

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

ORIGINAL APPLICATION NO. 586 of 2000

Jabalpur, this the 6th day of March, 2003.

Hon'ble Mrs. Shyama Dogra, Member (J)

Udal Singh aged about 61 years  
S/o Madhoo Singh-Retired Head Clerk,  
Carriage & Wagon Depot, Central  
Railway Jabalpur, R/o Q.No.1015  
PSM Compound Jabalpur M.P.

-APPLICANT

(By Advocate- Mr. R.K. Gupta)

versus

1. Union of India through  
Secretary, Ministry of Railways  
(Railway Board) Rail Bhawan,  
New Delhi.
2. General Manager,  
Central Railway, Mumbai CST
3. Divisional Railway Manager,  
Central Railway, Jabalpur.

-RESPONDENTS

(By Advocate- Mr. S.P. Sinha)

ORAL ORDER (Dictated in Chamber)

This Original Application has been filed by the applicant with the following prayer:-

- (i) Quashing the impugned order dated 17.8.1999 Annexure A-1.
  - (ii) For issuance of directions to the respondents to continue to extend the facility of issuing of complementary passes to the applicant as due to him on his superannuation.
  - (iii) To pass directions to the respondents to pay interest @ 12% per annum on the balance amount of DGRG which was payable to the applicant after deducting of damage rent, as the same was withheld for more than two years without any valid reasons.
2. The brief facts of the case are that the applicant while working with the Railway Respondents got superannuation as Head Clerk wef 30.4.1997. While in service, he
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was allotted a Railway Quarter No. RB-II 249/A at Jabalpur. After his superannuation, the applicant was entitled to retain the said quarter for a period of four months on the payment of normal rent w.e.f 1.5.97 to 31.8.97 and he was also permitted to retain the said quarter by the respondents for aforesaid period. However, the applicant could not vacate the said quarter after August 1997 due to his illness and he also applied for permission to retain the quarter beyond that period and he retained that quarter till 18.6.1999.

3. The plea of the applicant is that the respondents while treating this period as unauthorised / retention of railway quarter withheld the amount of DCRG amounting to Rs.1,05,138/- violating the provisions of their own circular, which is annexed by the respondents themselves with their reply as Annexure R-1.

4. It is submitted by the learned counsel for the applicant that in view of this Annexure R-1 issued by the Government of India, Ministry of Railways on 24.4.1982 the whole DCRG amount could not have been withheld in view of Clause (ii) of the said letter, which envisages ~~is~~ that the settlement dues of the employee should be finalised with an appropriate 'hold-back' amount from DCRG/Spl. contribution to P.F., as the case may be, for rent recoveries, as permissible under extant rules.

5. The next contention of the applicant is that Annexure A-1 has also been passed on 17.8.1999 in violation of Clause (iii) of said letter (Annexure R-1), which enumerates that for every one month of unauthorised retention of Railway quarters, one set of post-retirement passes should be disallowed. A show-cause notice to this

effect may be issued to the retired employee before disallowing the pass.

It is submitted by the learned counsel for the applicant that before issuance of the impugned order vide Annexure A-1, no show-cause notice issued to the applicant, hence, principles of natural justice has been violated and in view of this, ~~and~~ the said impugned order is contrary to the rules and instructions being issued by the competent authority. Therefore, the same is illegal and not sustainable in the eyes of law while withholding the <sup>complementary</sup> benefit of ~~and~~ passes to the retired employee. In support of his contention, the learned counsel for the applicant has placed reliance on the decision of this Tribunal in OA No.47/1999 decided on 4.11.1999 in the case of D.D.Sharma Vs. Union of India & another.

6. The applicant has further submitted that the applicant has retired on 30.4.1997 and he has vacated the said quarter (Railway) on 18.6.1999 whereas the balance amount of his DCRG amounting to Rs.50,000/- to some odd amount on 21.10.99, hence there is a delay of two years in making the said payment to the applicant and in view of this the respondents are liable to pay interest to the applicant as permissible under law for such delayed payment. In support of this contention, he has referred to one decision of Hon'ble Apex Court cited in AIR 1995 SC 1129.

7. The respondents have filed reply and agitated the contentions being raised by the applicant in the Original Application on the ground that the present application is premature, as the applicant has not availed of the departmental remedies of representation before coming to this Court.

8. So far as withholding the pass facility vide Annexure R-1 to the applicant, it is concerned, it is submitted by the learned counsel for the respondents that the same has been done in accordance with law and as per rules. Before passing of said order, the applicant has been afforded an opportunity by issuing show-cause to him vide Annexure A-3 dated 07.05.1997. Therefore, there is no violation of principle of natural justice as the respondents are entitled to pass such order on account of unauthorised retention of the Railway Quarter by the railway employee. Therefore, 18 sets of passes were withheld vide Annexure A-1 dated 17.8.1999.

