

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 241/95/199

Date of Decision: 27-08-96

Sokkalingam A.Nadar & Anr.

Petitioner/s

Shri H.A.Sawant.

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri N.K.Srinivasan.

Advocate for the
Respondent/s

CORAM:

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

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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.241/95.

pronounced, this the 22nd day of August 1996.

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

1. Sokkalingam A.Nadar,
Railway Quarter No.104/28,
Borivli (East),
Bombay - 400 066.

2. Shiva Subramaniam A.Nadar,
Railway Quarter No.104/18,
Borivli (East),
Bombay - 400 066.

.... Applicants.

(By Advocate Shri H.A.Sawant)

V/s.

1. The Secretary,
Railway Board, Ministry
of Railways, Rail Bhavan,
New Delhi - 110 001,
Acting for the Union of India.

2. The General Manager,
Western Railway HQ Office,
Churchgate,
Bombay - 400 021.

3. The Divisional Railway Manager,
Bombay Central Division,
Western Railway,
Bombay - 400 008.

.... Respondents.

(By Advocate Shri N.K.Srinivasan).

O R D E R

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

In this O.A. the facts are as below. The applicant No.1 is a Railway employee occupying Railway Quarter No.104/18. He retired on 31.8.1993. He was permitted to stay in the Quarters up to 30.4.1994. His gratuity amounting to Rs.21,735/- has not been paid as he has failed to vacate the Quarters.

The eviction notice was issued on 2.8.1994 and the

eviction order was issued on 2.1.1995. According to the applicant his first son by name Nadar Sharma Pandian is handicapped and he was being considered against the quota reserved for physically handicapped employees in Group 'C' vide (Annexure -IV) letter dt. 27.5.1992, but the same was cancelled vide (Annexure - V). If the Railways had not cancelled the written test his first son would have been in employment well prior to the applicant No.1's date of superannuation. For no fault of his the test was cancelled. It appears ^{from} the order sheet dt.19.1.1996 ^{that} since been the applicant's first son has given employment and the applicant was given leave to amend the O.A. accordingly. On going through the record, no such amendment was carried out and I am therefore, required to proceed on available material. The applicant next contends that his second son was employed as a Khalasi w.e.f. 20.4.1994 and he registered for accommodation as per rules on 5.7.1994 and that there are several cases in which as a special case the Quarters have been regularised and therefore, the respondents ought to have regularised the Quarters in favour of his second son who is applicant No.2. The reliefs claimed by the applicants therefore are, to restrain the respondents from proceeding with the eviction and to regularise the Quarters in question in the name of his son, to pay the gratuity amount with interest from the date of retirement due to superannuation and to issue post retirement

complimentary passes for the year 1994 onwards as per rules.

2. The Respondents have opposed the O.A. First of all, it is contended that the O.A. is barred by limitation because applicant retired on 31.8.1993 and the O.A. has been filed on 13.2.1995. Secondly, it is contended that the quarters in question cannot be regularised in favour of his second son, as the son was employed after the date of superannuation and therefore, the requirements of the Rule are not fulfilled. Regarding gratuity it is contended that the same would be released on vacation of Railway Quarters as per Rules. The post-retirement complimentary passes would also be released only after the applicant vacates the quarters and thereafter, one set of pass for each month for unauthorised occupation would be disallowed.

3. The applicants have contended that withholding of gratuity and withholding of post-retirement passes is against the Law laid down by Wazir Chand V/s. Union of India & Ors. (Full Bench Judgments (CAT) Vol.II). He also relies on the Supreme Court Judgment in Gangaram M.Gupta and another V/s. Union of India and Others (Civil Appeal No.3496/91).

4. I have considered the matter. It appears that to me/on the facts of the case, the case of Gangaram M.Gupta and another decided by the Supreme Court does not apply. In that case the appellant No.2

had already prayed for sharing of accommodation more than $1\frac{1}{2}$ years prior to his father's retirement in 1982, ^{but} the order for sharing was made about two months before retirement. The Supreme Court accepted the submissions of the appellant No.1 that the application for sharing was kept pending for more than $1\frac{1}{2}$ years and that if this fact is taken into account the case is clearly covered by the Railway Board's instructions. Thus, the ratio of Gangaram does not apply.

5. Regarding non-eviction and regularisation of the Quarters, it is clear that both the sons ⁱⁿ after the of the applicant are employment of respondents but and superannuation of the applicant therefore, the essential condition that the son in whose name regularisation is sought should have been a Railway servant sharing accommodation with the father for six months prior to the date of retirement is not fulfilled. Therefore, the question of regularisation does not arise. The fact that such regularisation is allowed as a special case in certain cases cited by the applicant like Xavier Kuriakose, Diesel Assistant, and B. Kannan, T.C. / Anand, Diesel Foreman does not help him because the circumstances under which regularisation was allowed are not before me and in any case, for aught I know the regularisation may not have been justified and such unjustified regularisation ^{is} not

...5.

give a vested right to the applicant to claim regularisation on that basis. There can also be no bar to eviction in terms of P.P. Act and the Respondents are at liberty to proceed against the applicant as per law. So far as gratuity is concerned the case of Wazir Chand lays down as below :

"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.

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 the instant case, the entire amount of gratuity which is not justified has been withheld. The respondents are directed to release the gratuity after adjusting normal rent for the entire period of occupation of the quarters plus ~~the~~ Rs.1000/- as a hold back against penal rent for the recovery of which they are entitled to proceed as per rules. The balance amount of gratuity should be paid to him after the above adjustment. So far as the post-retirement passes are concerned Wazir Chand laid down that disallowing one set of post-retirement ^{passed} for every month of unauthorised .

retention of quarters is unwarranted. Therefore, the Respondents are directed to release post-retirement passes for the applicable year and thereafter within a month of the vacation of the quarters.

6. The O.A. is disposed of in these terms. There would be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.