CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1001 /1995

Date of Decision: 07 October 96

Smt., M.P.KANAL — Petitioner/s

Mr. G.S. Walia — Advocate for the Petitioner/s

V/s.

U.O.I. & ORS. — Respondent/s

Mr. V.S.Masurakr — Advocate for the Respondent/s

CORAM:

Hon'ble Shri P.P. Srivastava, Member(A)

Hon'ble Shri .....

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Member (A)

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A. No. 1001 OF 1995

DATED: THIS 7th DAY OF ~~SEPTEMBER~~ October 1996

Coram: Hon. Shri P.P. Srivastava, Member(A)

Smt. M.P.Kanal,
Retired Head Clerk,
formerly working at
Head Quarters Office,
Western Railway,
Churchgate, Bombay
Residing at RT Barracks
No.29/340 Chembur Colony,
Chembur, Mumbai
C/o. G S Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Mumbai

(By Adv. Mr. G S Walia) ..Applicant

V/s.

1. Union of India,
through General Manager,
Western Railway,
Head Quarters Office,
Churchgate, Mumbai

2. Financial Advisor and
Chief Accounts Officer (Pension),
Western Railway,
Head Quarters Office,
Churchgate, Mumbai

3. Chief Manager
Union Bank of India,
Chembur (West) Branch,
My Mother Cooperative
Housing Society Building No.1,
Plot No.412 R.C. Marg,
Chembur (W), Mumbai

(By Adv. Mr. V S Masurkar,
Central Govt. Standing
Counsel) ..Respondents

ORDER
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[Per: P P Srivastava, Member(A)]

1. The Applicant was working as Head Clerk in the Western Railway Head Quarters office. She was allotted Railway Quarter No. 75/6 at Matunga Road. The Applicant retired from railway service on 31.10.1991 on attaining the age of superannuation. She continued to occupy the quarter after retirement and vacated it only on 19.4.1994. The applicant has submitted that she could not vacate the quarter because her own house at Chembur was not vacated and was given possession by her tenant only on 6.4.94 after the applicant succeeded against the tenant in a civil suit. The applicant thereafter immediately vacated the railway quarter on 19.4.94.

2. The Applicant submits that she received letter dated 15.5.95 from the Respondent administration addressed to the Manager, Union Bank of India, the 3rd Respondent. In this letter the Respondent administration had asked the Bank to recover an amount of Rs.51,106/- from the Dearness Relief to be paid to the applicant along with pension towards damage rent and electricity charges. The applicant has further stated that she has not received the DCRG amounting to Rs.26,040/- on her retirement. The respondents have not paid the DCRG on the ground that she had not vacated the railway quarter. The Applicant has therefore approached the Tribunal through this O.A. and

has prayed for the relief that the order dated 15.5.95, Exhibit A, and the letter dated 13.7.95, Exhibit B from the Union Bank of India be quashed. The Applicant has also sought relief that she be paid full amount of DCRG along with permissible interest. The applicant has further sought the relief that she is entitled to two post retirement passes and the same should be issued to the applicant.

3. Counsel for the applicant has argued that no notice was given before impugned order dated 15.5.95 has been issued for recovery of the amount of Rs.51,106/-. Therefore the order of recovery is against the principles of natural justice and bad in law and is required to be quashed on this ground alone. Counsel for the applicant has also argued that the respondent administration cannot recover penal or damage rent without taking action under Sec. 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [Hereinafter referred to as P.P.Act] and nothing more than normal rent can be recovered by the Respondents from the applicant. Counsel for the Applicant has argued that this Tribunal has taken the view in many cases that damage rent cannot be recovered without following the provisions as laid down u/s.7 of the P.P.Act. Counsel for the applicant has further

submitted that the Full Bench judgment pronounced on 22.2.96 in O.A.No. 936/93 in RAM POOJAN Vs. UNION OF INDIA & ORS., ATJ 1996(1) 540, does not lay down the correct law and is to be treated as per incurium. In RAM POOJAN's case the Full Bench was considering the following questions for decision:-

> (a) Whether in respect of railway employee in occupation of a railway accommodation a specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer/retirement or otherwise, is necessary before further retention of the accommodation can be considered as unauthorised and penal/damage rent levied or
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> (b) Whether the retention of accommodation beyond the permissible period can automatically be considered as unauthorized without any specific order of cancellation of allotment and the penal/damage rent levied accordingly.

The Full Bench has replied these questions in paras 38 and 39 after dealing with the reference as follows:

> "38. In the light of the discussions hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows:
>
> a) In respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied.
>
> b) Our answer is that retention of accommodation beyond the permissible period in view of Railway

> Board's circulars would be deemed to be unauthorised occupation and there would be automatic cancellation of an allotment and penal rent/damage can be levied according to the rates prescribed from time to time in the Railway Board's circular.
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> 39. We further hold that it would be open to the railway authorities to recover penal/damage rent by deducting the same from the salary of the railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of unauthorized Occupants) Act 1971. We also hold that resort to proceedings under the said act is only an alternative procedure which does not debar recovery as per the provisions of the Railway Board's circulars."