9. In reply to withholding the entire DCRG amount on account of retention of the Railway Quarter unauthorisedly for the period of two years, it is submitted by the learned counsel for the respondents that since the concerned authorities cannot anticipate that till what period the applicant or railway employee would retain the quarter. Therefore, to secure the recovery of damage rent, electrical and water charges the entire DCRG amount had to be withheld and the same has been done in accordance with law and on vacation of said quarter by the applicant on 18.6.99 the remaining amount of DCRG has been paid to him on 21.10.99. Therefore, he is not entitled for payment of interest whatsoever on this count. The learned counsel for the respondents have also placed reliance on the decision of Hon'ble Apex Court in the case of Wazir Chand Vs. Union of India, (2001)6 SCC 596, wherein it has been held that for unauthorised occupation of the Railway quarter, the penal rent etc. can be recovered from the pensionary benefits of the employee. Therefore, the action being taken against the applicant for withholding the entire amount of DCRG is legal and passed in accordance with law.

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10. The applicant has reiterated his claim while filing rejoinder to the said reply and further submitted that the said impugned order as well as withholding of DCRG amount to double jeopardy in view of Rule 16 of CCS (CCA) Rules, 1965 as the applicant has not been heard before passing of this impugned order.

11. Heard the rival contentions of the learned counsel for the parties and gone through the records.

12. After perusal of Annexure A-3, it is found that by any stretch of imagination, it can be said to be a show-cause before denying the benefit of passes to the applicant for non-vacation of railway quarter. The contents of the said letter dated 7.5.1997 envisaged that the applicant has been directed to vacate the railway quarter on 1.9.1997, failing which the damage rent would be deducted as per calculation after taking the legal assistance for vacation of said quarter. Thereafter, it is mentioned in the said letter that it would be in the interest of the applicant not to delay in vacating the said quarter otherwise as per directions of the Railway Board the benefit of grant of passes for every one month for said unauthorised occupation of the quarter would be stopped.

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A bare perusal of the aforesaid contents shows that no show-cause has been issued to the applicant before issuance of impugned order vide Annexures A-1. Annexure A-3/ is a simple conditional order/warning to the applicant to vacate the said railway quarter. The respondents have also submitted so in para 4.8 of their reply that in spite of warning issued by the respondents vide Annexure A-3, the applicant has not vacated the said quarter. Even literal meaning of show-cause enumerates that one has to express reasons why particular proceedings or orders as the case may, be not initiated against him. No such opportunity to express reasons has been afforded to the applicant.

Therefore,  
/ it is held that no show-cause has been issued to the applicant, which has deprived him an opportunity of being heard in violation the instructions of the respondents issued vide Annexure R-1 in clause (iii) therein. Therefore, the said impugned order is not sustainable and is held to be passed in contravention of instructions.

13. Otherwise also it amounts to imposing double jeopardy to the applicant as in one hand the entire amount of DCRG has been withheld and the damage rent has been deducted and on the other hand the benefit of issuance of passes to the retired employee has been discontinued for infinite period  
/ as nothing has been mentioned in the said impugned order (Annexure A-1) that till which period this benefit would be discontinued to the applicant. Otherwise also withholding of privilege passes is amount to imposing minor penalty as per Rule 6 of the Railway Servants (P & A) Rules, 1968 and no procedure has been followed as ~~is~~ envisaged in these rules before imposing that penalty on the applicant. Therefore, the impugned order is not sustainable on this count also.

14. So far as the contention of the respondents that they have withheld the entire DCRG amount on the ground that they could not anticipate the exact period for which the applicant would have occupied the quarter is concerned, I find force in the contention of the respondents. However, since the applicant has vacated the said quarter on 18.6.99 and balance amount of his DCRG has been paid to him after a period of four months, i.e., 21.10.99 the applicant is entitled for payment of interest as permissible under law. Therefore, the said point is also answered accordingly.

*S. J. S.*

15. In view of the observations as made hereinabove, I am of the considered opinion that the impugned order vide Annexure A-1 dated 17.8.99 is not sustainable and the same is hereby quashed and set-aside with liberty to the respondents to proceed in the matter in accordance with law, if they so desire keeping in view that the applicant is a retiree and such benefit has been extended to the retired employees on complimentary basis.

Since the said impugned order stands quashed, the respondents are directed to issue these complimentary passes to the applicant in future, <sup>as per law.</sup> This view has been taken on the basis of the decision passed by this Bench in above referred O.A. No.47/99 wherein para 2 the respondents have mentioned that they have no objection to issue the passes to the concerned applicant, as the said applicant had vacated the Government accommodation. In the present <sup>case</sup> also, the applicant has vacated the railway quarter long time back in the year 1999. Therefore, he is also entitled for the benefit. The respondents are further directed to pay interest at the rate as permissible under law for the said period of four months, i.e., 18.6.99 to 21.10.99 within a period of three months from the date of receipt of copy of this order.

16. In view of these observations and directions, this O.A. stands disposed of. Parties shall bear their own costs.

*Shyama Dogra*  
(Mrs. Shyama Dogra) 6/3/03  
Member (J)

पुस्तकालय संग्रहालय, वाराणसी

प्रधानमंत्री विभाग

(1) वाराणसी विभाग

(2) वाराणसी विभाग

(3) वाराणसी विभाग

(4) वाराणसी विभाग

R. K. Gupta, Adm  
SP Singh, Adm

26/8/03

Issued  
on 21.3.03