

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00841/16**

Reserved on : 03/07/2018
Pronounced on : 03/08/2018

**C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

Vimal Prasad Singh, son of Ram Jatan Singh, resident of Village- Hilalpur (Kushwaha Tole), Police Station- Hilalpur, District- Vaishali, Bihar.

..... Applicant.

- By Advocate: - Mr. Dharmesh Kumar

-Versus-

1. The Union of India through the General Manager, North Central Railway, Allahabad, U.P. 211003.
2. The Chief Personnel Officer, North Central Railway, Allahabad.
3. The F.A. & CAO, North Central Railway, Subedarganj, Allahabad, U.P.- 211003.
4. The Assistant Divisional Finance Manager, North Central Rly., Allahabad.
5. The Divisional Railway Manager, North Central Rly, Allahabad.
6. The Senior Divisional Electrical Engineer(G), North Central Railway, Allahabad.
7. The Senior Divisional Electrical Engineer (G), North Central Railway, Kanpur.
8. The Senior Divisional Personnel Officer, N.C.R., Allahabad.
9. The Asstt. Divisional Electrical Engineer (G), N.C.R., Kanpur.

..... Respondents.

- By Advocate: - Mr. S.K. Ravi

O R D E R

J.V. Bhairavia, J.M.:- This OA has been filed by the applicant for a direction to the respondents to pay the gratuity amount of the

applicant which had been withheld to collect normal house rent along with penal damages for the period 24.05.2011 to 09.04.2015 along with interest.

2. The brief facts of the case is as under :-

2.1 The applicant had joined the service as Technician on 16.03.1981 in the Electrical Department of North Central Railway, Allahabad. While he was in service and posted at Kanpur, he was allotted Railway Quarter No. 84 in the Railway Colony, Type-II, Kanpur in which he was residing with his family.

2.2 On 24.05.2011, he was transferred from Kanpur to Etawah.

2.3 Since the applicant's son and daughter were studying at Kanpur he had filed various applications/representations before the competent authority from time to time and requested to allow him to retain the said quarter allotted at Kanpur (Annexure A/1 dated 12.07.2011, Annexure A/2 dated 21.02.2012 and Annexure A/3 dated 27.11.2012 refers). It is further contended that the applicant had submitted another application dated 27.11.2012 to the competent authority and again requested to retain the allotted quarter at Kanpur till 31.03.2013, the said application of the applicant was also endorsed and recommended by the respondent no. 5 with a further request to the concerned authority consider it sympathetically and forward it for further action (Annexure A/3 refers).

2.4 The said application of the applicant remained pending before the concerned authority and the continuation of occupation

of the said Railway Quarter allotted at Kanpur remained in occupation with the family members of the applicant. The son and daughter of the applicant were studying over there and the wife of applicant was seriously ill and was under medical treatment at Kanpur. The said fact of occupation of the said quarter was within the knowledge of the respondents. Not only that the respondents were regularly deducting House Rent and other taxes for such allotted Railway quarter from the monthly salary of the applicant. Applicant was not paid any HRA.

2.5 On 22.06.2013 the applicant was again transferred from Etawah to Kanpur and he continued to stay in the said allotted quarter.

2.6 The applicant had received instructions/letter dated 25.03.2015 whereby he was informed that the said quarter which is allotted to him and on vacating the same by the applicant the said quarter was ordered to be allotted to the other employee, namely Amrendra Kumar, Technician (Annexure A/4). In response to it the applicant had handed over charge of the said quarter to Shri Amrendra Kumar on 09.04.2015 and the copy of intimation about handing over the charge of the said quarter on 09.04.2015 has been informed to the respondents has been placed on record in this OA (Annexure 4/1 refers).

2.7 Since the applicant had vacated his allotted quarter on 25.03.2015 and handed over the possession on 09.04.2015 the office of respondent no. 7 also had issued "No Dues Certificate" to the

effect that only Rs. 600/- towards electricity charges was to be realized from the applicant (Annexure A/5 refers). The said due charges of Rs. 600/- was also subsequently paid by the applicant.

2.8 It is contended that the applicant was retiring on 30.09.2015, shockingly he was served with letter dated 29.09.2015 issued by Senior Divisional Electrical Engineer/G, NC Railway, Allahabad. In the said letter it is stated that the said department had received one complaint of Shri Dinesh Kumar, SSE/PS/RTW regarding non vacation of the allotted quarter without permission on transfer for about 4 years by the applicant. In this connection, it was informed to the DPO/Settlement to arrange to recover the penal rent from the applicant for the period from 24.05.2011 to 09.04.2015 on the ground that the employee had not obtained any retention permission as well as regularization of the quarter (Annexure A/6 refers).

