

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 385/94

Transfer Application No:
xxxxxxxxxxxxxxxxxxxxx

DATE OF DECISION: 7.9.94

Shri S.V. Ramteke Petitioner

Shri H.A. Sawant Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri N.K. Srinivasan Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

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

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 385/94

S.V. Ramteke

... Applicant

V/s.

The Divisional Railway
Manager, Bombay Division
Western Railway, Office of
the D.R.M. Bombay Central
Bombay.

The Union of India, through
the General Manager
Western Railway Head
Quarter Office, Churchgate,
Bombay.

... Respondents.

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

Appearance:

Shri H.A. Sawant, counsel
for the applicant.

Shri N.K. Srinivasan, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 7.9.94

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

This O.A. has been filed under section 19 of the Administrative Tribunals Act 1985. The relief claimed is to release Gratuity payable to the applicant amounting to Rs. 45,200/- on his retirement from service with effect from 31.12.1991 with interest. In the reply filed by the respondents it has come out that the Gratuity was withheld in terms of Railway Board's letter No. F(G)III-87 PN 1-/2 EXHR/I dated 19.8.87 because the applicant had not vacated the Railway quarter in his possession. The proceeding 5 under Public Premises(Eviction of Unauthorised Occupants)Act were taken on 21.4.93. The applicant had vacated the quarter on 31.1.94. The respondents have stated that after deducting a sum of Rs.29,379/- towards rent and a sum of Rs. 4,806/- towards electricity charges the balance amount of Rs. 11,015/- has been released to the applicant.

2. The applicant in his rejoinder has stated that he has not so far received balance amount as stated by the Railways, but the basic issue is that the Railway Administration was not competent to withhold any amount of Gratuity towards rent and electricity charges and therefore the respondents are bound to pay him the full amount of gratuity with interest. In this connection applicant relies upon the Full Bench Judgement reported in Vol. II Bhari Brothers, viz the case of Wazir Chand V/s. Union of India and others (P. 287). So far it is material to the present case, it is stated in para 19, that on the basis of true import of 1982 circular, we hold that withholding of entire amount of DCRG in the case of a retired railway servant till such period as he does not vacate the railway quarter is unwarranted. The Full Bench also held that the 1982 circular which was issued by the Northern Railway is void under Article 14 of the Constitution of India. In para 14 there is reference to the Railway Board's letter dated 8.6.83. This circular deals with the subject of withholding of DCRG. It is stated that except cases covered under Rule 2308 of Indian Railway Establishment Code, the payment of pensionary benefit is automatic and should be made promptly. Rule 2308 is not applicable in this case because it deals with cases when the President reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his

service, including service rendered upon re-employment after retirement. So far as Railway Board's letter No F(E)III-87 PN 1-/2 dated 19.3.87 on which the reliance is placed by the respondents, para 3⁽ⁱⁱ⁾(b) thereof reads as follows:

" Regarding Gratuity, sufficient amount to cover the anticipated recoveries may be withheld and the balance paid to the employee. Regarding non-vacation of quarters, an appropriate "hold-back" amount from Contribution to P.F. was authorised vide Board's letter No. E(G)81-51 dt. 24.4.82. It is clarified that if local conditions so warrant, the entire amount of DCRG/SC to P.F may be withheld till the quarters are vacated. "

At the same time it is stated in subsequent para (iii) that if unavoidable delay is envisaged in determining the final pension and gratuity of the retiring Railway employee, expeditious steps to sanction upto 100% of Pension and upto 100% of Gratuity as provisional in accordance with the rules, should be taken.

3. It is seen that the Full Bench has struck down the Northern Railway Board circular dated 4.5.82. That circular made a reference to Railway Board circular ^{the contents of which} were not examined by the Full Bench. However, since the circular of Northern Railway relating to withholding of the entire amount of DCRG in case of non vacation of quarters ^{was} held as unconstitutional by Full Bench, any action in violation of law laid down by Full Bench has to be held to be illegal. It is settled law that the Railway Administration cannot withhold the Gratuity on the ground that the Railway employee has not vacated the quarter. The Railway Administration may proceed in terms of Public Premises (Eviction of Unauthorised Occupants) Act 1971 to declare the employee as an

unauthorised occupant, and to recover the rent as per law including the penal rent from the retired employee. It is significant that in Wazir Chand's judgement the policy laid down is that it is not in order for the Tribunal to direct payment of normal rent by an un-authorised occupant. According to the settled law, the right to Gratuity of the employee was a Constitutional right though not a Fundamental right. Railway Administration is bound to make payment of the same to the employee promptly.

4. We, therefore, hold that the action of Railways in withholding the entire amount of DCRG amounting to Rs. 45,200/- payable to the applicant is illegal and that ^{the same is} ~~is entitled~~ ^{required} to be released. The applicant has asked for payment of Bank rate of interest on the amount of withheld Gratuity. We do not consider it to be a fit case to award payment of interest at the Bank rate. We, therefore, dispose of this case by passing the following order.

