

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 205/95

Date of Decision 22.03.96

B. S. Naik

Petitioner

Mr. G. S. Walia

Advocate for the Petitioner.

Versus

UOI & CRS.

Respondent

Mr. V. S. Masurkar

Advocate for the Respondents.

Coram:

The Hon'ble Mr. V. Ramakrishnan, MEMBER (A).

The Hon'ble Mr. ~~.....~~

1. To be referred to the Reporter or not? no

2. Whether it needs to be circulated to other Benches of the Tribunal? no

Member (A)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH "GULESTAN" BUILDING No.6
PREScot ROAD, MUMBAI-1.

ORIGINAL APPLICATION No.205/1995

DATED THIS 22ND MARCH, 1996

CORAM : HON.SHRI V. RAMAKRISHNAN, MEMBER (A)

B.S. Naik, C/o G.S. Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street, Fort,
Bombay 400 001.

(By Mr. G.S. Walia, Counsel) .. vs. Applicant

Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate, Bombay 20
and 2 Ors.

(By Mr. V.S. Masurkar, Counsel) .. Respondents

O R D E R (ORAL)

(Per : V. Ramakrishnan, Member (A)

The applicant was a railway servant and he took voluntary retirement with effect from 31.8.1992. As he had completed more than 30 years of service, he could voluntarily retire after giving three months notice and such voluntary retirement admittedly took effect from 1.9.1992. While in service he was allowed Railway quarters which he continued to occupy even after the date of retirement and is in possession of the same even today. As the applicant had not vacated the quarter, the railways did not release the gratuity and also the railway concessional passes available to retired railway servants. Subsequently, on 9.2.1995, the concerned

Accounts Officer issued an order (Exhibit A) which is the impugned order, to the effect that as the applicant had not vacated the railway quarter and is in unauthorised occupation of the same, substantial sums by way of damage rent were liable to be recovered from him and held that after adjusting the gratuity amount of Rs.30,525/- a further sum of Rs.18,304/- still remained to be recovered. The Accounts Officer issued a direction as per the impugned order to recover half the amount of Dearness Relief on pension towards adjustment of balance damage rent after deducting the entire DCRG. The applicant is aggrieved by this order and has approached this Tribunal in February, 1995, by filing the present O.A. wherein he has prayed for a declaration that he is entitled to receive full amount of DCRG with interest thereon and also the post retirement passes. He has also ~~6/13~~ prayed for quashing of the impugned order dated 9.2.1995 (Exhibit A) which directs recovery of 50% of Dearness Relief on pension towards outstanding damage rent. He has secured an interim direction from the Tribunal staying the operation of the impugned order.

2. I have heard Shri G.S. Walia, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents.

3. Shri Walia submits that the impugned order dated 9.2.1995 is untenable and is clearly illegal. He also

argues that this order has been issued by a person who does not have the necessary competence to do so. Shri Walia states that the impugned order talks of recovery of damage rent. He brings out that the damage rent for occupation of railway quarter can be levied only after following the formalities as laid down by law. He discusses at length the provisions of Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act for short). He also refers to the decision of the Bombay Bench of the Tribunal in a series of cases where it had been held that it was not permissible for the respondents to charge penal rent for unauthorised occupation of quarters without 'getting' the right established in the forum created under the PP Act and unless the remedy is sought under Section 7 of the PP Act by the Estate Officer, no damage rent can be levied. Shri Walia contends that even to day the respondents have not taken any action under Section 7 of the PP Act and as such there is no question of charging any damage rent from the applicant. He argues that when the applicant has no liability to pay damage rent in the present situation, the question of recovery of the same from the DCRG of the applicant as also from Dearness Relief on pension would not arise. He states that on this preliminary ground alone the applicant has to succeed.

4. Shri Walia goes on to argue that the Railways have no authority to withhold the amount of gratuity of a

retired, railway employee, even if he has not vacated the railway quarter and draws attention to the Full Bench decision of the Tribunal in WAZIR CHAND - Vs. - UNION OF INDIA & OTHERS, CAT (FB) Vol.II 287, where it was held that withholding of DCRG is not permissible. He also brings out that the department went on appeal against the decision of the Full Bench by filing a S.L.P. in the Hon'ble Supreme Court of India and the same was dismissed. He makes available a copy of the order of the Hon'ble Supreme Court in the S.L.P. Civil Appeal No.12305/93, decided on 1.11.93, where the Apex Court observed:

"The special leave petition is dismissed on the grounds of delay as well as on merits."

