

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/221/2011

Jabalpur, this Friday, the 31st day of August, 2018

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Smt. Nirmala Tiwari, W/o Late Ashok Tiwari,
aged about 56 years, R/o C/o Abhishek Tiwari,
H. No.514, Infront of Om Kirana, Badanpur,
Shakti Nagar, District Jabalpur (M.P.) – 482001 **-Applicant**

(By Advocate – Shri A.K. Pare)

V e r s u s

1. Deleted.

2. Divisional Railway Manager (Personal),
West Central Railway, Near Indra Market,
Jabalpur, District Jabalpur (M.P.) – 482001.

3. Divisional Railway Manager (Personal),
West Central Railway, Habibgunj, Bhopal Division,
Bhopal (M.P.) 462011. **-Respondents**

(By Advocate – Shri Y.N. Mishra)

(Date of reserving order: 03.04.2018)

O R D E R

By Navin Tandon, AM.

The applicant, through this Original Application, is challenging the action of the respondents whereby an amount of Rs.6,28,357/- has been recovered from retiral dues of her husband (hereinafter referred to as 'deceased-railway officer').

The applicant is further challenging the methodology adopted

by the respondent-railways, on the basis of which, the said amount has been recovered.

2. The brief facts of the case are that the deceased railway officer was a Group 'B' officer, when he voluntarily retired from service w.e.f. 17.01.2003.

2.1 The case of the applicant is that after her husband's voluntarily retirement from service, the respondents have withhold the amount of his retiral dues and further, vide order dated 03.09.2003 (Annexure A-3), recovered the amount of Rs.6,28,357 on the following heads:

- “(1). Damage Rent - Rs.5,22,767
for the period from 12.6.2000 to 20.6.2003
- (2). Electricity Bill - Rs.18,272/-
from 1.1.1999 to 20.03.2003.
- (3). Over payment for the month of May, 2000
Rs.7,880/-.
- (4). Over payment form the month of January, 2003
Rs.11,641/-.
- (5). Metal Token Rs.5,187/-.
- (6). ECC Loan - Rs.59,940/-.”

2.2 The deceased-railway officer had earlier raised this issue by filing OA No.189/2003 before this Tribunal, which was disposed of on 02.04.2003 with a direction to the respondents to decide his representation.

2.3 During the pendency of the matter the husband of the applicant expired on 19.12.2005.

2.4 Thereafter, the applicant filed OA No.440/2009 claiming the similar reliefs as prayed for in this O.A. However, the same was disposed of as withdrawn vide order dated 12.11.2009 with liberty to the applicant to file a fresh O.A. Hence, the applicant has filed the present Original Application.

3. The applicant has sought for the following reliefs:

“(8.1) The Hon’ble Tribunal may kindly be pleased to set aside the impugned order/letter dated 16.06.2003, 03.09.2003, 06.02.2003 and other consequential orders in the interest of justice.

(8.2) The Hon’ble Tribunal may kindly be pleased to declare the impugned action of the respondents making recovery from the terminal benefit is untenable in the eye of law.

(8.3) The Hon’ble Tribunal be further pleased to direct the respondents to immediately release the terminal benefits with interest of the applicant without further delay.

(8.4) The Hon’ble Tribunal be further pleased to direct the respondents to refund the amount with interest as mentioned in the impugned order dated 16.06.2003, 03.09.2003, 06.02.2003 and other consequential orders.

(8.5) Any other direction or order which the Hon’ble Court may deem fit and proper in the interest of justice may kindly be alongwith the cost of this O.A.”

4. The applicant submits that Railway quarter No.C-8 was allotted to the deceased railway officer on 31.03.1997, on his transfer to Jabalpur.

4.1 The applicant submitted that the quarter No.C-8 for which the damage rent has been recovered was damaged due to massive earthquake in May, 1997. This was liable to be dismantled. Therefore, damage rent cannot be recovered for a damaged quarter.

4.2 The applicant has also submitted that, voluntary retirement of her husband was accepted by the respondents unconditionally, and therefore, withholding of his retiral benefits and recovery therefrom is illegal and arbitrary.

5. During the course of arguments, the learned counsel for the applicant has placed reliance on the following decisions:

(i) **Union of India and others Vs. Madan Mohan Prasad**, decided on 28.02.2002, JT 2002 Supp(1) SC 65 : (2010) 15 SCC 785; wherein their lordships have stated that the claim of penal damages is not within the scope of Rule 323 of Manual of Railway Pension Rules, 1950, and therefore held while disbursing the DCRG to the respondent the normal house

rent inclusive of electricity and water charges which are admitted or obvious dues can be deducted out of the same under Rule 323.

(ii) **Gorakhpur University & ors Vs. Dr. Shitla Prasad Nagendra & others**, (2001) 6 SCC 591. In the said matter the Allahabad High Court held that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employee. No infirmity or illegality was found by the Hon'ble Supreme Court in the said order and accordingly the appeal was dismissed.

(iii) **Smt. Angoori Devi Vs. Union of India and others**, Original Application No.13/2012 decided by a co-ordinate Bench of this Tribunal at New Delhi vide order dated 09.01.2014. The CAT/Principal Bench in the said matter quashed the order of recovery of penal rent from the DCRG and/or from any of the terminal benefits.

