

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/00890/2015

Indore, this Friday, the 21th day of December, 2018

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

Sonpal S/o Mangal, aged 62 years, C/o Jasodabai Kishanlal,
Old Railway Colony, Ratlam 457001 **-Applicant**

(By Advocate – Shri P.C. Choudhary)

V e r s u s

Union of India & others represented by

1. General Manager, Western Railway, Head Quarter Office,
Churchgate, Mumbai 400020.

2. Chief Work Shop Manager, Western Railway, Loco Carriage
& Wagon Work Shop, Freeland Gang, Dahod (Guj) 389151.

-Respondents

**(By Advocate – Ms. Geetanjali Chourasia, proxy counsel of
Smt. Pratibha Walia)**

(Date of reserving order : 18.12.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the fact that the amount of
Rs.3,75,060/- towards the payment of DCRG to the applicant, at
the time of retirement on 31.01.2014, has been withheld.

2. The applicant has, therefore, sought for the following
reliefs:

“8.1 The Respondents may kindly be ordered to release and pay Gratuity and all the settlement dues along with consequential benefits.

8.2 The interest on amount of Gratuity delayed should be paid along with Gratuity.

8.3 Interest on all retirement benefits at the rate of 18% be paid.

8.4 The cost of this application may be awarded.

8.5 Any other appropriate relief as deemed fit in the nature of circumstances of the case may kindly be granted.”

3. The applicant has earlier approached this Tribunal by filing O.A No.201/203/2015 before this Tribunal, which was disposed of on 17.03.2015 with a direction to the competent authority of the respondents to take a view of the pending legal notice in accordance with law by passing a reasoned and speaking order, within a period of two months. Accordingly, the respondents have passed Annexure A-2 order dated 23.04.2015, whereby the recovery of the damage rent deducted from the DCRG amount of the applicant, has been said to be legal and as per rules. Hence, he has filed this Original Application.

4. The applicant submits that the respondent No.2 has withhold the amount of DCRG, without issuing any show cause notice or prior intimation to the applicant. The applicant

submitted a claim application before Assistant Commissioner of Labour and controlling authority under payment of Gratuity Act, 1972 at Baroda Gujarat. However, the respondents have deposited only Rs.1,64,047/- in the bank account of the applicant and the remaining amount was not paid to him.

5. The applicant further submits that he was entitled for Type-II quarter, however, he was allotted Type-I quarter No.371/G-H by the Housing Committee, which was a very old and in poor condition. Further, at the time of retirement, he was entitled to retain Railway accommodation for six months. Therefore, he submitted application for retention of quarter on the ground of medical illness of his son. Hence, there was no question of any unauthorised occupation of the said Railway quarter and the recovery made from the DCRG amount of the applicant is illegal and bad in law.

6. The respondents have filed their reply and have refuted the claim of the applicant. It has been submitted that the applicant had not vacated the Railway quarter prior to his retirement but vacated the same in the month of May, 2014. As per Para 8 of Railway Board's letter dated 28.10.1993 (Annexure R-13), the Railway administration has the right to

withhold, recover or adjust the Government dues from the DCRG amount of the Railway employee and return the balance amount after vacation of the Railway accommodation.

7. The respondents have further submitted that as per settlement arrived on 07.10.2008 in the dispute raised by the Union, the respondents agreed upon the issue that the applicant with three others applied for out of turn allotment before Housing Committee and their applications were sent to General Manager, Western Railway for consideration and necessary orders. However, the Housing Committee had not accepted the proposal for out of turn allotment of Type-II Railway quarter, as there was a long waiting list of 429 employees for allotment of Type-II Railway quarter.

8. It has been further submitted by the respondents that the applicant was in occupation of unsafe Railway quarter No.371/G-H, hence, he was offered alternative Railway quarter No.1663/A, as per his choice. But, despite taking over the charge of Railway Quarter No.1663/A, the applicant had not vacated the previous Railway Quarter No.371/G-H. Therefore, recovery of damage rent and electric charges against

unauthorised occupation of Railway Quarter was made from DCRG payable to the applicant.

9. The respondents have also submitted that Railway Quarter No.371/G-H was declared as unsafe and required to be dismantled, therefore, the applicant was offered Railway Quarter No.1663/A. Further, the applicant was in possession of sub standard quarter No.371/G-H and one standard quarter No.1663/A, hence, non vacation of unsafe Railway quarter has been treated as unauthorised occupation and the amount thereof has been recovered from the DCRG payable to the applicant.

