

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00789/2016

Date of order: 27. 11. 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Pradip Kumar Mondal,
Son of Late Sashadhar Mondal,
Residing at 2/9, Edison Road,
B-Zone, Durgapur,
District – Burdwan,
Pin – 713205,
Category – IV.

2.A. Smt. Kajol Roy Choudhury (Widow)
B. Abhishek Roy Choudhury (Son)
C. Abinava Roy Choudhury (Son)

Son of Late Shubnath Ray Choudhury,
Residing at 18, Ram Mohan Avenue,
A-Zone, Durgapur,
District – Burdwan,
Pin – 713204,
Category – IV.

3. Dilip Kumar Chatterjee,
Son of Late Radhnath Chatterjee,
Residing at 1D/14, J.M. Sen Gupta Road,
Durgapur,
District – Burdwan,
Pin – 713205,
Category – IV.

4. Anumpam Chatterjee,
Son of Dwizendra Nath Chatterjee,
Residing at 56, Vidyasagar Avenue,
B-Zone, Durgapur,
District – Burdwan,
Pin – 713 205,
Category – IV.

5. Niranjan Show,
Son of Late Ramsankar Show,
Residing at 10/16,
Aurobinda Avenue,
A-Zone, Durgapur,
District – Burdwan,

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Pin - 713204,
Category - III.

6. Buddha Dev Ray,
Son of Late Pramatha Nath Ray,
Residing at 19, Gurunanak road,
A-Zone, Durgapur,
District - Burdwan,
Pin - 713205, Category - IV.

7. Smt. Sabitri Saha,
Daughter of Madhu Sudan Saha,
Residing at 4/1,
Ramkrishna Avenue,
A-Zone, Durgapur,
District - Burdwan,
Pin - 713204,
Category - V.

8. Barid Kumar Mondal,
Son of Late Sakti Pada Mondal,
Residing at 7/9 Akbar Road,
A-Zone, Durgapur,
District - Burdwan,
Pin - 713204,
Category - V.

9. Smt. Gita Kundu,
Daughter of Late Chandi Charan Ray,
Residing at 1/16,
Ashoke Avenue,
A-Zone, Durgapur,
District - Burdwan,
Pin - 713 204,
Category - II.

10. Narayan Rai,
Son of Late Jogi Rai,
Residing at 6/4, Edison Road,
B-Zone, Durgapur,
District - Burdwan,
Pin - 713205,
Category - IV.

11. Archana Das,
Daughter of Late Ramendra Nath Sarkar,
Residing at 23/16, Bharati Road,
Durgapur, District - Burdwan,
Pin - 713 205,

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Category - IV.

12. Subhra Murmu,
Daughter of Late Sisir Kumar Murmu,
Residing at 2/9,
Vidya Sagar Avenue,
Durgapur,
District - Burdwan,
Pin - 713 205,
Category - IV.

13. Aparna Biswas (Roy),
Wife of Dulal biswas,
Residing at 6/37, J.M. Sengupta Road,
Durgapur, District - Burdwan,
Pin - 713 205,
Category - IV.

... Applicants

- V E R S U S -

1. Union of India,
Represented by the
Secretary,
Department of Ispat,
Ministry of Steel,
Having office at Ispat Bhavan,
New Delhi,
Pin - 110 001.

2. The Steel Authority of India Ltd.,
(A Central Government Organization),
Public Section Undertaking,
Ispat Bhavan,
New Delhi,
Pin - 110 001.

3. The Chief Executive Officer,
Durgapur Steel Plant,
Ispat Bhavan,
Durgapur,
District - Burdwan,
Pin - 713203.

... Respondents

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For the Applicants : Mr. A. Chakraborty, Counsel
 For the Respondents : Ms. R. Basu, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with the eviction notice to vacate their official accommodation and also the fact that their retirement benefits have been withheld by the respondent authorities, the applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief, in particular:-

“(a) Direction be given upon the respondents to release the applicants’ gratuity, leave salary, last month’s of payment and benefits from NJCS agreement with interest forthwith.

(b) A Direction be given upon the respondents to allow the applicants retain the quarters where they are presently residing on lease/license basis at normal rate of rent.

(c) To pass such other order or orders as your Lordships may deem fit and proper.

(d) Liberty may be given to file this application jointly in common cause of action U/S 4(5)(a) CAT Procedure Rules, 1985.”

2. Heard both Ld. Counsel, examined pleadings and documents on record. Written notes of arguments have been furnished by both Ld. Counsel.

3. The submissions of the applicants, as made through their Ld. Counsel, is that, the applicants are all retired employees of the Durgapur Steel Plant which was integrated with the Steel Authority of India Limited. That, even though the applicants had superannuated during the period 2008-2014, their Gratuity, Leave Salary and last months’ salary were withheld on the ground that the applicants have to surrender their official accommodation. This, in accordance with the applicants, is an illegal decision issued in violation of Article 14 of the Constitution of India, as because the respondent authorities has a floating Scheme for the quarters to be taken on lease or license basis. In case of the

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applicants, however, no such benefits were extended; on the other hand, their retiral benefits have been illegally withheld by the respondent authorities and, hence, being aggrieved, the applicants have approached the Tribunal praying for the above mentioned relief.

