

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 423/95

Date of Decision 25-04-96

Shri J.Antic Petitioner

Shri G.S.Walia Advocate for the Petitioner.

Versus

Union of India & Ors. Respondent

Ms.Y.Shenoy for Sh.V.S.Masurkar 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, MUMBAI 1.

OA.NO. 423/95

Proounced, this the 25th day of April 1996

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

Shri J.Antic ... Applicant
By Advocate Shri G.S.Walia

V/S.

Union of India & Ors. ... Respondents
By Advocate Ms.Y.Shenoy for
Shri V.S.Masurkar

O R D E R

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

In this OA. the relief claimed by the applicant is for a direction to the Railway administration to pay interest on delayed payment of DCRG according to rules, i.e. from the date of his retirement till the actual payment of DCRG amount. The applicant retired on 30.8.1986 after attaining the age of superannuation. He was in occupation of Railway quarter No.88/5 at Matunga Road, Western Railway Colony, Bombay. His son was also serving in Western Railway and an application for regularisation of quarter on father to son basis was pending in another OA. The Railway administration regularised the quarter by their order dated 25.5.1992 at Exhibit-'A' page 8. Although the order is dated 25.5.1992, it is stated that it would take effect from 1.4.1991 and it is further stated that the occupation of the above mentioned quarter from 31.8.1986, i.e.

the date of superannuation of the applicant (Father) to March 1991 is treated as unauthorised and penal rent will be charged for the same. In OA.NO. 800/93 decided by this Tribunal on 25.10.1993, the order dated 23.7.1993 so far as it relates to charging of damaged rent without proceedings under P.P.Act was quashed. ~~While~~ giving liberty to the respondents to initiate proceedings under P.P.Act and to retain Rs.5,000/- from the DCRG payable to the applicant, the Railway administration was directed to pay the balance DCRG to the applicant within two months. The contention of the applicant is that no proceedings under P.P.Act have so far been taken for recovery of damage rent. Admittedly, he has vacated the quarter on 1.4.1991 on the footing that it has been regularised in the name of his son. Therefore, once the quarter has been vacated, the Railway administration cannot retain Rs.5,000/- earlier withheld by them and further the Railway administration is bound to pay interest in accordance with the rules. In this connection, he relies on Railway Board's letter No. F(E)III/79/PN1/15 dated 14.9.1984 which provides for interest to be paid on Death-cum-Retirement Gratuity because of administration's delay. Further, the applicant also points out that according to the latest orders, namely, Railway Board Circular No. F(E)III/94/PN1/28, dated 1.11.1994, the rate of interest payable on the

delayed payment of gratuity would be ~~at the~~ ^{rate} applicable ~~to SRPF deposits~~ (at present 12 per cent per annum compounded annually) and this rate is applicable from 1994.

2. The respondents have opposed the OA. According to the respondents the applicant is in unauthorised occupation of the quarter w.e.f. ~~May 1987~~ to March 1991 and hence the respondents are within their rights to charge the penal rate as per rules ~~even~~ otherwise the amount of Rs.5,000/- was kept back under the directions of the Tribunal. So far as the payment of interest is concerned, it is payable only when payment of DCRG is delayed on account of administrative lapses. In this particular case the delay was not due to administrative lapses but due to unauthorised occupation ~~of~~ the quarter by the applicant. Lastly, it is contended that the OA. is hit by principles of analogous res-judicata because in the ^{800/93} OA ~~/~~ also the same ~~prayer~~ ^{for} payment of DCRG with interest was ~~made~~ and the Tribunal having considered the matter had directed payment of DCRG after hold back of Rs.5,000/- and not having passed any order as to payment of interest, the prayer ~~for~~ payment of interest should be deemed to have been rejected and the same matter cannot be reagitated by the applicant in the present OA.

3. The counsel for the applicant has contended that the principles of res-judicata do not apply because what he is praying for is interest under the rules. In this connection, he relies on judgements of the Tribunal in OA.NO.428/95 (K.V. Joseph) decided on 19.12.1995 and OA.NO.280/95 (M.D.Paralkar) decided on 19.1.1996. K.V.Joseph's case was identical with the present OA. because in an earlier OA.No.314/90, the DCRG was ordered to be released and thereafter the applicant again approached the Tribunal for payment of interest in ^{a fresh} OA. and the same was directed to be paid according to the rules of Railway administration. In OA.NO. 280/95 reliance was placed on Urman Singh's case (OA.NO.439/95) to the effect that damage rent cannot be recovered except in accordance with the P.P.Act, though the issue of damage rent in that case was decided by agreement and so far as interest on DCRG was concerned, the same was directed to be paid relying on Full Bench judgement in Wazirchand's case.