The Ld. Counsel for the Applicant has argued that the ratio laid down in the Full Bench Judgement in RAM PUJAN case is wrong and erroneous to the extent that the respondent railway administration need not follow S.7 of the P.P.Act, 1971 for charging damage rent. Ld. Counsel for the Applicant has drawn my attention to para 22 of the Full Bench judgment of RAM POOJAN's case which reads as under:

> "22. The learned counsel for the respondents cited the following two decisions by a Division Bench of C.A.T. Calcutta before us.
>
> (i) Shanker and Ors. Vs. Union of India and Ors. 1993(2) ATJ 553 (1994) 26 ATC 278 (ii) Suda Iswar Rao Vs. Union of India & Ors. (1994) 2 ATJ 539.
>
> These two decisions are by the same Division Bench. Dealing with the submissions made on behalf of the respondents in the first case that Section 7 of the Public Premises(Eviction of Unauthorised Occupants) Act is nothing but an alternative procedure for recovery of rent dues from a government employee and cannot be treated as the only mode of recovery. The Division Bench relying on the Supreme Court decision in New

> Delhi Municipal Committee Vs. Kaloo Ram took the view that Section 7 does not create right but merely prescribes alternative procedure for recovery of certain dues. It was also held that such procedure under Section 7 is merely an alternative procedure and Railway can recover the dues by deducting from the salary. The Division Bench further held that the Railway authorities can recover the damage rent from the salary itself when by the appropriate Railway Board circular such rates have been fixed, which have got statutory force, and the railway servant must be deemed to be aware of such rates and when the railway servant is in unauthorised occupation of the railway accommodation the respondents did not commit any illegality in assessing the damage rent and recovering the same from the salary of the railway servant. It was also held that the railway administration can recover the damage rent or penal rent exceeding 10% of the emoluments without formally cancelling the allotment."

Counsel for the applicant submits that the Hon'ble Supreme Court in NEW DELHI MUNICIPAL COMMITTEE Vs. KALU RAM & ANOR, AIR 1976 SC 1637 nowhere has mentioned that proceedings u/s. 7 of P.P.Act is an alternative procedure for recovery of certain dues. The Counsel for the applicant has argued that the Hon'ble Supreme Court in KALU RAM's case was dealing with the issue of limitation and the question of Section 7 being an alternative procedure was not an issue therein. Counsel for the applicant has specifically drawn my attention to the following passage in KALU RAM's judgment dealing with this issue, which reads as under:-

> "If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent,

> the determination must be in accordance with law. Section 7 only provides a special procedure for the realization of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred."

Counsel for the applicant has argued that KALU RAM judgment does not support the view taken by the Division Bench of Calcutta in its judgments in (i) SHANKER & ORS Vs. UNION OF INDIA AND ORS.; (ii) SUDA ISWAR RAO Vs. UNION OF INDIA AND ORS., referred to in para 22 of the Full Bench Decision of RAM POOJAN. He further argued that a similar view was taken by this Tribunal in URMAN SINGH Vs. UNION OF INDIA in O.A. No. 439/95 decided on 25.7.95 an unreported judgment. In para 8 of this judgment the Tribunal has held that S.15 of the P.P.Act creates a bar for recovering anything in excess of normal rent unless the remedy is sought u/s.7 of the P.P.Act before the Estate Officer. Counsel for the applicant has also argued that the P.P.Act would have a overriding effect and there cannot be any question of alternative procedure on the basis of rules which might be prescribed under Article 309 of the constitution of India. On this ground also the Counsel for the Applicant submits that the procedure laid down in the administrative circulars cannot be adopted in view of specific provision in the P.P.Act.

4. Counsel for the Respondents Mr. Masurkar on the other hand submits that RAM POOJAN judgment is a Full

Bench decision and is therefore binding on the Tribunal unless it is overruled by an Bench of more than 3 Members. He further states that since it has been held by the Full Bench in RAM POOJAN case the proceedings under S.7 of the P.P.Act is only an alternative procedure which does not debar recovery of dues as per the provisions of Railway Board circular, the action taken by the respondent administration in recovering the penal rent without following the provisions of P.P.Act is within the frame work of the law laid down by the Full Bench.

5. After considering the arguments of both the counsel on the issue, if RAM POOJAN judgment is binding on this Tribunal, I am of the view the Full Bench Judgement pronounced by Three Members is binding on the present Bench.

5.1 It is a fact that this Tribunal has taken a view that action under P.P. Act Section 7 is necessary before recovery of rent more than normal rent, in many Division Bench decisions, including the one referred to above by the Ld. Counsel for the applicant i.e., URMAN SINGH's case (in which the undersigned was a Member). But in my view the controversy stands settled after the Full Bench judgment in RAM POOJANs case which is binding on this Bench.

5.2 I have already quoted from the Hon'ble Supreme Court judgment in KALU RAM's case in para 3 above. The Hon'ble Supreme Court has held Section 7 only provides a special procedure for the realisation of rent in arrears and is not a source or foundation of the right to claim a debt otherwise time barred. Since the provisions of Section 7 have been held only as a special procedure and not being a source or foundation of any right, it can be said and has been said that the provisions of Section 7 of P.P.Act do not give any right or power to recover the damage rent or arrears of rent which is not legally recoverable. It can also be said that since the provisions of Section 7 do not give any right or power, these provisions will not also take away any right or power available under law for recovery of arrears in rent including damage rent, if the right and power is otherwise available under the law. It is within the power of Union Government to frame the rules under Article 309 of the Constitution for service matters which will also include rules for recovery of rent including damage rent from the employee. This power under Article 309 of Constitution would not therefore be taken away by the provisions of Section 7 of the P.P.Act.