In view of this, Shri Walia argues that the decision of the respondents in withholding the DCRG is illegal. He also cites a number of other authorities and legal provisions in this regard and in particular refers to Article 366(17) of the Constitution where pension has been defined to include gratuity also. Shri Walia states that as pension cannot be attached for recovery of dues under section 11 of the Pension Act, it necessarily follows that gratuity also cannot be attached for any such recovery. He also contends that the railways cannot recover any amount from the Dearness Relief on pension as Dearness Relief forms part of pension and cannot be taken as a separate unit and there is no rule or order which would permit the railways to make any recovery out of the

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Dearness Relief on pension. He relies in this regard on the decision of the Bombay Bench of the Tribunal in v.p. Kolhe Vs. Union of India & Ors. (an unreported decision) in O.A. No.147/94 decided on 18.8.1994. He also submits that withholding of post retirement complimentary passes is also not permissible as has been held by Full Bench in WAZIR CHAND's case, and he prays that the respondents should be directed to release the applicant's passes.

5. The learned counsel for the respondents Shri Masurkar, raises a preliminary objection that the applicant has not made the Divisional Railway Manager or the Chief Works Manager as party respondents and the application has to fail on the ground of non-joinder of necessary parties. This contention of the learned counsel is without merit. Once the applicant has impleaded the Union of India, the lower authorities need not be made party respondents. This position is well settled and the application cannot be dismissed only on the ground that the authorities who were normally dealing with the applicant have not been impleaded as necessary parties, when the Union of India has been impleaded as a party.

6. Shri Masurkar goes into the merits of the case. He says that he is aware of the rulings of the Bombay Bench regarding the need to invoke Section 7 of the PP

Act for recovering damage rent as also the decision of the Full Bench in Wazir Chand's case. He however submits that it is necessary to take note of certain dates. The applicant took voluntary retirement with effect from 1.9.1992 but had made a statement elsewhere that he had retired on superannuation on that date. As per the normal rules, once he had retired, he was expected to vacate the quarter after four months at normal licence fee which may be extended upto 8 months at twice the rate. The applicant has not made any efforts to vacate the quarter even though he is unauthorisedly in occupation of the quarters for more than three and a half years. The conduct of the applicant in this regard is reprehensible and he is not entitled to any relief. It is also the contention of the learned counsel that the applicant was aware of the railway rules which placed an embargo on release of DCRG and post retirement passes if the quarter is not vacated. The applicant had admittedly taken voluntary retirement with effect from 1.9.92 and he had kept quiet all along and woke up to his rights only when the impugned order dated 9.2.95 was issued, when he promptly approached the Tribunal with the present O.A. The applicant herein has challenged the adjustment of gratuity, but he had remained silent all these years when the same was not released to him. Shri Masurkar emphatically states that the intention of the applicant in the present case is to continue the unjust and

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unwarranted retention of quarter depriving eligible people who are standing in the queue and that such a person does not deserve any sympathy and should not be given any relief by the Tribunal.

Shri Masurkar also submits that there is no bar in withholding part of the Dearness Relief which is clearly distinguishable from pension. In this connection he draws my attention to the Supreme Court decision in the case of UNION OF INDIA - VS. - VASUDEVAN PILLAY 1995(1) SCALE 9 where the court has held that dearness relief is a separate component from pension and non-release of dearness relief to pensioners in appropriate situations would not in any way be illegal. Shri Masurkar contends that the application is devoid of merit and deserves to be dismissed with costs.

7. I have carefully considered the rival contentions. The applicant is challenging the order of the Accounts Officer dated 9.2.95 which orders recovery of half the amount of Dearness Relief on pension every month towards the damage rent after adjusting the entire amount of Gratuity. As has been brought out by Shri Walia and in the context of clear ruling of the Bombay Bench of the Tribunal in a number of cases such as BHUPINDER SINGH VS. - UNION OF INDIA - O.A.No.452/92, decided on 26.8.1994; J.L. SONI VS. - UNION OF INDIA, O.A. No.238/92, decided on 29.11.1994; URMAN SINGH - VS.