4. Considering the facts of the case and the case law cited, I am of the view that the prayer for payment of interest in this case is not hit by the principles of ^{to M} analogous/res-judicata because the prayer of interest is in terms of applicable rules and in this particular case rules have been shown to ~~me~~ which show that in case of delay ~~in~~ payment of DCRG ^{is} because of administrative reasons, respondents'

administration is liable to pay interest as per applicable rules, i.e. Circular dated 14.9.1984 read with Circular dated 1.11.1994.

5. The remaining question is as to ^{from} what date the respondents should be directed to pay interest. The applicant would pray for payment of interest from three months from the date of retirement, i.e. w.e.f. 1.12.1986. I, however, take note of the Supreme Court judgement in Raj Pal Wahi & Ors. vs. Union of India & Ors., SLP No. 7688/91 of 1988.

This is not a reported judgement but has been cited ^{this Tribunal} before several times. In that case the Supreme Court held that the Government employee is not entitled to get interest on ^{administrative delay in} account of payment of Death-cum-Retirement Gratuity so long as quarters are not vacated. Applying the ratio of Raj Pal Wahi's case, I am of the opinion that since the quarters are vacated on 1.4.1991, the with-holding the payment of DCRG beyond this date can be said to be due to administrative reasons which delay ought to have been avoided by the Railway administration.

Accordingly the Railway administration is liable to pay interest at the applicable rate from 1.4.1991 till the date of actual payment. So far as the payment of held back amount, namely, Rs.5,000/- is concerned, relevant Pension Rules envisage that at the most an amount of Rs.1,000/- can be withheld if the

quarters are vacated and in this particular case,
since the quarters are ^{deemed to be a}vacated, the question of
withholding any amount on account of non-vacation
of quarters does not arise and in particular no
rules have been pointed out to me which permit
the Railway administration to withhold DCRG amount
on account of penal rent. The OA. is allowed and
disposed of in these terms. The held back amount
plus interest payable should be paid to the applicant
within 3 months from the communication of this order.
There would be no orders as to costs.

M. R. Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Review Petition No.01/1997
in
Original Application No.423/95.

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

J.Antic. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

ORDER ON REVIEW PETITION BY CIRCULATION.

(Per Shri M.R.Kolhatkar, Member(A)) Dt.14.1.1997.

In this Review Petition filed by the Original Respondents, the Judgment dt. 25.4.1996 in the O.A. is sought to be reviewed on several grounds. One of the grounds is that the claim for interest which is conceded by the Tribunal is hit by the principles of constructive res judicata. This aspect was considered in the Judgment and this ground appears to treat the Review Petition as an appeal which it is not. The next ground is that the Tribunal has granted interest, but the same is not permissible in terms of the binding ratio of the Judgment of the Hon'ble Supreme Court in Union of India V/s. S.V.Ramtake in SLP (C) No.14609 of 1995. In this Judgment the Hon'ble Supreme Court observed that "we think that in the facts and circumstances of the case, the Tribunal ~~was~~ 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 thereafter if there was delay, he would be entitled to interest." In the Judgment which is sought to be reviewed, the date of vacation of the quarter was 1.4.1991 and therefore, the interest was granted from that date. It is not clear how the Review Petitioner claims that the Judgment does not follow the binding ratio laid down by the Supreme Court in Ramtake's case. Next it is stated that the Tribunal had directed payment of interest on withheld amount of DCRG which is also not correct and the date should be 1.6.91. w.e.f. 1.4.1991. It is not clear what is the date taken by the Review Petitioner as the date of vacation. In the written statement to the O.A. itself the respondents have stated that the applicant was in unauthorised occupation of Railway Quarter w.e.f. May, 1987 to March, 1991 and therefore, on their own admission the date of vacation is 1.4.1991. The question of grant of ^{grace of} one month is a matter of discretion. Even assuming that one month's grace period is given, that would come to 1.5.1991, this still does not explain as to how the respondents have calculated the date as 1.6.1991. Even otherwise, the grant of grace period is a matter of discretion and Supreme Court Judgment in Ramtake's case does not refer to any grace period.

2. The respondents have stated that the Tribunal ought not to have granted interest on the withheld amount of gratuity of Rs.5,000/- because the same

...3.

was withheld under orders of the Court. A careful perusal of the Judgment, however, would show that interest has not been allowed on the held back amount of Rs.5,000/-. Lastly, the Review Petitioners have relied on a Single Bench Judgment of the Tribunal in O.A. No.1463/95 decided on 26.7.1995 which was reviewed by the Tribunal in R.P. No.91/96 on 31.10.1996 stating that the respondents are liable to pay interest only after the applicant vacates the Quarters. The facts and circumstances of the case were quite different and in any case, it is not clear to me as to what is the conflict as ^{between} this decision and the decision in the O.A. sought to be reviewed.

3. The Review Petition therefore, has no merit and is therefore dismissed by circulation as permissible under the Rules. Before parting with the case, I cannot, but observe that the present R.P. was entirely uncalled for.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.