5.3 Section 15 of P.P.Act lays down that 'No Court shall have jurisdiction to entertain any suit or proceeding in

respect of the eviction of any persion who is in unauthorised occupation of any public premises, and for recovery of the arrears of rent payable under Sub-section(1) of Section 7 or damages payable under sub-section (2), or interest payable under Sub-section (2A), of that section'. It is therefore, clear that if the Union Government has to approach Court to recover rent including damage rent from the employees, the only remedy would be to proceed under Section 7 of the P.P.Act by approaching Estate Officer and no other court would have jurisdiction. However, provisions of Section 15 cannot be meant to restrain the power of the Government to frame rules under Article 309 of the Constitution for recovery of rent including damage rent. It is perhaps in this sense that the Full Bench in Ram Pujan's case has held that the resort to the P.P.Act is only an alternate procedure which does not debar the recovery as per the Railway Board's circular.

5.4 Another important issue involved in most of the Divisional Bench judgements cited by the Ld. Counsel for the applicant including Urman Singh's case is that these decisionss have held that for recovery of damage rent more than the normal rent, action has to be undertaken under the provisions of P.P.Act. However, the provisions

of P.P.Act under section 15 do not differentiate between recovery of rent, i.e., normal rent or the damage rent. Therefore, if the recovery of damage rent according to Government circular is hit by Section 15 of the P.P.Act as held in the various Division Bench judgements cited before me, the same provisions would also be applicable in recovery of arrears of normal rent. Therefore, the distinction between the recovery of normal rent (which is permitted in the Division Bench judgement) without following P.P.Act and recovery of damage rent is not borne out by the provisions of Section 15 of P.P.Act.

5.5 It is seen that the P.P.Act was amended by Amendment Act of 1968 in view of the Hon'ble Supreme Court judgement in Northern India Caterers Pvt.Ltd., Vs. State of Punjab, AIR 1967 SC 1581, wherein the Supreme Court has declared Section 5 of the Punjab Public Premises Act, 1959 void on the ground the the section is discriminating as it provides two alternative remedies to the Government. By the Amendment Act of 1968 in the P.P.Act, jurisdiction of Civil Court is precluded in respect of eviction of persons who are otherwise unauthorised occupants of public premises and in respect of recovery of arrears of rent or damage rent from such persons. The same question as was considered in the Caterers' case

came up for decision in M. CHHAGGANLAL Vs. GREATER BOMBAY MUNICIPALITY, AIR SC 2009 The question for decision in Municipal Corporation's case was whether the Section 5(A) of the Bombay Municipal Corporation Act as also Bombay Governed Premises (Eviction) Act, 1955 (before its amendment as a result of the Caterers' case) which provided a special procedure for evicting an unauthorised occupant violated Article 14 because it was open to the prescribed authority either to resort to the special procedure for eviction or to file a suit. By a majority judgment, the judgment in Caterers' case was over-ruled. The position which emerged from the New Bombay Municipal Case has been summerised in Para 9.123 at page 530 in Constitution Law of India Vol. I IVth Edition of Seervai which reads as under:-

> "(i) Art.14 does not demand a fanatical approach.
>
> (ii) It was not and could not be argued that the Act in so for as they provided for special procedure to the State and the Municipal Corporation were invalid... It cannot now be contended that special provision of law applying to Government and public body is not based upon reasonable classification or that it offends Article 14.
>
> (iii) One finds it difficult to reconcile oneself to the position that the mere possibility of resort to the civil court should make invalid a procedure which would otherwise be valid. It can very well be argued that as long as a procedure does not by itself violates either Article 19 or Article 14 and is thus constitutionally valid, the fact that that procedure is more onerous and

harsher than the procedure in the ordinary civil courts, should not make that procedure void merely because the authority competent to take action can resort to that procedure in the case of some and ordinary civil court procedure in the case of others. That a constitutionally valid provision of law should be held to be void because there is a possibility of its being resorted to in the case of some and the ordinary civil court procedure in the case of others somehow makes one feel uneasy and that has been responsible for the attempt to get round the reasoning which is the basis in the decision in Northern India Caterers' case (supra)"

(iv) A review of Sup.Ct.decisions (in their chronological order) can be summarised thus: "Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Ali Sarkar's case and Suraj Mal Mohta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in Suraj Mal Mohta's case (supra) a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explain and amplify by affidavit, necessary guidelines could be inferred as in Saurashtra Case (supra) and Jyoti Pershad case (supra) the statute will not be hit by Article 14. Then again where the statute itself covers only a class of cases as in Haldar's case (supra) and Bajoria's case (supra), the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that the mere availability of two procedures will vitiate one of them, i.e., the special procedure, is not supported by reason or authority."

(v) As to the impugned acts (a) the purpose behind them, viz., the speedy recovery of Government and Municipal Premises gave sufficient guidance to the authorities on whom power was conferred, (b) given this guidance, officers would be expected to avail themselves of the speedy procedure under the Act and not resort to the dilatory procedure of a civil suit, (c) "inconsidering whether the officer would be

> discriminating betwen one set of persons and another one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination that we must take into account ... Discrimination may be possible but is very improbable."

5.6 With the overruling of the Caterers' case by the Municipal Corporation's case, the position of law on the issue of two procedures has since changed. The amendment to P.P.Act by inserting Section 15 by which the jurisdiction of all other courts are debarred, was as a result of decision in caterers' case. In view of New Bombay Municipal case decision those provisions are required to be interpretted narrowly and only for the purpose for which these were inserted. Therefore, since Section 15 of P.P.Act, debars the jurisdiction of any other court only, it can safely be interpreted that it would not bar the right of the Union Government to frame rules under Art.309 for recovery of rent including damage rent. In this sense also the decision in Ram Pujan's case that provisions under Section 7 of P.P.Act is only an alternate procedure which does not debar recovery according to the Railway circular, can be justified.