2.9 It is further contended that the applicant retired on attaining the age of superannuation on 30.09.2015. The applicant came to know that his gratuity (DCRG) amounting to Rs. 5,14,875/- has been withheld by the respondents. Therefore, the applicant had submitted a representation dated 03.11.2015 (Annexure A/7) and requested the authority to pay the gratuity amount as the same was withheld in spite of the fact that the applicant had vacated the allotted quarters on 09.04.2015 itself, i.e. 5 months prior to his retirement and the concerned account department had also issued No Dues Certificate in favour of the applicant. Therefore, there is no

reason to withhold the amount of DCRG. The applicant again filed a representation dated 22.06.2016 (Annexure A/8) before respondent no. 5 requesting for payment of gratuity amount which has been withheld, but in vain. Hence, this OA.

3. The learned counsel for the applicant has submitted that the applicant is entitled to receive his amount of gratuity. The applicant has never misrepresented before the authority in respect of occupation of allotted quarter. The applicant has recovered the house rent and the other taxes for the said allotted quarter and time to time the applicant had submitted his applications for allowing him to retain the same. However, without issuing any specific order the respondent had orally instructed and allowed the applicant to occupy the same and for such period the respondent department had deducted monthly rent and the taxes from his salary. The respondents had not issued any show cause to the applicant before handing over the charge of the said allotted quarter as per the direction of the respondents vide their letter dated 25.03.2015. Subsequently, the account department has issued No Dues Certificate also. The above conduct of the respondents leads to deemed approval of the lawful occupation of the said quarter. Therefore, the so called recovery for unauthorized occupation for the period of 25.04.2011 to 09.04.2015 with respect to the allotted quarter to the applicant is arbitrary and the further action of withholding the amount of gratuity of the applicant is also arbitrary and in violation of principle of natural justice as well as in violation of

Railway Service (Pension) Rules, 1993. It is further contended that the respondents have not followed any procedure laid down in the said rules and arbitrarily withheld the amount of gratuity of the applicant. Therefore, applicant is entitled to the relief as prayed for.

4. In contra, the respondents have filed their written statement and denied the contention of the applicant.

4.1. The learned Standing Counsel for the respondents submitted that after the applicant was transferred on promotion from Kanpur to Etawah he was spared on 23.05.2011, but he did not vacate the said allotted quarter and retained it unauthorizably. Subsequently, he was again transferred back to Kanpur from Etawah, the applicant had retained the said quarter without any fresh permission or allotment and the said quarter remained in his possession unauthorizably till 09.04.2015.

4.2. It is further submitted by the respondents that as per the Railway Board's Rule-10.0 & 10.1 of Master Circular No. 49 (revised) (RBE No. 35/200&) dated 20.07.2007, permission can only be granted for two months on normal rent and six months on sickness certificate issued by authorized concerned Railway Medical Officer or on educational ground which was required to be applied within time, i.e. within 30 days from the date of transfer or spare.

4.3. It is further contended that since he had not taken permission by submitting an application within 30 days the said Railway quarter was remained in his unauthorized occupation w.e.f. 24.05.2011 to 09.04.2015, i.e. 46 months and 17 days and therefore

as per existing rules in the relevant period, the damage rent required to be recovered from the applicant.

4.4. It is further submitted that damage rent was recommended under Sub-Rule(1) and 2(a) of Rule -15 and 16 of the Railway Services Pension Rules, 1993 which permits for recovery and loss etc. from the applicant. As per office records the representations of the applicant dated 12.07.2011 and 21.02.2012 have not been received in the office of respondent no. 7 whereas, the application for retention of quarter from 24.01.2011 to 31.03.2013 was submitted by the applicant after expiry of 30 days, i.e. after one and half years on 27.11.2012. Therefore, the applicant is not entitled for any permission to occupy the said quarter.

5. The applicant has filed a supplementary affidavit in which he has enclosed the pay slips from the year 2011 to 2015 to show that the respondent authorities had deducted house rent and amount of water tax from the salary of the applicant from 24.05.2011 to 25.03.2015 in respect of allotted quarter.

6. The learned counsel for the applicant further submitted that action of the respondents for withholding of gratuity is not sustainable in the eyes of law since he was allowed to retain the quarter at Kanpur on verbal permission w.e.f. 24.05.2011 till 09.04.2015. The applicant further submits that the action of the respondents for withholding DCRG is not in accordance with Railway Pension Rules. Since the applicant was about to retire in the month of September, 2015, considering the service record of the applicant

