

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1157/97

3.9.98

Date of Decision:

I.T.Motwani

.. Applicant

Shri H.A.Sawant

.. Advocate for
Applicant

-versus-

Divisional Railway Manager, Mumbai Central Division, Mumbai & Ors. .. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not

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


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO.1157/97

this the 3rd day of September, 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

I.T.Motwani,
Retired CIOW Churchgate,
Western Railway, Head Quarter
Office, Churchgate, Mumbai.

By Advocate Shri H.A.Sawant

... Applicant

v/s.

1. The Divisional Railway Manager,
Mumbai Central Division,
Mumbai Divisional Office,
Mumbai Central, Mumbai.

2. The General Manager,
Western Railway HQ Office,
Churchgate, Mumbai.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed praying for the following reliefs :- (a) to direct the respondents to pay the amount of gratuity of Rs.63,360/- to the applicant, (b) to direct the respondents to pay interest on the delayed payment of gratuity from the date of retirement, i.e. 31.7.1994, (c) to direct the respondents to issue post-retirement/complimentary passes for the year 1997 onwards.

2. The applicant while working as Chief Inspector of Works, Western Railway superannuated from service on 31.7.1994. At the time of retirement, he was occupying a Railway quarter. The applicant was permitted retention of the quarter from 1.8.1994 to 30.11.1994 initially and thereafter from 1.12.1994 to 31.3.1995 on account of his sickness. Eviction proceedings were started against the applicant under the Public Premises (Eviction of unauthorised occupants) Act, 1971 and the competent authority passed eviction order on 8.1.1996. The applicant filed an OA. NO. 1481/95 challenging the eviction order as well as seeking the relief of payment of gratuity with interest and issue of the post retirement complementary passes. However, this OA. was subsequently withdrawn to challenge the eviction order before the Civil Court. The present OA. has been filed with regard to the relief of payment of gratuity with interest and issue of post retirement complementary passes. The applicant submits that he has since vacated the quarter on 25.7.1997. He made a representation on 13.6.1997 for payment of gratuity and issue of post retirement complementary passes. This was followed by several reminders but he did not get any reply from the administration. Feeling aggrieved, the present OA. has been filed on 16.12.1997 seeking the above referred reliefs.

3. The applicant has contended that right to gratuity is a right to property within the meaning of the Article 300A of the Constitution of India and any law depriving a person of his gratuity must satisfy Article 14 of the Constitution of India. He ^{has} further

stated that holding of entire gratuity is not permissible as held by the Full Bench in the case of Wazirchand vs. Union of India. The applicant, therefore, states that he is entitled for payment of gratuity along with interest for delayed period. As regards the non issue of the post retirement complimentary passes, the applicant has placed reliance on the order of the Full Bench in the case of Wazirchand. The applicant has further relied upon the following two orders of the Tribunal in support of his grounds :- (a) P.M.Jain vs. Union of India, 1993(24) ATC 746, (b) Madan Mohan vs. Union of India, ATR 1993 (1) CAT 494.

4. The respondents have contested the claim of the applicant through the written statement. The respondents at the out set have opposed the application on the plea that it is hit by the principle of res-judicata as the applicant has filed a fresh OA. for the same cause of action for which he had filed earlier OA.NO.1481/95. On merits, the respondents have submitted that the applicant did not vacate the quarter after his retirement. He was allowed retention of quarter from 1.8.1994 till 31.3.1995 but did not vacate the quarter thereafter and therefore was in unauthorised occupation of the same from 1.4.1995 onwards. The respondents further contend that as per the extant rules, the gratuity was not paid to the applicant for non-vacation of the quarter. Further, for non-vacation of the quarter and unauthorised occupation of the quarter, the applicant is liable to pay the penal rent as per the extant rules.