5.7 Be it as it may, as far as the present O.A. is concerned, the controversy stands settled by the Full Bench judgement in Ram Pujan's case on this issue which is binding on this Bench as has already been observed.

5.8 Therefore, I hold that the plea that the damage rent can be recovered only through proceedings under S.7 of the P.P.Act is no longer available to the Applicant in view of RAM POOJAN Full Bench judgment. It will therefore be in order to recover the penal or damage rent in terms of the provisions of the Railway Board's Circular.

6. I am also of the view that in terms of the Full Bench Judgement in RAM POOJAN case wherein it has been held that no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of rentention of the quarters on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied according to the rates prescribed from time to time in the Railway Board Circular, no notice is required to be given for recovery of penal/damage rent.

6.1 This view is also supported by the Hon'ble Supreme Court in HINGORANI's case wherein in para 7 it has been observed as under:-

> "... It is plain upon the terms of SR-317-B-25 that the liability to pay damages equal to the market rent beyond the concessional period is an absolute liability and not a contingent one.

> Both the Ld. Single Judge as well as the Division Bench were clearly in error in subjecting liability of a Government officer to pay market rent for the period of unauthorised occupation to the fulfilment of the condition that the Director of Estates should serve him with a notice that in the event of his continuing in unauthorised occupation he would be liable to pay market rent."

I am therefore, for the view that contention of Ld. Counsel for the applicant that notice is to be given in terms of principles of natrual justice before recovery of damage rent is not sustainable.

7. Counsel for the Applicant has argued that for deduction from DCRG Full Bench in case of WAZIR CHAND is the authority. Ld. Counsel for the Applicant has argued that Full Bench in WAZIR CHAND Vs. UNION OF INDIA & ORS., decided on 25.10.1990 has considered the question of recovery from the DCRG. The counsel for the applicant has further submitted that the SLP against WAZIR CHAND judgment was rejected by the Hon'ble Supreme Court of India on merits. The order of the Hon'ble Supreme Court in the SLP dated 1.11.1993 reads as under:

> "The Special Leave Petition is dismissed on the grounds of delay as well as on merits."

Ld. Counsel for the applicant therefore submits that WAZIR CHAND case is not only a Full Bench judgment but in Supreme Court on merits it becomes law of the land and is required to be followed as the law has been laid down by the Apex Court and is a binding precedent under Article 141 of Constitution of India.

8. In WAZIRCHAND case the following points were referred to for decision:

1. Whether the Railway Administration can withhold the entire amount of gratuity so long as the retired Railway servant does not vacate the Railway quarter and whether passes can be withheld according to instructions contained in Railway Board's letter dated 24th April, 1982, which are as follows:-

"(ii) So far as the instructions contained in para 1(ii) of Board's letter under reference are concerned, it has been decided in consultation with F.A./C.A.O. that the entire amount of DCRG/SC to P.F. may be held back and 'No Claim' certificate is not to be issued till the Rly. accommodation is finally vacated by the concerned retired employee.

"(iii) For every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallwed. A show-cause notice to this effect may be issued to the retired employee before disallowing the pass."

2. Whether it is open to the Tribunal to allow normal rent to be paid by the retiring Railway servant till such time as the DCRG is paid to him?

or

Whether the rent or lease amount payable will be calculated on the basis as if the accommodation occupied was unauthorised and whether the Railways are liable to pay interest charges on delayed payment of DCRG withheld because of non-vacation of a Railway quarter by a retired Railway servant?

or

Whether the two matters may not be linked and rent will be payable according to rules and interst on delayed DCRG is to be allowed as per orders of the Tribunal in each case ?

Full Bench after considering these questions has replied as under:-

> "Issue No.1:
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> (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.
>
> (ii) Disallowing one set of post-retirement passes for eavery month of unauthorised retention of railway quarter is also unwarranted.
>
> Issued No.2 : (i) A direction to pay normal rent for the Railway quarter retained by a 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 of the 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.
>
> (iii) Direction/order to pay interest is to be made by the Tribunal in accordance with law keeping in view the facts and circumstances of the case before it."

9. Ld. Counsel for the Applicant has argued that WAZIR CHAND does not permit withholding of full DCRG and therefore the action of the Respondent administration in withholding the entire amount of DCRG of the applicant is bad in law and therefore, the action of the respondent administration in not paying the DCRG to the applicant is against the law as laid down in WAZIR CHAND's case.

10. Ld. Counsel for the respondents on the other hand has arged that the true meaning of WAZIR CHAND ratio is

that appropriate amount from the DCRG can be withheld and that WAZIR CHAND's Full Bench decision does not prohibit the Railway administration from withholding an appropriate amount from the DCRG. Counsel for the Respondents further argued that the recovery of damage rent or any other dues for that matter from the DCRG is permissible under the rules. Counsel for the respondents further argued that in case if the withheld amount of DCRG is more than the damage rent then on the remaining amount of DCRG the employee would be entitled for interest as permissible from the date it became due. Ld. Counsel further argued that in the present case the dues to be recovered from the applicant are much more than the total amount of DCRG and therefore withholding the whole of DCRG would have to be treated as appropriate in this case. The Counsel draws my attention to Para 11 of the WAZIR CHAND's Full Bench decision which mentions as under:-