In his written notes of arguments, Ld. Counsel for the applicant would bring forth **(1994) 28 ATC 516 R. Kapoor v. Director of Inspection** to highlight the ratio that Gratuity cannot be withheld on grounds that government accommodation has not been vacated.

4. The respondent, per contra, have contested the claim of the applicants stating as follows:-

Thirteen Ex-employees of DSP, Durgapur have consciously and unauthorisedly retained Company's quarters since their respective dates of superannuation from service on a mistaken belief that, in terms of circular dated 31.3.2008, they were authorized to retain their quarters even after their retirement. The Quit notice for vacating company's quarters have been issued to each of them after permissible period of four months. The applicants have neither been paying damage rent/penal rent nor the license fee. Eviction proceedings under Public Premises (Eviction of Unauthorised Occupation) Act, 1971 have already been instituted but the applicants are still in unauthorized occupation of Company's quarters. Under these circumstances, gratuity etc. have been withheld as per paragraph 4.8 of the relevant Scheme for retiring employees and paragraph 3.2.1 (c) of SAIL Gratuity Rules of SAIL Personnel Manual.

The respondents would further argue that the Respondent authority being a public sector Enterprise is guided by a set of rules/guidelines/policy and, that, in the instant case, the respondent authority has acted as per the relevant guidelines contained in the

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company's circular dated 31.3.2008. Moreover, the leasing process did not have an automatic applicability in respect of the applicants as claimed in their averments. Unauthorised retention/occupation of Qrs. cannot be regarded as the eligibility for lease/license of such accommodation.

The respondents would refer to the decision of the Hon'ble Supreme Court in **Civil Appeal No. 5195-5197 of 1998 filed by Wazir Chand**, which decided on 14.9.2000 that the said retired employee was liable to pay the penal rent in accordance with rules and therefore there is no illegality in such dues being adjusted against the DCRG of the employee.

The respondents would also rely on the orders in **O.A. No. 350/442/2016** in the matter of **Ananga Kr. Saha & ors. v. Union of India & ors.** wherein the Tribunal had dismissed the case on 8.6.2016 with liberty to the applicant to approach the appropriate forum quoting the Hon'ble Apex Court Judgment in **Rashila Ram /2002 SCC (L&S) 2016** after holding that the Tribunal has no jurisdiction to go into the legality of the order passed by the competent authority under the provisions of the Public Premises Eviction of Unauthorised Occupants) Act, 1971.

5. Heard Ld. Counsel for the parties, considered the arguments/counter arguments as well as the judicial pronouncements brought forth to support the respective claims.

6.1. As brought forth by the respondents, an identical matter was considered and disposed of by the Tribunal in O.A. No. **350/442/2016 Ananga Kr. Saha & ors. v. Union of India & ors. (SAIL)** and, in the said matter, the admitted position was that the applicants had retired on superannuation between 2008 to 2012 but had not surrendered their quarters to the Durgapur Steel Plant on a mistaken belief that in terms

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of circular dated 31.3.2008 they were authorized to retain their quarters even after their retirement. The Tribunal, after having discussed the contents of the circular, the applicability of the same to superannuated employees and, after referring to the ratio in **Gorakhpur University & ors. v. Dr. Shitla Prasad Nagendra, Civil Appeal No. 1874/99** as well as **Union of India & ors. v. Rashila Ram [2002 SCC (L&S) 1016]** concluded as follows:-

“9. In the present case it could be noted that the applicants consciously, but on a mistaken belief, retained the quarter long after their retirement. They were neither paying the damage rent/penal rent nor the licence fees determined by the employees. Eviction Proceedings under Public Premise's (Eviction of Unauthorised Occupants) Act, 1971 have already been instituted for their eviction and they are still in occupation of the quarter unauthorisedly and proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act in short) are not to be interfered with by this Tribunal. A demand was raised from the Union to allow the serving and retired employees to have the quarters on licence basis but the same never fructified into any formal decision or order licensing them to retain the quarters. Therefore, the ratio of **Shitla Prasad Nagendra supra** would not apply to the present case.

10. In the aforesaid backdrop the prayer in the O.A. seeking release of retirement benefits including gratuity, is dismissed with liberty to the applicants to approach appropriate forum in accordance with law against the proceedings initiated under P.P. Act. No order is passed as to costs.”

In the instant case too, the applicants have relied on the circular dated 31.3.2008 (Annexure A-2 to the O.A.) and the follow up circular dated 2012, 2014 and 2015 to drive home their claim as potential lessees /licensees of such premises. The circular of 31.3.2008 is not applicable to the retired employees staying on unauthorisedly after superannuation as decided in O.A. No. 442/2016. Circulars of 2012 and 2014 relate to Bokaro Steel Plant and Rourkela Steel Plant respectively. The circular of 2015 does not refer to automatic retention of government accommodation. Hence none of the circulars referred to at A-4 to A-5 of the O.A. come to the aid of the applicants.

The Ld. Counsel for the applicant would vociferously contend that the applicants are entitled to relief as per ratio held in **R. Kapur (supra)** in particular highlight the contents of para 8 of the judgment, which states as follows:-

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"8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of the judgment of this Court in *State of Kerala v. M. Padmanabhan Nair*. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum."

As the judgment in ***R. Kapur (supra)*** relies on the ***State of Kerala v. M. