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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 104/95

Date of Decision 11-4-96

Shri K.Thyagarajan Petitioner

Shri Y.R.Singh Advocate for the Petitioner.

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, Mumbai 400 001.

O.A.NO. 104/95

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Dated this 11th day of April 1996.

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

Shri K.Thyagarajan ... Applicant

By Advocate Shri Y.R.Singh

v/s

Union of India & Ors. ... Respondents

By Advocate Shri N.K.Srinivasan

O R D E R

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

The applicant retired on superannuation on 25.8.1990 as Asstt.Electrical Foreman (Carshed), Bombay Central, Western Railway. In this OA. he has claimed the relief of release of entire amount of DCRG and other retiral benefits with interest @ 18% and also the relief of quashing and setting aside the eviction proceedings initiated against him and to declare that the applicant is liable to pay only normal rate of rent. At the time of final hearing, it was not disputed that the applicant has on 14.3.1995 since vacated the quarter/and that so far as proceedings under P.P.Act are concerned, no notice under Section 7 has been issued. It is evident that the second relief does not survive ~~in~~ the above background and the only question to be decided is whether the applicant is entitled to release of entire amount of DCRG along with interest.

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2. The respondents have contended that the DCRG amount of Rs.32,500/- has been kept in deposit in terms of Railway Board's letter No. F(E) III-87 PN 1-12 dated 19.8.1987 till the applicant vacates the quarter allotted to him.

3. At the argument stage, the counsel for the respondents ~~does not~~ dispute that the applicant is entitled to the release of DCRG, he, however, contends that the applicant is not entitled to any interest atleast upto the date that he vacated the quarter and for this purpose he relies on the Supreme Court judgement in Raj Pal Wahi & Ors. vs. Union of India & Ors., SLP No.7688-91 of 1988. In that case the Railway authorities had withheld DCRG on the basis of administrative instructions issued by the Railway Board dated 24.4.1982. At the time of the decision there was no grievance with regard to the withholding of the DCRG since the same was released. The learned counsel for the petitioner had pressed for payment of interest in terms of Circular of the Railway Board dated 10.9.1984 and the relevant portion reads as below :-

"The Government have had under consideration the question of raising the rate of interest payable to a Railway employee on delayed payment of gratuity where the delay occurs on account of administrative lapse or for reasons beyond the control of the Government servant concerned. In partial modification of this Ministry's letter NO.F(E)III.79.PNI/16, dated 3/9/1979, the President is now pleased to decide that where the payment of D.C.R.G. has been delayed the rate of interest will be as follows :

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- (i) beyond 3 months and upto one year - 7% p.a.
- (ii) beyond one year - 10% p.a.

In this context the Supreme Court has observed as below :-

"There is no dispute that the petitioners stayed in the Railway Quarters after their retirement from service and as such under the extent rules penal rent as charged on these petitioners which they have paid. In order to impress upon them to vacate the Railway quarters the Railway authorities issued orders on the basis of the Railway Circular dated 24th April, 1982. Purporting to withhold the payment of death-cum-retirement gratuity as well as the Railway passes during the period of such occupation of Quarters by them. The delay that was occurred is on account of the withholding of the gratuity of the death-cum-retirement gratuity on the basis of the aforesaid Railway Circular. In such circumstances we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of Railway Board and not on account of administrative lapse. Therefore we are unable to accept that submission advanced on behalf of the petitioners and so we reject the same. The Special Leave Petition is thus disposed of."

In view of the judgement of the Supreme Court the learned counsel for the respondents submits that Railway administration is not liable to pay interest.

4. Learned counsel for the applicant, however, argues that the case of Raj Pal Wahi does not apply and what is applicable is the Full Bench judgement in p.287 in Wazir Chand's case reported at Full Bench Judgements published by Bahri Bros. 1991 Edition Vol.II. In this judgement the Railway Board Circular which allows the hold back of the amount of DCRG is discussed in Para 10

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and the validity of the same has been up-held.
The learned counsel submits that in terms of relevant pension rules the Railway administration can at the most with-hold an amount of Rs.1000/- and was bound to release the ^{balance} L after three months of the retirement of the applicant and since the Railway administration delayed the payment he is entitled to interest.

5. I am inclined to agree with the counsel for the applicant. In Raj Pal Wahi's case the Supreme Court had ^{no} occasion to interpret Circular dated 24.4.1982. What the Supreme Court dealt with was the Circular of 10.9.1984 in which the Government ^{is} itself required to make payment of interest if there is administrative lapse on the part of Government. The Supreme Court held in Wahi's case that retention of Government quarters cannot be said to be administrative lapse on the part of the Government and therefore ^{in terms of} ^{applicant} the Circular of 1984 cannot insist on payment of interest. But the question before me is whether the Railway administration was entitled to hold back the entire amount of the DCRG and still not pay interest in respect of the amount to which the applicant has a right as a matter of property and on which he has lost interest. There are also judgements of the Supreme Court in regard to the payment of interest on DCRG and not linking the release of the DCRG with continued occupation of the Government quarter vide the case of R. Kapoor.

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6. I am, therefore, inclined to grant interest to the applicant which would, however, be modulated according to the date of vacation of the quarters. I, therefore, dispose of the OA. by passing the following orders.