> 11. 1982 circular issued by the Railway Board can rightly be regarded as statutory in character applicble to all the railway servants. As regards the Pension Circular, the same having been issued by the Northern Railway can take within its sweep only the group C and group D railway servants serving in the Northern Railway provided that the same can otherwise be sustained. Since the power of the General Manager to make rules of general application in respect of Group C and D employees is subject to the important proviso that the rules will not be inconsistant with any rules made by the Ministry of Railways i.e., President of the Railway Board, if there is any consistency between 1982 circular

on the one hand and pension circular on the other, the pension circular to the extent of inconsistency or repugnancy would be bad. Clause (ii) of the opening opara in 1982 circular provides that settlement dues of the employee should be finalised with an appropriate "hold-back" amount from the DCRG/Special contribution to P.F. as the case may be for rent recoveries, as permissible under the extant rules. It is exiomatic that statutory provision is to be interpreted as per the ordinary meaning on the basis of the language in which it has been couched. So construed, this clause would clearly mean and imply that the right to withhold DCRG is subject to two important conditions. These being:-

(a) only an appropriate amount can be withheld from DCRG; and

(b) if the same is permissible under the Rules in force.

As against this, para 2 of the Pension Circular seems to give a carte-blanche to the authority concerned in the matter of withholding DCRG by stating that the entire amount of DCRG/special contribution to P.F. may be held-back and 'No Claim Certificate' is not to be issued till the railway accommodation is finally vacated by the concerned retired employee. The instructions contained in para 2 of the Pension Circular are clearly inconsistent with those contained in Clause (ii) of the opening para of 1982 circular, insofar as these provide for withholding the entire amount of DCRG. These instructions are also not based on correct interpretation of Clause

(ii) of the opening para of 1982 circular. Since 1982 circular permits only an appropriate 'hold-back' from the DCRG and that too as permissible under the rules in force, the withholding of the entire DCRG is not permissible in terms of this circular. The expression 'appropriate hold-back' is to be given its due meaning and cannot be treated as surplasage. It is a cardinal rule of construction that no word should be construed redundent or surplus while interpreting the provision of a statute or a rule."

11. The question of withholding an appropriate amount, if permissible under the rules is to be decided on the

basis of the provisions in the rules. As far as the appropriate amount is concerned, the decision of the administration would be considered appropriate if after the person whose DCRG is withheld vacates the railway quarter within such period that the damage rent and all other dues on this account would be nearly same as the amount withheld. If the amount withheld is more than the total dues to be recovered from the employee then the withheld amount has to be treated as inappropriate from the point of view of the employee. If the amount withheld is less than the total dues to be recovered from the employee then the amount withheld will be inappropriate from the point of view of administration. The decision to withhold the appropriate amount is to be taken at the time of retirement of the employee and its appropriateness can only be decided when the employee has vacated the railway accommodation. Since the decision of appropriateness is in future the only way the appropriateness can be determined would depend upon the date of vacation of the railway quarter. Since there is no foolproof method for the administration to decide the appropriate amount at the time of retirement of the applicant, the only practical solution to the problem lies in granting interest to the employee from the date of his retirement to the date of payment of DCRG amount

after deducting the dues on account of market rent / damage rent etc. Thus if the administration has withheld more than the recoveries from the amount of DCRG, the employee would be entitled to interest on this extra amount withheld from DCRG. In the present case the applicant has remained in the railway quarter for a period from 1989 to 1994 and the amount of damage rent as worked out by the respondents is more than the total amount of DCRG.

12. The respondent administration in this case has withheld the full amount of DCRG. Therefore, in terms of WAZIR CHAND Full Bench Judgment it would look that the action of the respondent administation is against the provisions of the WAZIR CHAND's case on the face of it. However, considering the fact that the damage rent amount is more than the total amount of DCRG the question of payment of interest would not arise in this case. WAZIR CHAND's case does not prohibit withholding of the appropriate amount of DCRG and prohibits only withholding of the entire amount of DCRG. If the decision would have been that withholding of DCRG is not permissible at all then the applicant would be entitled to market rate of interest on the DCRG from the date of his retirement. But in view of WAZIR CHAND's decision being that only withholding of entire amount is impermissible and by

implication the administration can withhold appropriate amount, the liability to pay interest at the market rate would depend upon the appropriateness of dues.

13. The respondents have also brought to my notice the recent judgment in O.A.No.144/95 decided on 15.11.1995, M.S. BANERJEE Vs. UNION OF INDIA & ORS. wherein the question of recovery of rent from DCRG was considered and after considering the case law on the subject the Division Bench had passed the final order in para 31 as under:-

> "31. In view of the above, we allow this petition in part and pass the following orders:
>
> i) The respondents shall, within three months from the date of communication of this order, re-assess the dues from the petitioner towards unauthorised occupation of the quarter under the rules for the period from 11.3.88 to 23.3.94 (sick 25.3.94) and after recovering such dues from his DCRG, the balance amount, if any, shall be refunded to the writ petitioner, with interest only balance amount at the rate of 18% per annum from the date of vacation of quarters till actual payment. However, if no amount is due to the petitioner after adjustment of such recovery, then the petitioner shall be informed accordingly within the aforesaid period of three months through a speaking order.
>
> ii) The respondents shall issue post-retirement complimentary passes to the petitioner henceforth as per rules as and when he applies for the same.
>
> iii) There shall be no order as to costs."

Since in the present case the amount of DCRG is less than the total amount to the recovered, the question of paying any interest on DCRG would not arise.

