

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 27.10.2000

OA No.183/1996

Prakash Bhusan S/o Shri K.C.Sharma, resident of Shiv Colony, Kundan Nagar, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Ajmer.
3. The Assistant Divisional Accounts Officer, Western Railway, Ajmer.
4. The Principal, Zonal Training School, Western Railway, Udaipur.

.. Respondents

Mr. W.Wales, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. N.P.Nawani, Administrative Member

OrderPer Hon'ble Mr. N.P.Nawani, Administrative Member

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has sought following reliefs:-

"(a) Quash and set aside the impugned Office Order No.491/2/29/Duplicate dated 3.6.94 (Ann.A/1 - page 26 of the paper book), on the basis of which the Respondent No.4 has drafter and has been held responsible for adjustment of Rs. 17144/50 (except Rs. 461/-) from the total amount of Rs. 17319/- retained from the applicant's "Encashment of un-availed Leave".



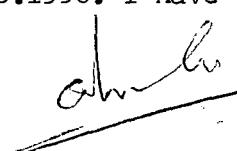
(b) Direct the Respondent No.2 to refund the amount of Rs. 16858/- un-authorisedly retained by him effective 1.1.90 (i.e. Rs. 17319.00 minus Rs. 461.00).

(c) To grant 24% interest charges on Rs. 16,858/- illegally retained with effect from 1.1.90 till the date of payment/release of the amount withheld."

2. I have heard the learned counsel for the parties and have also perused the material on record.

3. After going through the voluminous pleadings, it is possible to determine that the controversy in this case relates to the illegality of withholding of Rs. 17,319/- from the leave salary of the applicant to cover re-classification of the Bungalow No.125/B with consequent revision in the rent. The applicant appears to have been allotted Bungalow No.125/B in September, 1981 to August, 1986. The applicant retired from service on 31.12.1989. At the time of his retirement, the sum of Rs. 17,319/- was deducted from the settlement dues (leave salary) to cover for "intended" revision of rent, as also some other dues like excess payment of Rs. 3200/- on account of HRA for the period from June, 1987 to September, 1987 and some small amount on account of electrical energy charges. The applicant has challenged the recovery as being illegal and against the circulars of the Railway Board while the respondents have denied it and stated that the said recovery has been done rightly and legally. The applicant, however, has prayed for refund of Rs. 16,858/- i.e. Rs. 17,319/- minus Rs. 461/-.

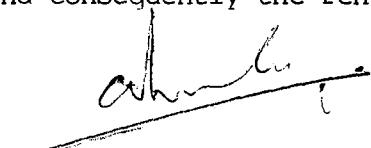
4. The respondents have taken a preliminary objection that the OA is hopelessly barred by limitation as the order regarding recovery of the said amount was issued on 20.7.1990 and even the impugned order Ann. Al was issued on 3.6.1994 and the OA has been filed on 25.3.1996. I have carefully considered this aspect. I find



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that the respondents themselves were guilty of long delay of more than 5 years in issuing the final settlement order giving details of the House Rent deducted and revised rent vide letter dated 3/4.4.1995 (Ann.A7). It is also observed that not only the applicant has been making representations but even the Principal of the Zonal Training School, Udaipur, where the applicant had served as Principal earlier, had been making references to concerned authorities to settle the outstanding dues of the applicant. In view of the special facts and circumstances of this case, I feel that it will be just and proper to condone the delay in this case.

5. It appears that the applicant retired on 31.12.1989. The learned counsel for the applicant has shown to me a letter dated 2.6.1989 issued from the DRM's office in which the said Bungalow No.125/B has been shown as type-IV while being allotted to Shri R.N.Dixit on being vacated by Shri O.P.Marshai and also a letter dated 26.9.1997 from the same office in which the said Bunglow No.125/B has been mentioned as type-IV. The fact remains that the applicant retired on 31.12.1989 which date also appears in Ann.A7. Prior to this, he was in occupation of the said Bunglow from September, 1981. It is strange that from Setpember, 1981 till retirement of the applicant in December, 1989 i.e. over a period of more than 8 years, the respondent did not proceed to refix the rent of the said Bunglow. On the other hand, they kept on deducting rent at rates varying from Rs. 52 to Rs. 90 per month from his salary. It is only on 20.7.1990 that the respondents informed the applicant about the details of the amount of Rs. 17,319/- which was retained from his settlement dues. The respondents have not filed any document to show that the applicant was informed at the time of allotment to the applicant in September, 1981 and during his occupation that the classification of the Bunglow is likely to change and consequently the rent is also likely to undergo an



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upward revision. Thus a surprise was sprung on the applicant only at the time of his retirement by withholding a substantial amount of Rs. 17,319/- and he was informed only on 20th July, 1990 the details of such recovery which actually underwent a change later on. It is also strange that final details of recovery were intimated to the applicant only after 5 years i.e. on 3/4.4.1995 (Ann.A7) and it is observed that there is difference in the break-up of these amounts between Ann.A2 and Ann.A7. No prior notice was given to the applicant before his retirement that the said amount will be retained from the settlement dues at the time of retirement so that he could have his say.

6. It is also seen from the break-up that the amount of Rs. 3200/- has been recovered from the applicant on account of excess payment of HRA from June, 1987 to September, 1987. It has not been brought out by the respondents that the excess amount of the HRA has been paid to the applicant on his mis-representation. This excess amount is also related to the period of 1987 and if at all could have been recovered well before the applicant retired in December, 1989.