UNION OF INDIA, O.A. No.439/95, decided on 25.7.1995, there is a bar to recover any excess rent other than normal rent, unless the department takes action under Section 7 of the PP Act. It may be true that the applicant is over-staying in the quarter beyond the permissible period for a retired servant as laid down in the rules and if the railway administration were aggrieved by the conduct of the applicant it is necessary for them to take action in the manner laid down by law such as recourse to the PP Act, etc.

Shri Walia submits across the bar that subsequent to filing of the present O.A., notice under Section 4 of the PP Act has been served on the applicant and also an order under Section 5 was passed. The applicant had approached the City Civil Court and obtained a stay. It is not necessary for me to go into the proceedings of the applicant before the City Civil Court. I only take note of the fact that the Railways had not so far taken action under Section 7 of the PP Act and they are therefore not entitled to charge damage rent at present in the light of the legal position explained in a catena of decisions such as Bhupinder Singh Vs. Union of India, J.L. Soni Vs. Union of India and Urman Singh Vs. Union of India referred to supra. The applicant is not liable to pay any damage rent at this stage when the Railways had been remiss in as much as they had not followed the procedure

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prescribed by law and in such a situation, the question of recovery of damage rent from the gratuity or part of Dearness Relief would not arise at all and the impugned order dated 9.2.1995 at Exhibit A cannot be sustained. As the Railways had not taken any action under Section 7 of the PP Act, the applicant is not liable to pay at this stage any damage rent and it necessarily follows that the order dated 9.2.95, which is impugned in the present O.A. has to be quashed. In view of this finding, it is not necessary to go into the question as to whether any dues can be adjusted from the Dearness Relief from pension or not.

8. The other reliefs sought for by the applicant are for release of full amount of gratuity with interest and also release of post-retirement passes. The question whether the Railways can withhold DCRG and post-retirement passes when the retired railway employee has not vacated the official quarter has been gone into by the Full Bench in Wazir Chand Vs. Union of India & Ors. (Full Bench Judgments of Central Administrative Tribunals (1989-1992) Vol.II - 287). Para 27 of the judgment sums up the conclusions of the Full Bench and is reproduced below:

"27. 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.

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(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.

In view of this ruling, it is not permissible to withhold the entire amount of DCRG and also to disallow the post-retirement passes for unauthorised retention of railway quarter. The railways action in this regard is therefore clearly untenable.

9. The present application therefore succeeds on the short ground that the Railways had not taken action under Section 7 of the PP Act which would give them legal authority to levy damage rent. I however notice that the applicant had not taken effective steps for release of gratuity and has not submitted any representation to the Railway authorities for the same. Shri Walia states that it is incumbent on the railways to make payment of the retiral dues without any delay once the applicant has retired. All the same, the inaction of the applicant in this regard is a factor to be reckoned while computing the interest due to him.

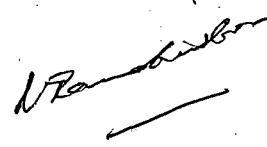
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10. In the light of the foregoing discussions, I dispose of the present O.A. with the following directions:

- i) The impugned order dated 9.2.1995 at Exhibit A is hereby quashed.
- ii) The railways should release the amount of gratuity to the applicant within two weeks from the date of receipt of a copy of this order.
- iii) They are liable to pay interest on this amount and are directed to pay interest @ 7% per annum for the period from 1.12.1992 upto 31.8.1993 and @ 10% per annum thereafter till the date of payment. I do not propose to award any higher rate of interest keeping in view the facts and circumstances of the case.
- iv) The respondents are also directed to release the post retirement passes which would be admissible to a retired employee within a month from the date of receipt of a copy of this order, for the year 1996 onwards, subject to the applicant making an application for such post retirement passes.

v) The respondents would be at liberty to pursue their remedy provided by the PP Act if it is available to them.

vi) There is no order as to costs.



(V. RAMAKRISHNAN)
MEMBER (A)

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