14. In the facts and circumstance of the present case I am of the view that withholding of total amount of DCRG would have to be considered as appropriate and the adjustment of DCRG towards recovery of damage rent cannot be considered illegal in this case.

15. Ld. Counsel for the Applicant has argued that the respondent's action in directing the Bank to recover the damage rent from the Dearness Relief on Pension is illegal because the Dearness Relief on Pension is part of Pension. Counsel for the applicant has argued that recovery from the pension cannot be made. There is no dispute on this issue that recovery from pension or commutted value of pension cannot be made except as provided under the Pension Act. Ld. Counsel for the Applicant has cited a judgment of the Hon'ble Supreme Court in UNION OF INDIA AND ANOTHER Vs. WING COMMANDER R.R. HINGORANI (Retd), 1987 ATC Vol.2, P.939, decided on January 30, 1987 for the proposition that no recovery can be made from the commutted value of the pension. Counsel for the Respondents has not disputed the position that no recovery can be made from the pension or commuted value of pension except as provided under the Pension Act and in terms of the Railway Pension Rules, 1950, para 323. Counsel for the respondents has argued that the dearness

relief on pension is not part of the pension or commuted value of pension. Counsel for the respondent has further argued that although the dearness relief on pension is depending on pension but the dearness relief on pension has a seperate identity and changes depending on the rise in Price Index.

16. The Manual on Railway Pension Rules, 1950 para 323 concerning recovery of Government dues from pensionary benefit reads as under:

> 323(i) A claim against the Railway servant may be on account of one or the other of the following:-
>
> (a) losses (including short collections in freight charges, shortage in stores) caused to the Government as a result of negligence or fraud on the part of the Railway servant while he was in service;
>
> (b) other Government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, post office, life insurance premia, outstanding advacance, etc.;
>
> (c) non-Government dues.
>
> (ii) Recovery from recurring pensions a loss of commutted value thereof, which are governed by the Pensions Act, 1871, can be made only in terms of para 315: accordingly, a recovery of only item (a) may be made from these provided the conditions laid down in para 315 are fulfilled. A recovery on account of item (a) which cannot be made in terms of para 315, and any recovery on account of items of (b) and (c), cannot be made

.26.

from these even with the consent of the railway servant. The amount due on account of item (a) which cannot be recovered from these and/or on account of item (b), can, however, be recovered from ordinary/terminal/death cum retirement gratuity which are not subject to Pensions Act, 1871. It is permissible to make recovery of Government dues from the ordinary/terminal / death-cum- retirement gratuity due even without obtaining his consent, or without obtaining the concent of the members of his family in the case of a deceased railway servant.

17. Ld. Counsel for the respondents has submitted that so far as the dearness relief on pension is concerned the same has been defined in Railway Services (Pesnion) Rules, 1993, which are also statutory rules framed under the provisions of Article 309 of the Constitution. Rule 75 sub-para (21) reads as under:-

"(21) Dearness relief on pension or family pension -

(i) relief may be granted to the pensioner or family pensioner in the form of dearness relief at such rates and conditions as the Government may specify from time to time.

(ii) if a pensioner is reemployed under central or state government or a corporation, company, body, or bank under such government in India or abroad, including pemanent absorption in such corporation, company, body or bank, he shall not be eligible to draw dearness relief on pension or family pension during the period of such re-employment.

(iii) a railway employee who gets permanently absorbed in terms of clause (a) of rule 54 and opts for lumpsum payment in lieu of prorata monthly pension in terms of clause (a) of rule 54 shall not be eligible for dearness relief."

In Chapter-I on section 19 pension has been defined as under:-

"Pension includes gratuity except when the term pension is used in contra-distinction to gratuity but does not include dearness relief."

The provisions concerning adjustment pertaining to railway accommodation have been made in Rule 16. Sub-rule (6) of Rule 16 reads as under:-

> "(6) The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement if allotted shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made.
>
> NOTE: For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss cause by him to the accommodation or its fittings."

Counsel for the respondents has argued that in view of these rules, it is permissible to recover the damage rent from the dearness relief also.

18. The Ld. Counsel for the applicant has cited two cases decided by the Tribunal in support of the contention that no recovery can be made from the Dearness Relief on pension. The first case is CHANDULAL MASHAN BHAI Vs. UNION OF INDIA & ORS, O.A. No.523/91 decided on 1.7.94. Ld. Counsel for the applicant has further argued that similarly it has been held in O.A.No. 147/94 V.P. KOLHE V/s. UNION OF INDIA that no recovery can be made from the dearness relief.

19. The counsel for the respondent has argued that the judgement in the case of CHANDULAL MASHAN BHAI Vs. UNION OF INDIA & ORS., O.A.No.523/91 has not considered the rules, Railway Services (Pension) Rules, 1993, Railway Pension Rules, 1950 and therefore that judgment has to be construed as a decision in the facts and circumstances of that case. Similarly in O.A.No. 147/94 V.P. KOLHE Vs. UNION OF INDIA & ORS. the rules concerning dearness relief and the provisions concerning recovery from dearness relief as pointed in pension rules 1993 which are framed under provisions of Article 309 of the Constitution of India, have not been considered.

20. The judgment in O.A.No.523/91 CHANDULAL HASHIMBHAI Vs. UNION OF INDIA of this Bench has been based on the judgement of the Principal Bench in BENI PRASAD Vs. UNION OF INDIA, ATR (CAT) 209 as well as of Jodhpur Bench in U.M. GOYAL Vs. UNION OF INDIA, 1992 AISLJ 80. In these two judgments also the Tribunal has taken a stand that no recovery can be made from the dearness relief on pension.

20.1 The Jodhpur judgment in U M GOYAL has relied on the provisions of BENI PRASAD Vs. UNION OF INDIA, ATR

1987(2) CAT 205. In BENI PRASAD's judgment the Principal Bench has observed as under:-

> " The definition of 'pension' under Rule 3(0) in an inclusive definition and reas as under:
>
> > "Pension includes gratuity, except when the term of pension is used in contra-distinction to gratuity."
>
> This definition does not throw much light on whether R.I.P. as such, could be treated as pension. Dearness Allowance relief granted to pensionrs is primarily intended to offset high rise in prices and cost of living. It is, in fact, the depreciated value of the rupee that is sought to be compensated by granting relief to a pensioner by way of R.I.P. It is thus, in fact, part of the pension. It is an amount paid for service already rendered. If a person is entitled to receive pension, he will also be entitled to receive R.I.P. Without pension, there could not be any payment of R.I.P. Relief in pension in all respect, in our view, is part of pension. The prohibition contained in Rule 9 is therefore, eqully applicable to R.I.P."

20.2 Thus, it will be seen that the Principal bench in BENI PRASAD's case has not considered the provisions of the Pension Rules, 1993 wherein the dearness relief on pension has been defined and the mode of recovery on pension have been laid down as has already been brought out in para 17 above. As has been shown that the Principal Bench decision in BENI PRASAD has been followed in the Jodhpur Bench decision of U.N.GOYAL and since these two decisions have been followed in the CHANDULAL HASHMBHAI's case decided by this Bench, it is clear that

none of these judgments have considered the provisions of rule as provided in the Pension Rules, 1993. Similarly, it is seen that in the KOLHE's case O.A. 184/94, the Pension Rules have not been considered. Therefore, all these decisions do not help the applicant in the present case wherein the recovery from Dearness Relief on pension has been made in terms of the Railway Services (Pension) Rules, 1993. It is also seen that these rules have been framed in exercise of powers conferred under provisions of Article 309 of the Constitution by the President. These rules therefore cannot be held invalid on the basis of authority of judgements cited by the counsel for applicant.

It is not necessary to consider the validity of these [Railway Service (Pension) Rules 1993] rules on merit as these rules have not been challenged in the present O.A.

21. I am of the view that since the concerned rules permitting recovery of dues from the dearness relief have not been considered and held illegal in the two judgments cited by Counsel for applicant, the respondent administration would have right to recover the dues from the dearness relief in terms of the rules prvoided in Railway Services (Pension) Rules 1993. The two judgments quoted above therefore would have to be treated as

applicable only in the facts and circumstances of those cases and do not help the applicant.

22. The counsel for the applicant has also cited the case of VINOD KRISHNA KAUL Vs. UNION OF INDIA & ORS., 1996 scc (l&s) 253 decided by the Supreme Court. The applicant (Kaul) was in occupation of the Government quarter while he owned a house and was requied to shift to his own house in terms of the Government Resident (Central Pool), New Delhi Rules 1963 clauses 3&4. Since he did not shift to his own house, penal rent was charged. The Supreme Court held that penal rent could not have been charged as Shri Kaul was not in possession of the house. In para 6 the Supreme Court held as under:-

> " ... The legal maxim lex non cogit ad impossibilia has to be borne in mind, i.e., the law does not compel a person to do the impossible. In the present case, in view of the subsisting lease in favour of the tenant, the commencement of the lease being prior to 1.1.1976 and the entire period in question being covered by the period of that lease, the provisions of clauses 3 and 4 could not be applied to the appellant, even if he is assumed to be the owner of the house for this purpose. Recovery of the higher rent/damages from the appellant in accordance with clauses 3 and 4, as aforesaid, is therfore not justified."

22.1 Counsel for the applicant has argued that in terms of KAUL's judgment the applicant also cannot be

charged penal rent as she was not in possession of her house and got it only after prolonged litigation.

22.2 Counsel for the respondents on the other hand has argued that there is a vital difference in the present case and KAUL's case decided by the Hon'ble Supreme Court. Shri KAUL was a serving employee and was entitled to Government accommodation in which he was living. But for the fact that he was having his own house in New Delhi, he was entitled to reside in Government accommodation. In the present case the position is different. The present applicant has retired from service and had no right to live in the Government accommodation according to rules. The penal rent is being charged from the time when she is not entitled to remain the Government accommodation after superannuation.

22.3 I am inclined to accept the argument of the Counsel for the respondents that facts in the present case are different from the case of Kaul cited by Ld. Counsel for the applicant and can be differentiated. The ratio laid down by the Hon'ble Supreme Court in Kaul's case, therefore, does not help the applicant.

23. Another question raised by the applicant is issue of the complimentary passes. Since the applicant has vacated the Railway quarter, she should be given the post-retirement complinetary passes according to her authorisation for the year 1996 onwards. Although the applicant has vacated the quarter on 19.4.1994, she will be entitled to passes for the current year onwards as the passes for the past period cannot be issued nor they can be converted into monetary benefits.

24. In conclusion I hold that the action of the respondents in recovering damage rent and other dues from DCRG and from Dearness Relief on Pension cannot be held illegal.

25. In view of the above discussions, the challenge of the applicant to the action of respondent against recovery of damage rent and other dues from withheld DCRG and from Dearness Relief on Pension fails.

26. The applicant will be entitled to complimentary passes on retirement as she has already vacated the quarter with immediate effect.