The applicant has a liability of Rs.61,170/- as arrears of rent upto 27.5.1997. In addition, he is also required to pay Rs.2,968/- as Electricity charges. Since the total amount payable by the applicant is more than the amount of the gratuity due to the applicant, as such no amount is due for payment to the applicant. Respondents have also averred that since the DCRG was withheld for non-vacation of quarter, no interest is payable for the same. Respondents have placed reliance on the judgement of the Hon'ble Supreme Court in the case of Union of India vs. Ujagar Lal, 1997 (1) SCSLJ 115.

5. The applicant has filed a rejoinder reply controverting the pleadings of the respondents in the written reply. The applicant has also submitted that the eviction order has been quashed by the Civil Court and he has been permitted to retain the quarter upto 30.5.1997 and therefore the occupation of the quarter for the entire period was not unauthorised and therefore no penal rent is to be recovered. The applicant has further contended that in terms of the Railway Board letter dated 31.12.1990, the applicant is entitled for payment of interest for delay in payment of DCRG.

6. As per order dated 8.1.1998, by way of interim relief, the respondents were directed to grant post retirement complimentary passes to the applicant.

7. I have heard Shri H.A.Sawant and Shri V.S.Masurkar, learned counsel for the applicant and respondents respectively. The material brought on record has been also carefully considered.

8. It is an admitted fact that the applicant did not vacate the quarter after his retirement from service on 31.7.1994. The applicant was allowed retention of the quarter upto 31.3.1995 and thereafter the respondents treated the applicant as unauthorised occupant of the quarter. The applicant has since vacated the quarter on 27.5.1997 and the payment of DCRG has been not yet made to the applicant. The respondents have contended that the payment of DCRG was not done due to the applicant due to non-vacation of the quarter as per the extant rules. On the other hand, the applicant has argued that gratuity and pension could not be withheld and has placed reliance on the judgement of the Full Bench in the case of Wazirchand vs. Union of India. Keeping these rival contentions in view, the point for consideration is whether the respondents could legally with-hold the payment of gratuity for non-vacation of the quarter.

9. The applicant has placed reliance on three judgements as referred to earlier in support of his contention that gratuity could not be withheld if a person ~~does not~~ ^{vacate} a railway quarter after retirement. These judgements are briefly discussed as follows :-
(a) P.M.Jain vs. Union of India :- On facts, the issue involved in this OA. is entirely different. The applicant was treated as unauthorised occupant of the quarter inspite of the fact that for the same

period he was allowed leave on medical ground.

The Tribunal held that in case the leave was granted, the applicant was entitled to retain the Government accommodation. Here, the payment of gratuity had been made to the applicant retaining some amount to recover the penal rent as due. The Bench ordered the amount of DCRG to be released as the applicant was not in unauthorised occupation in the quarter. With these facts, the ratio of this order is not of any help to the case of the applicant.

(b) Madan Mohan vs. Union of India :- In this case, the payment of DCRG was made to the applicant deducting a certain amount towards the recovery of the penal rent for unauthorised occupation of the quarter. The Bench has held that no recovery of the penal rent could be done from the DCRG for recovery of any penal rent. They have already proceeded against the applicant under the Public Premises (Unauthorised occupants) Act, 1971. The issue whether the quarter is occupied by the applicant ^{Eviction of} ~~authorisedly~~ after the retirement is not under challenge in the present OA. As is noticed from the averments made in the OA., the applicant has already agitated the matter before the Civil Court against the eviction proceedings. In view of this, the order in the OA. has no direct application to the case of the applicant.

(c) Wazirchand vs. Union of India :- The main reliance of the applicant in support of his case is on this order of the Full Bench. In this order, the Full Bench had considered the Railway Board's Circular issued in 1982 which had provided that appropriate amount could be withheld from the ~~DCRG~~ DCRG for non-vacation of the quarter at the time of retirement. However, the