ORDER.

OA is allowed. The respondents are directed to make payment of the Gratuity to the applicant in full alongwith interest at the rate of 12% counting from two months from the date of superannuation i.e. on 1.3.91. The payment should be made to the applicant within two months from the communication of this order. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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*This order modified under
Supreme Court order dt 4/12/95
In CA No. 11617/95. order placed
in file. 4/16/96.*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CONTEMPT PETITION NO.02/97 IN O.A.385/94

Pronounced this the 27 day of August-1997

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

S.V.Ramteke,
6/218, Harvest,
Shailesh Nagar,
Dahisar(East)
Mumbai - 400 068.

By Advocate Shri H.A.Sawant

.. Contempt
Petitioner

-versus-

1. Shri N.Krithivasan
General Manager,
Western Railway,
HQ Office,
Churchgate,
Mumbai - 400 020.

2. Shri R.K.Sareen,
Divisional Railway Manager,
Mumbai Central Division,
Western Railway,
Mumbai - 400 008.

3. Shri Sudhir Mittal,
Additional Divisional
Railway Manager,
Mumbai Central Division,
Western Railway,
Mumbai - 400 008.

By Counsel Shri V.S.Masurkar

.. Contemners

-: O R D E R :-
(Per B.S.Hegde, Member(J))

Heard Mr.H.A.Sawant for the applicant
and Mr.V.S.Masurkar for the respondents.

2. Applicant has filed CP 2/97 in O.A.
385/94. The Tribunal vide its order dt. 7-9-94
after hearing both the parties held the action
of the Railways in withholding the entire amount
of DCRG amounting to Rs.45,200/- payable to the
applicant is illegal and that the same is required
to be released. Accordingly CA was allowed and

R/S

..2/-

respondents were directed to make payment of the Gratuity to the applicant in full along with interest @ 12% counting from two months from the date of superannuation i.e. on 1-3-91 and the payments were directed to be made to the applicant within two months from the communication of the order.

3. Against the order of the Tribunal dt. 7-9-94 the respondent department filed an SLP before the Supreme Court. The Supreme Court vide its order dt. 12-7-1995 stayed the operation of the Tribunal's order in respect of the amount deducted by way of occupation charges from the gratuity and interest thereon. Ultimately the apex court by its order dt. 4-12-1995 passed the following order :

"We are not called upon to interfere with the order for direction regarding grant of gratuity but we think that in the facts and circumstances of the case, the Tribunal ought not to have granted interest for delayed payment till the date the respondent vacated the quarter. After he vacated the quarter he was entitled to the payment of gratuity and, therefore, if there was delay he would be entitled to interest. We, therefore, modify the order of the Tribunal and state that the interest will not be payable till one month after he vacated the quarter. The appeal is allowed to that extent only."

4. It is an admitted fact, that though the applicant was superannuated from service on 31-12-1991

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he occupied the quarter and vacated the same on 31-1-94. The contention of the applicant is that though there is a specific direction by the Tribunal, the respondents did not release the gratuity amount and committed contempt of this Tribunal's order. The order of the Supreme Court passed on 4-12-95 was received by the applicant in the month of January'96, applicant has filed the CP in January, 1997 which is apparently within the time limit.

5. Respondents in their reply to CP stated that the petitioner has been agitating payment of gratuity but forgot his duty to pay the licence fees including arrears of rent consequent upon the revision of rent from 31-12-91 till the date of vacation of quarters on 31-1-94 i.e. for 25 months and also electricity charges totalling of Rs.69,445/- for the period 1-7-90 to 31-1-94. It is also stated that the normal licence fee from January'92 to April, 1992 i.e. 4 months @ Rs.66/- p.m. comes to Rs.264/- The penal rent from May'92 to January'94 i.e. 21 months comes to Rs.64,176.50. Hence no DCRG is payable.

6. However, the Tribunal's judgment concerning payment of gratuity has become final and that order is required to be implemented. Therefore the action of the respondents in deducting/ adjusting the rent etc. from the DCRG although permissible under the rules cannot be done in this case. Therefore it is incumbent that the administration

should pay the DCRG and the modified interest as per the Supreme Court order without making any adjustment of rent etc. Needless to say the respondent administration would be entitled to separately to make recovery of rent etc. as per law. The payment of DCRG and interest should be made within two months from the date of receipt of this order.

7. In the circumstance we are not discharging the C.P. Place the matter for orders in the ^{Second} ~~First~~ week of November, 1997.
on 10.11.97/14.

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

B.S. Hegde
(B.S. HEGDE)
MEMBER(J)

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27/8/97
order/Judgment despatched
to Applicant/Respondent(s)
on 3/9/97

3/9/97