10. The applicant has filed rejoinder to the reply filed by the respondents. He has reiterated his stand that he was never in occupation of any unauthorised Railway Quarter. It has been further reiterated that retention of Railway Quarter for about four months after the retirement of the applicant, was as per rules, however, the respondents did not pay any heed on it despite his application dated 21.12.2013 (Annexure A-8 of O.A).

11. The respondents have also filed their additional reply (sur rejoinder) to the rejoinder filed by the applicant. It has been denied that the applicant has never assigned the reason of

medical illness of his son in his application for retention of Railway Quarter after retirement. It has also been submitted that despite Annexure R-8 and R-9 notices issued to the applicant to vacate unsafe Railway Quarter, he had not vacated the same even after his retirement. Thus, there was no question for issuing any show cause notice or prior intimation before withholding DCRG amount of the applicant and the action of the respondents was as per rules.

12. We have heard the learned counsel for the parties and perused the pleadings and documents annexed therewith.

13. The issue before us is regarding withholding the DCRG amount and the damage rent recovered by the respondents from the DCRG amount of the applicant.

14. It is an admitted fact that the amount of Rs.3,75,060/- was due towards payment of DCRG to the applicant at the time of retirement on 31.01.2014. The same was withheld by the respondent department and subsequently, an amount of Rs.1,64,047/- was deposited in the bank account of the applicant and the remaining amount was recovered on account of damage rent for unauthorised occupation of the applicant for Railway Quarter No.371/G-H.

15. It is the applicant's contention that the amount of DCRG cannot be withheld without any prior intimation or show cause notice. In reply to his contention, the respondents have placed reliance on Para 8 of Railway Board's letter dated 28.10.1993 (Annexure R-13), which reads as under:

“8. a. In case where a railway accommodation is not vacated after superannuation of the railway servant or after cessation of his services such as on voluntary retirement, compulsory retirement, medical invalidation, or death, then, the full amount of retirement gratuity, death gratuity, or special contribution to provident fund, as the case may be, shall be withheld.

b. The amount withheld under clause (a) shall remain with the Railway administration in the form of cash.

c. In case the railway accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the railway administration shall have the right to withhold, recover, or adjust from the Death-cum-retirement Gratuity, the normal rent, special license fee or damage rent, as may be due from the ex-railway employee and return only the balance, if any, on vacation of the railway accommodation.

d. Any amount remaining unpaid after the adjustment made under clause (c), may also be recovered without the consent of the pensioner by the concerned Accounts Officer from the dearness relief of the pensioner until full recovery of such dues has been made.

e. 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).

In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash, which shall be released immediately on the vacation of such railway accommodation.”

Thus, it is clear that in case a railway accommodation is not vacated by a railway servant after superannuation, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, can be withheld. Since admittedly, the applicant had not vacated the house after his superannuation therefore, the action of the respondents in withholding the amount of DCRG at the time of applicant's retirement cannot said to be illegal.

16. In regard to applicant's contention that no show cause notice was issued before recovering the amount towards damage rent, perusal of letter dated 28.08.2008 (Annexure R/9 collectively), makes it clear that the applicant was issued a show cause notice for vacating the Railway Quarter No.371/G-H, as the same was declared unsafe and required to be dismantled,

failing which, damage rent was to be recovered for unauthorised occupation of the same. Further, despite taking over the charge of Railway Quarter No.1663/A, the applicant had not vacated the Railway Quarter No.371/G-H and ultimately vacated the same on 31.05.2014, i.e. after four months from the date of his retirement.

17. It is also not in dispute that the applicant had submitted a claim application before Assistant Commissioner of Labour and controlling authority under payment of Gratuity Act, 1972 at Baroda, Gujarat and as per the settlement, amount of Rs.1,64,047/- was deposited in the bank account of the applicant by deducting Rs.2,11,913/- towards damage rent and electricity charges for the period of unauthorised occupation of the applicant.

18. We also find from Annexure A-8 application of the applicant for retention of Railway Quarter No.371/G-H that though the applicant had stated about medical illness of his son, however, no such reason can be seen on the application. The applicant was well aware of the fact that Railway Quarter No.371/G-H is listed for dismantling and, therefore, there was no occasion for the respondents to allow any further retention to

the applicant on the said unsafe quarter. The applicant, in his rejoinder, has not controverted the fact of occupying the Railway Quarter No.371/G-H despite being listed for dismantling and also taking over the charge of Railway Quarter No.1663/A. Thus, we are of the considered view that the respondents were well within their right to withhold the amount of DCRG, which had been rightly adjusted after calculating the damage rent and electricity charges for the period of unauthorised occupation of the applicant.

19. In the result, we do not find any merit in this Original Application. Accordingly, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-