27. The O.A. is disposed of with above direction. No order as to costs.

(P.P.Srivastava)
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 104/96 in OA.NO. 1001/95

Friday this the **14th** day of **February** 1997

CORAM : Hon'ble Shri P.P.Srivastava, Member (A)

Smt.M.P.Kanal ... Applicant

V/S.

Union of India & Ors. ... Respondents

Tribunal's Order by Circulation

This Review Petition is filed against the judgement of the Tribunal pronounced on 7.10.1996. The applicant has brought out in the review petition that the Tribunal has not considered the fact that the Full Bench judgement in Wazir Chand's case was upheld by the Hon'ble Supreme Court and the appeal was rejected and therefore it is binding judgement under Article 141 of the Constitution of India and this is an error apparent on the face of the record. However, I find that the question concerning Full Bench judgement in Wazir Chand's case has been discussed in Paras 7,8,9,10,11 and 12. Since the Tribunal has followed the Full Bench judgement in Wazir Chand's case in deciding the issue concerning the recovery from DCRG, the question of this judgement being a binding precedent under Article 141 of the Constitution of India did not arise. Since the Full Bench judgement in Wazir Chand's case has been followed by the Tribunal, there is no error on the face of the record as has been pleaded by the petitioner in Para 2 (b). In Para 2 (b) the review petition brings out

.. 2/-

that the Tribunal committed a grave error in not referring to the Wazir Chand's case and on the contrary relied upon the Ram Pujan's case and this amounts to ignoring the Hon'ble Supreme Court's judgement concerning binding precedent. The arguments of Learned counsel for the applicant is wholly misconceived. Ram Pujan's case and Wazir Chand's case dealt with two different issues. The Full Bench judgement in Ram Pujan's case has been followed by the Tribunal for deciding if the recovery could be made without following the procedure of P.P.Act, while the Full Bench judgement in Wazir Chand's case has been followed in deciding the issue of recovering the amount from DCRG. Since both the decisions have been followed on the issues which have been decided by these two Full Bench judgement, there is no merit in the argument submitted by the applicant in Para 2 (b) that Ram Pujan's case does not hold good in view of the SLP having been dismissed by the Hon'ble Supreme Court in the case of Wazir Chand's case. Since both the decisions have been followed by the Tribunal and since there is no contradiction between the two decisions and since the two decisions of the Full Bench are dealing with two different issues, the submissions are wholly misconceived and are untenable.

2. In Para 2 (c) and (d) the applicant has submitted that DCRG is protected under Section 60 (g) of the CPC and this specific and vital statutory protection has been completely lost sight of by the Tribunal while rendering the judgement. The judgement rendered by the Tribunal in this case has followed the Full Bench judgement in Wazir Chand's case as far as reduction in DCRG is concerned.

.. 3/-

Since Full Bench judgement is binding on Single Bench, no further arguments were considered necessary in deciding this issue as the judgement followed the Full Bench judgement in Wazir Chand's case on this specific issue and it was not necessary to consider other arguments as the judgement on this particular aspect is based on Full Bench judgement in Wazir Chand's case.

3. In Para 2 (e) the applicant has submitted that the P.P. Act,1971 is a superior and statutory Act passed by the Parliament and as such no orders of the Railway Board can nullify or take precedent over the P.P.Act,1971 and therefore there cannot be any alternative procedure prescribed as compared to the P.P.Act, 1971. The applicant has further stated that :-

> " It is most surprising that this very important legal aspect of the matter has been totally ignored by the Hon'ble Tribunal while delivering the judgement and the Hon'ble Tribunal has not spoken a word on the aforesaid clinching arguments of the Applicant (Review Petitioner herein) and chosen to altogether ignore and has not rendered any findings of the aforesaid aspect."

On this issue,the above averment of the applicant is not factually correct as this aspect has been dealth with in detail by the Tribunal in Paras 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6. After dealing with this issue in all the above paras, the Tribunal has said in Para 5.7 as under :-

> " 5.7 Be it as it may, as far as the present O.A. is concerned, the controversy stands settled by the Full Bench judgement in Ram Pujan's case on this issue which is binding on this Bench as has already been observed."

.. 4/-

This issue concerning the finding on this particular aspect, as brought out by the applicant in the review petition, has been specifically dealt with in Para 5.6 of the judgement which reads as under :-

> " 5.6 With the overruling of the Caterers' case by the Municipal Corporation's case, the position of law on the issue of two procedures has since changed. The amendment to P.P.Act by inserting Section 15 by which the jurisdiction of all other courts are debarred, was as a result of decision in caterers' case. In view of New Bombay Municipal case decision those provisions are required to be interpretted narrowly and only for the purpose for which these were inserted. Therefore, since Section 15 of P.P.Act, debars the jurisdiction of any other court only, it can safely be interpreted that it would not bar the right of the Union Government to frame rules under Art.309 for recovery of rent including damage rent. In this sense also the decision in Ram Pujan's case that provisions under Section 7 of P.P.Act is only an alternate procedure which does not debar recovery according to the Railway circular, can be justified."

4. In view of this, I am of the view that the Review Petition is devoid of any merit. The applicant has not brought out any material which will show that there has been any error apparent on the face of record, or any other important material which was not available at the time of arguments and, therefore, there is no merit in this Review Petition and the same is dismissed in limine.

(P.P.SRIVASTAVA)
MEMBER (A)

mrj.

dtd: 14/2/97
order/Judgement despatched
to Applicant/Respondent (s)
on 19/2/97
21/2/97