ORDER

The OA. is allowed. The respondents are directed to release the with-held amount of gratuity to the applicant and also pay interest to the applicant as below :-

- (a) Interest at the rate of 12% on the amount of DCRG minus Rs. 1000/- from 25.11.1990, i.e. three months after the date of retirement till 14.3.1995, i.e. till the vacation of the quarters.
- (b) Interest at the rate of 18% from 15.3.1995 till the date of actual payment.

It is clarified that before making payment of the above amount the respondents are free to deduct normal rent plus electricity/ water charges. It is further clarified that respondents are at liberty to proceed against the applicant for recovery of penalty rent, if any, as per law. There will be no order as to costs.

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

mrj.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO. 114/96, M.P. NO.: 866/96 IN

ORIGINAL APPLICATION NO.: 104/95.

Date of Decision: 19-02-97,

Shri K. Thyagarajan

Petitioner.

None for the applicant

Advocate for the
Petitioner.

VERSUS

Union Of India & Others

Respondents
(Review Petitioner).

Ms. Yashoda Shenoy for
Shri V. S. Masurkar.

Advocate for the
Respondents.

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

- (i) To be referred to the Reporter or not ? x
- (ii) Whether it needs to be circulated to x
other Benches of the Tribunal ?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 114/96 IN O.A. NO.: 104/95.

M.P. NO.: 866/96.

Pronounced Dated this _____ the 19th day of February, 1997.

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

Shri K. Thyagarajan,
R/o. 129/16,
Western Railway Quarters,
Kherwadi (E),
Bombay - 400 051.

... Applicant

VERSUS

1. Union Of India through
the General Manager,
Western Railway,
Churchgate,
Bombay.

2. The Divisional Rly. Manager,
Western Railway,
Bombay.

3. The Sr. Divisional Engineer,
Western Railway,
Bombay Central,
Bombay.

... Respondents
(Review Petitioner).

(By Advocate Ms. Yashoda Shenoy
for Shri V.S. Masurkar)

: ORDER :

! PER.: SHRI M. R. KOLHATKAR, MEMBER (A) !

In this review petition, the original respondents, namely; the Railway Administration, have prayed for review of my judgement dated 11.04.1996. In that O.A., the applicant retired on superannuation on 25.08.1990 and vacated the quarter on 14.03.1995. He had sought the relief of release of entire amount of DCRG and other retiral benefits with interest and the Tribunal had granted the relief in following terms :-

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- "(a) Interest at the rate of 12% on the amount of DCRG minus Rs. 1,000/- from 25.11.1990 i.e. three months after the date of retirement till 14.03.1995, i.e. till the vacation of the quarter.
- (b) Interest at the rate of 18% from 15.3.1995 till the date of actual payment."

2. The respondents have challenged the first part of the order relating to grant of interest @ 12% on DCRG when the applicant had not vacated the quarter. According to the respondents, there is a legal error apparent on the face of the record in as much as it is against the ratio of the Supreme Court judgement in SLP No. (C) 14609/95 .. Union of India V/s. S.V. Ramteke decided on 04.12.1995. That judgement is annexed at exhibit R-III, which reads as below :-

"The only short question is in regard to the Tribunal's order directing payment of interest at the rate of 12% per annum to be calculated after the expiry of 2 months from the date of superannuation from 1.3.1991. Grievances of the Railway Administration is that after the respondent superannuated, he did not vacate the quarter occupied by him and thereby committed a breach of one of the terms of employment and therefore, the Appellant was entitled to withhold the amount and in any case cannot be said to be liable to pay interest on the amount so held. It was further contended by the Learned Counsel for the appellant that the Respondent had also not paid rent for the quarter occupied by him post retirement. 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 had 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

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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 with no order as to cost."

3. The respondents have also cited other cases but they are not material.

4. As there was an arguable case, notice was issued for preliminary hearing of the review petition but the counsel for the original applicant remained absent, although notice was given to him. I have heard the learned counsel for the review petitioner/original respondents.

5. In my judgement, I had cited the case of Raj Pal Wahi & Others V/s. Union Of India & Others, SLP No. 7688-91 of 1988, however, the case of S. V. Ramteke was not cited before me. I am of the view, however, that I am bound by the ratio of the Supreme Court judgement in Ramteke's case. That judgement was delivered on 04.12.1995 i.e. prior to the date of deciding the O.A., namely; 11.04.1996. When a binding Supreme Court authority is not cited before the Tribunal, the Tribunal is all the same bound by such a judgement and a subsequently delivered judgement which does not follow the ratio of that earlier Supreme Court judgement has to be considered to be containing an error apparent on the face of the record. I am of the view, therefore, that my judgement requires modification, especially, in regard to the direction regarding payment of interest for the period the applicant was in occupation of the quarter.

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6. I, therefore, hold that the applicant, in view of the ratio laid down in Ramteke's case, is not entitled to interest during the period he was in possession of the quarter. That part of the order relating to grant of interest @ 12% on the amount of DCRG minus Rs. 1000/- from 25.11.1990 till 14.03.1995 is hereby revised. However, the order relating to grant of interest @ 18% for the period from 15.3.1995 till the date of actual payment remains.

7. The review petition has been filed late by 208 days. The respondents have filed M.P. No. 866/96 for condonation of delay. The miscellaneous petition stands allowed and I am disposing of the review petition on merits.

8. In the light of the above discussion, the review petition is allowed. Accordingly, the R.P. stands disposed of with no order as to costs.

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

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order/Judgement despatched
to Applicant/Respondent (s)
on 22/2/97