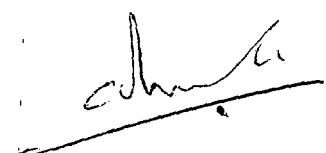
7. It has also been contended on behalf of the applicant that the said Bungalow No.125/B was classified as type-IV during the time two officers who occupied the same before him and also during the period two officers who occupied the said Bungalow after his retirement. The applicant, therefore, alleges discrimination since he only has been singled out for a higher ~~rent~~ on account of upgradation of the said Bungalow from type-IV to type-V. The applicant has also annexed at Ann.A12, a copy of the Railway Board's letter in which it has been clarified that classification of quarters need not be altered where plinth area is larger than the standard plinth area and fixation of rent must take into

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account the aspect of type of quarter. It appears that, notwithstanding this, clarification issued by the Railway Board, which has not been controverted by the respondents, the impugned order dated 3.6.94 (Ann.Al) was issued in which the said Bunglow No.125/B has been classified as type-V quarter and its rent was steeply revised to Rs. 138 to Rs. 385 p.m. for different periods as given in the said Ann.Al and on the basis of which the difference of rent has been adjusted against the amount of Rs. 17319/-, which has been retained. It is also observed that in para 28 of their reply the respondents have mentioned "that the classification issued by the railway department is not applicable in the case of the applicant".

8. The learned counsel for the applicant has also relied on the judgment rendered in the case of B.S.Sarin v. Union of India and ors., reported in (1997) 35 ATC 254 to support his contention that the amount of Rs. 17319/- could not have been recovered from his leave encashment. I have seen that the amount has been recovered from leave salary but this itself is not very material and the judgment does support the contention of the applicant that the amount could not have been recovered from the leave salary of the applicant.

9. It also appears that the applicant was unauthorisedly occupying the said Bunglow between Sept. 86 to December, 1989 for which a recovery of balance amount of Rs. 7726/- seems to have been included in the recoveries. The contention of the applicant is that in view of the order dated 18.4.1989 (Ann.All) from Headquarter Office, Western Railway, the damage rent as mentioned in the said order at the rate of Rs. 15 per Sq.Metre could have been levied only w.e.f. 18.4.1989 as the order is prospective in nature unless it is specifically mentioned that the order will have retrospective



effect. Therefore, it appears that the computation of damage rent from Sept.86 to April, 89 was not as per the relevant instructions. The learned counsel for the applicant seeks support from the judgment in the case of Dhan Singh v. Union of India and ors. reported in (1993) 24 ATC 290 in this regard. I find that the respondents has given no specific reply as to the authority/instructions on the basis of which the damage rent as listed in their letter dated 3/4.4.1995 (Ann.A7) was levied on the applicant.

10. I have also gone through the Railway Services (Pension) Rules, 1993 which according to the preface in the said Rules mention that this "compilation actually embodies the existing rules....". The relevant rule are extracted hereinunder:-

Rule 15(2) "The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of a railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4)."

Rule 16(5) "If on any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information."

A plain reading of above rules will indicate that whether it is recovery and adjustment of dues or adjustment and recovery of dues pertaining to accommodation, the adjustment is to be done against the gratuity. In the instant case, the respondents have



vaguely stated that the amount of Rs. 17,319/- was retained from the "settlement dues" but I find from last para of the order dated 3/4.4.1995 (Ann.A7) that it was "retained in his leave salary". Even in the old manual of Railway Pension Rules, 1950 para 323 (b) provides that in case of recovery on account of house rent etc., the Railway servant may either be asked to furnish a surety of a suitable permanent Railway servant or a suitable cash deposit may be taken from a Railway servant or only such portion of death-cum-retirement gratuity as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted. It is, therefore, clear that respondents have not retained the said amount as per provisions of the rules and if that be so, the retention of the said amount was illegal. This is in tune with the judgment in the case of B.S.Sarin v. Union of India (supra) wherein it was held that recovery cannot be made from the leave encashment.

11. In view of above discussions, I come to the conclusion that it was wrong on the part of the respondents to have withheld an amount of Rs. 17,319/- from the leave salary of the applicant at the time of his retirement in December, 1989. The applicant was also not given any opportunity to have his say before the said amount was withheld. It was also wrong on the part of the respondents to have given the final statement/details of recoveries after more than 5 years of the retirement of the applicant and to have kept the amount from the leave salary of the applicant with them all this long period. The respondents have not been able to convincingly controvert the assertion of the applicant that the said Bungalow No.125/B was type IV before the occupation by the applicant and remained type-IV after he vacated it. If that be so, an explanation was needed for making it type-V during the stay of the applicant. The recovery of Rs. 3200/- on account of excess house rent paid almost two years before the retirement of the

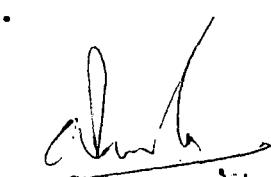


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applicant was also bad in law specially when the applicant had not obtained HRA on either mis-representation or fraud. The damage rent which was subsequently imposed on the applicant was also not based on the instructions of the Headquarter Office, Western Railway as contained in their letter dated 18.4.1989 (Ann. All). Taking all this into consideration, I find that the application is fit for being allowed but the impugned order dated 3.6.1994 (Ann. Al) is not to be set aside in the absence of clear and specific pleadings. The amount of Rs. 16,858/-, as mentioned by the applicant himself in his relief clause is required to be refunded to the applicant and with interest in the circumstances of this case.

12. The Original Application is, therefore, allowed partly and the respondents are directed to refund the amount of Rs. 16,858/- to the applicant with interest at the rate of 12% p.a. from 1.1.1990 till the date of refund. This direction may be carried out within 4 months from the date of receipt of a copy of this order.

13. There will be no order as to costs.


(N.P. NAWANI)

Adm. Member