General Manager of the Railway issued a further Circular directing ~~the~~ withholding of entire DCRG for non-vacation of the quarter. However, since then the situation has changed. The respondents have contended that the DCRG was not paid after retirement for non-vacation of the quarter as per the extant rules. During hearing, the learned counsel for the respondents was asked to indicate the rules and he drew my attention to the provisions of the Railway Services (Pension) Rules, 1993. On going through rules, it is noted that as per Rule 16 (8), it has been provided that the entire amount of gratuity shall be withheld in case of non-vacation of the Railway accommodation after retirement. In fact, the applicant himself has brought a copy of the Railway Board's Circular dated 31.12.1990 at Annexure-'A-10' which lays down for withholding of full amount of DCRG for non-vacation of quarter. These instructions have been subsequently incorporated in the Pension Rules as referred to earlier. The Pension Rules 1993 issued under the powers exercised under Article 309 of the Constitution of India and therefore are ~~in~~ statutory in nature. In view of the specific provisions in the rules, the reliance placed on the Wazirchand's case is of no avail to the applicant's case.

10. As indicated earlier, the applicant retired from service on 31.7.1994 and therefore in terms of the specific rules laid down, the withholding of DCRG by the respondents is not hit by any illegality. The applicant is, therefore, eligible for payment of gratuity only after the Railway accommodation had by him been vacated on 27.5.1997.

11. The applicant has also prayed for payment of interest for the delay in payment of the DCRG. As per the findings recorded earlier, the payment of DCRG could not be made to the applicant as per the extant rules till the vacation of the quarter. Therefore, the question of interest for delay in payment of gratuity since the date of retirement does not arise. In this connection, it would be appropriate to refer to the judgement in the case of Union of India vs. Ujagar Lal relied upon by the respondents. In this judgement, the Hon'ble Supreme Court has held that delay in payment of gratuity was not due to administrative lapse but on account of the Circular which prohibited payment of gratuity till the retired employee vacated the quarter occupied by him. It is also further held that an employee in unauthorised occupation of quarter cannot claim interest for delay in making payment of DCRG. There, the interest is not payable for the delay in payment of gratuity till the vacation of quarter. However, for any delay of payment of gratuity after the quarter is vacated, the applicant certainly deserves compensation for the delay and therefore entitled for payment of interest.

12. The respondents have submitted that the total recovery of the penal rent and the electricity charges is much more than the amount of gratuity claimed by the applicant and as such no amount is due for payment to the applicant. The applicant, on the other hand, has contested the claim of the respondents stating that the eviction order has been since quashed by the Civil Court and therefore the

entire period of occupation of quarter ~~from the date of retirement~~
till the vacation of the quarter, i.e. 27.5.1997

is to be treated as authorised occupation and no
~~to be~~
penal rent is recovered. As indicated earlier,
this issue is not agitated through this OA. although
averments have been made in the OA. The matter
had been agitated by the applicant in the Civil
Court. In view of this, no opinion is expressed
on this issue and all the contentions of the either
party are left open.

13. The plea of the respondents that the
application is hit by the principle of res-judicata
is not tenable in view of the order dated 14.3.1996
in the earlier OA.1481/95 brought on record on page
26 of the OA. As per this order, liberty was granted
to the applicant to agitate the matter with regard to
the gratuity and passes in a separate OA. and accordingly
the present OA. has been filed.

14. As regards the post retirement complimentary
passes, the applicant confirmed that as per the interim
order, the issue of passes has been started. Keeping
in view what is held by the Full Bench in the case of
Wazirchand vs. Union of India, the applicant is entitled
for issue of the post retirement complimentary passes
after vacation of the quarter.

15. In the result of the above, the OA. is
disposed of with the following directions:-
(a) The DCRG as due to the applicant shall be
released and payment ~~shall be~~ shall be
arranged within a period of three months
from the date of this order.

(b) The applicant shall be entitled for interest at the rate of 12% p.a. for the delayed period excluding one month from the date of vacation of quarter till the actual date of payment.

(c) The applicant shall be issued ~~complimentary~~ ^{post retirement} passes for the Calender year 1998 and thereafter on regular basis as per the extant rules.

(d) The above directions shall not preclude the respondents from recovery of any dues with regard to the normal/penal rent, electricity charges etc. as per the extant rules and keeping in view any compliance with the judicial order.

(e) No orders as to cost.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A)

mrj.