed before the Supreme Court. In D.G.Advani vs. Union of India & Ors. CA.NO. 528/93 which was decided on 23.11.1993 by Division Bench of this Tribunal at Bombay, it was held following the decision in Wazir Chand's case that the gratuity could not have been withheld for non-vacation of Railway quarter. According to the learned counsel for the respondents, it was open to the respondents to deduct the amount of penal rent from the gratuity which was payable without the intervention of the Estate Officer. This contention can no longer be entertained in view of the decision of the Supreme Court

in Special Leave Petition No. 13827/94 decided by the Supreme Court on 8.8.1994 against the decision in OA.NO. 528/93. There the Supreme Court took note of the position that the applicant had been paid death-cum-retirement gratuity in accordance with the directions of the Tribunal and had not vacated the Government accommodation inspite of the undertaking given to the Tribunal. In the circumstances, Special Leave Petition was allowed to be withdrawn. The learned counsel for the applicant relied on R.Kapur vs. Director of Inspection (Painting & Publication) Income Tax and another, JT 1994 (6) S.C. 354, where it was ruled that when the Tribunal had come to the conclusion that D.C.R.G. cannot be withheld merely because the claim for damages for unauthorised occupation is pending, it should have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. There the 18% interest was granted on the amount of D.C.R.G. In these circumstances, the contention of the respondents that the respondents could have deducted the amount of penal rent cannot be entertained.

4. The respondents are directed to pay to the applicant the amount of Rs.22,200/- together with interest at the rate of 10% p.a. from 10.12.1988 until the actual date of payment. These payments shall be made to the applicant within three months from the date of communication of the order. Liberty to the respondents to pursue the remedy, if any, independently in respect of damage rent for the quarters which were not vacated.



(M.S.DESHPANDE)
VICE CHAIRMAN