including the details of allotment of the railway quarter and the amount of deduction towards rent of said quarter as well as details about date of vacating the said quarter, the competent authority/Accounts Department had issued “ No Dues Certificate” to the applicant. The respondents have not denied the correctness of the said “No Dues Certificate” and therefore the respondents are not authorized to claim any rent or penal rent in respect to the said quarter and cannot withheld the amount of gratuity. The respondents have not ascertained and assessed any due payable till the applicant vacated the allotted quarter. As such, there was no amount due to the applicant. Therefore, the respondents have erroneously relied upon the provisions of Rule 15 and 16 of Railway Services (Pension) Rules, 1993. The respondents had never informed about any assessment of so called outstanding due amount and about its liability. Even otherwise also the applicant is not liable to pay any amount to the respondents as per their own certificate. The dispute, if any, regarding recovery of damages or rent from the ex-railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (40 of 1971) as per the provision of Rule 8 (E) of Railway Service(Pension) Rules, 1993. In the case of the applicant the concerned Estate Officer had not followed any procedure laid down in the said Act and the Pension Rules.

7. The learned counsel for the respondents has relied on the judgment dated 31.03.2015 passed by Hon’ble High Court of

Patna in the matter of The Union of India through GM, EC Railway & Ors. Vs. Shri Rajeshwari Prasad Sinha in CWJC No. 1412 of 2009 and submitted that in view of the observation made by the Hon'ble High Court in the said judgment that the adjustment of damage rent for unauthorized occupation of official quarter was allowed as per the provision of Railway Pension Rules and without following procedure prescribed under Public Premises (Eviction of Unauthorised Occupation) Act, 1971. Therefore, the action of the respondents is just and proper.

8. Heard the learned counsel for the parties and perused the record.

9. In the instant case, admittedly, the applicant was working as Technician-II in Electrical Department with the respondent Railway department at Kanpur. There, he was allotted Railway Quarter No. 84. The applicant was transferred from Kanpur to Etawah on 24.05.2011. Since the children of the applicant were studying at Kanpur, therefore, he had submitted an application/representation to retain the said allotted quarter. The application of the applicant was recommended for sympathetic consideration by his immediate superior officer and forwarded it to the concerned department for further consideration and action (Annexure A/3 refers). On 22.06.2013 the applicant was again transferred from Etawah and posted at Kanpur. The applicant continues to occupy the said allotted quarter.

10. It is not in dispute that the respondents were deducting monthly house rent and the other taxes including the charge of electricity in respect to the said allotted railway quarter. On 25.03.2015 the applicant was intimated that on vacation of the quarter by him the said quarter is required to be handed over to new allottee, namely, Amrendra Kumar. Accordingly, the applicant had vacated the said allotted quarter and handed over the charge to the said new allottee on 09.04.2015. The applicant had informed the respondents about handing over the charge of the said quarter to the new allottee (Annexure A/4/1 refers). It is noticed that the Railway authorities regularly deducted the monthly house rent from the monthly salary of the applicant for the period 24.05.2011 to 25.03.2015 which is evident from the pay slip placed on record in this OA for the period 2011 to 2015.

11. The respondents had issued No Dues Certificate to the applicant by taking note of the fact that the applicant had vacated the allotted quarter and as such there were no dues except Rs. 600/- for the bill of consumption of electricity of the said allotted quarter. It is also not in dispute that the applicant has already paid the said due bill of Rs. 600/-. Issuance of the No Dues Certificate in favour of the applicant is not in dispute. After vacating the railway quarter on 09.04.2015 the applicant was retired on superannuation on 30.09.2015.

12. It further reveals from the record that just one day before his retirement the applicant was served with the copy of

letter dated 29.09.2015 whereby on receipt of complaint of one Shri Dinesh Kumar working with the respondents about non vacation of the quarter and without permission the applicant had occupied the allotted quarter and on the basis of it, the Senior Divisional Electrical Engineer ordered to recover the penal rent for the period 24.05.2011 to 09.04.2015 as the employee had not obtained any retained permission as well as regularization of the quarter (Annexure A/6 refers).

13. As the applicant had retired and awaiting to receive his retiral dues, although only his pension was released, but the amount of gratuity of Rs. 5,14,875/- was withheld by the respondents on the ground that applicant had unauthorizedly retained the quarter and therefore recovery of penal rent amounting to Rs.8,43,648.30/- for the period 24.05.2011 to 04.09.2015, i.e. 46 months @ Rs. 18,117/- per month = Rs.8,33,382/- and 17 days @ Rs. 603.90/- per day = Rs. 10,266.30/- = Total Rs. 8,43,648.30/- as per the assessment dated 06.04.2017 (Annexure R/1 refers). The said action of withholding the amount of gratuity (DCRG) of the applicant has been challenged in the present OA.