6. Respondents have filed their reply. It has been submitted that after his transfer to Jabalpur, the deceased-railway officer was allotted quarter No.C-8 on 31.03.1997. The deceased-railway officer was promoted as SPO (Ad-hoc) vide office order dated 10.02.1999 and was relieved on transfer on 16.02.1999 to

join at Bhopal. But, he did not joint at Bhopal and had also not vacated the quarter. The deceased railway officer was subsequently transferred as Senior Personnel Officer (Ad-hoc) to Parel Workshop vide order dated 09.06.2000 (Annexure R-2). Thereafter, on 12.11.2001 (Annexure R-3), the deceased railway officer was transferred to Bhopal as Divisional Personnel Officer. However, the deceased-railway officer had not vacated the quarter.

6.1 The respondents have further submitted that the deceased-railway officer had resumed his charge at Bhopal on 26.11.2001 and continued as such up to 17.01.2003. Thereafter, he took voluntary retirement w.e.f. 17.01.2003. Since, the deceased-railway officer was in unauthorized occupation of Railway quarter and had not vacated the same despite repeated notices, the damage rent for the period from 12.06.2000 to 20.06.2003 has been recovered from his retiral dues.

6.2 Also, there were certain dues pending to be recovered from the deceased-railway officer, and therefore, his retiral benefits have been withheld by the competent authority, which have been adjusted after recovering those dues under the

various heads. The calculation of damage rent has been done as per the Railway Board's letter dated 24.07.2002, and therefore, there is no illegality in recovering the damage rent. It has also been submitted that as per Railway Board's letter dated 30.02.2002, the manufacturing cost of Bronze Metal Token is Rs.1729/- and in case of non-surrender of metal token on retirement or abandonment of service, the officer has to pay three times the cost of the Metal Token. Thus, the recovery of Rs.5,187/- was proper.

7. Heard the learned counsel for the parties and perused the pleadings and documents available on record.

8. The main issue involved in the present case is whether recovery of penal rent of the railway accommodation for unauthorized over stay can be adjusted from the retiral dues of the deceased railway officer?

9. In the matters of *Wazir Chand Vs. Union of India* (2001) 6 SCC 596 a retired railway employee continuously kept the quarters occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues,

balance amount of gratuity was paid to him. He contended that it was the bounden duty of the Government not to withhold the gratuity amount. The Hon'ble Supreme Court, however, dismissed the appeal observing that it was "unable to accept" the prayer of the appellant. Their lordships observed that the appellant having unauthorisedly kept the government quarter was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.

10. In the matters of *Secy., ONGC Ltd. Vs. V.U. Warrier*, (2005) 5 SCC 245 an employee of Oil and Natural Gas Commission (ONGC) unauthorisedly retained an official accommodation after his retirement. When penal rent was charged and sought to be recovered from retiral benefits of the employee, he filed a petition invoking Article 226 of the Constitution. The High Court allowed the petition and directed the Corporation to release all the benefits to which the employee was entitled. The High Court observed that it was open to the Corporation to take appropriate proceedings for recovery of the dues claimed by the Corporation. Aggrieved by the said order the ONGC approached the Hon'ble Supreme

Court. Allowing the appeal and setting aside the order passed by the High Court and considering the relevant decisions on the point, their lordships have held as under:

“28. As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court was a responsible officer holding the post of Additional Director (Finance and Accounts). He was, thus, ‘gold collar’ employee of the Commission. In the capacity of employee of the Commission, he was allotted residential quarters. He reached the age of superannuation and retired after office hours of 28-2-1990. He was, therefore, required to vacate the quarters allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarters was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to the Commission, but the possession of that quarters was restored to him taking into account the fact that he had retired and now he will have to vacate the quarters allotted to him by the Commission. In spite of that, he continued to occupy the quarters ignoring the warning by the Commission that if he would not vacate latest by 30-6-1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner—respondent herein—and on that ground also, the order passed by the High Court deserves to be set aside.”

11. Thus, in view of the above decision of the Hon’ble Supreme Court in the matters of **V.U.Warrier** (supra) we are of

the considered view that the reliance placed by the learned counsel for the applicant on the earlier decisions of the Hon'ble Supreme Court as well as of the CAT/Principal Bench, would not be applicable in the instant case.

12. Indisputably in the present case, the deceased-railway officer was also a responsible officer of the railways holding the post of Senior Personnel Officer/ Divisional Personnel Office. He had resumed his charge at Bhopal on 26.11.2001 and continued as such up to 17.01.2003. Thereafter, he took voluntary retirement w.e.f. 17.01.2003. The deceased railway officer vacated the railway quarter after five months from the date of his voluntary retirement. Further, there were certain dues pending with the deceased. Therefore, before finalizing his retiral dues, those amounts have to be recovered from the retiral dues. Since, the deceased-railway officer was in unauthorized occupation of Railway quarter and had not vacated the same despite repeated notices the damage rent for the period from 12.06.2000 to 20.06.2003, as well as other pending dues have been recovered from his retiral dues.

13. As regards the contention of the applicant that since the quarter in question was liable to be dismantled damage rent cannot be recovered for a damaged quarter, we find that the

deceased railway officer was in unauthorized occupation of railway property from the date of his relieving from Jabalpur on 12.06.2000. Therefore, the applicant cannot say that since the quarter was liable to be dismantled, the normal rent/or no rent should be charged. Since the deceased railway officer was in unauthorized occupation, the respondents were well within their powers to charge the penal rent.

14. Thus, considering the settled legal position as stated above, we are of the considered opinion that the respondents can not be faulted with for adjusting the penal rent as well as other outstanding dues while granting the retiral benefits to the deceased railway officer.

15. We hope and trust that the amount of RS.59,940/- deducted by the respondents towards loan from ECC has been deposited to discharge the loan liabilities of the deceased railway officer.

16. Accordingly we do not find any merit in this Original Application. The same is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member
rkv.

(Navin Tandon)
Administrative Member