14. On careful examination of the case, it appears that the applicant was allowed to occupy the said allotted quarter by the respondents. The occupation of the applicant for the period 24.05.2011 to 09.04.2015 was very much within the knowledge of the respondents. The application of the applicant for retention of the said quarter on his transfer to Etawah was recommended by the

superior officer. The respondents had recovered/deducted regular monthly house rent, water tax, charge of consumption of electricity of said allotted quarter from monthly salary of the applicant. The respondents have never declared occupation of the applicant as unauthorized occupation till he was instructed to hand over the possession to new allottee, i.e. on 25.03.2015. Not only that, considering this aspect, the concerned authority of the respondent department had issued No Dues Certificate in favour of the applicant.

15. All these conduct of the respondents clearly establish that the applicant was permitted to occupy the said quarter for the period 24.05.2011 to 09.04.2015 and the submission of the applicant that such conduct of the respondents were deemed approval for retention of the said quarter is required to be accepted.

16. The counsel for the respondents placed reliance on the judgment passed by Hon'ble High Court of Patna reported in 2015(4) PLJR page 655 and submitted that the respondents can adjust the dues and recovery of damage rent for unauthorized occupation of official quarter without following procedure prescribed under the PP (Eviction of Unauthorized Occupants) Act, 1971 and further submitted that the applicant had retained the said quarter without due permission from the competent authority and accordingly the said occupation of the applicant become unauthorised and therefore in view of the law laid down by Hon'ble High Court, Patna the action of the respondents to withhold the gratuity of the applicant is just and proper and also in consonance with provisions of Rule 15 and 16 of

Railway Pension Rules. It is noticed that the facts of the case before the Hon'ble High Court, Patna in the above stated case is different than the present one. In the said case before the Hon'ble High Court, the competent authority of the Railway permitted the applicant/respondents therein, to occupy the railway quarter for eight months, i.e. from 03.02.2011 to 02.02.2001 on payment of normal rent and for six months from 03.10.2001 to 02.04.2002 on double assessed rent. The said Railway employee stayed beyond the period permitted and did not vacate the quarter and continued to occupy the said quarter even after he superannuated on 31.01.2004. The applicant/respondent therein was working as Superintendent Grade-II. After his retirement when the railway authorities came to know that the said railway officer had mislead the office in grant of permission to retain the quarter even after retirement and violated the terms and conditions of permission granted to him and retained the quarter unauthorizedly, the railway department had withheld gratuity of the said employee of Rs, 1,17,000/-. In the said case, the unauthorized occupation was not in dispute. Therefore, the Hon'ble High Court, Patna was pleased to hold that the railway department while paying the retiral dues claims adjustment from the amount of gratuity of retired employee and in that circumstance, there was no need to follow the provision of Sub Rule-8 of Rule 16 of Railway Service (Pension) Rules, 1993.

17. In the present case, it is noticed that the applicant was allowed to occupy the allotted quarter and regularly house rent was

recovered/deducted from his monthly salary till he was advised to vacate the said quarter on the basis of fresh allotment of the said quarter issued in favour of other railway employee on 25.03.2015. Till then applicant was peacefully allowed to retain the said quarter. Not only that the respondents had issued the No Dues Certificate before his retirement. The applicant had never misrepresented with respect to retention of his quarter. The retention of the quarter by the applicant was within the knowledge of the respondent authority.

18. Under the circumstances, till the applicant retired the occupation of the quarter was never declared unauthorized occupation of the applicant. Therefore, the judgment relied upon by the respondents is distinguishable on the facts of the present case.

19. It is also apt to note here that the applicant had vacated the said quarter on 09.04.2015 and subsequently, on 30.09.2015 he retired. So before he retired the allotted quarter was vacated and handed over to the respondents. In view of this fact the action of respondents to withhold the amount of gratuity of the applicant is not justified and the applicant is legitimately entitled to receive amount of the gratuity under provision of Rule 70 of Railway Service (Pension) Rules, 1993.

20. It is also noticed that as per provision of Sub Rule 8(E) of Rules 16, dispute, if any, regarding recovery of damages or rent from the ex-railway employee shall be subject to adjudication by the concerned Estate Officer appointed under the Public Premises (Eviction of Unauthorized occupants) Act, 1971 (40 of 1971). It is

further stipulated that the gratuity should be released as soon as the quarter is vacated so that there is neither any hardship to the retired employee or its family nor there is any claim for payment of interest on withheld gratuity for reasons of any administrative lapse.

21. In view of the facts and circumstances of the case, the applicant is entitled to receive amount of gratuity after his retirement. Accordingly, the respondents are directed to release and pay the gratuity amount withheld by them to the applicant within a period of three months from the date of receipt of this order. As the applicant is also entitled to receive interest, the respondents are directed to grant applicable interest on the amount of withheld gratuity from the date of retirement till the date of payment. It is open for the respondents to take appropriate legal action against the applicant with respect to any dispute for recovery of damage rent, if exist and permissible under the provision of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

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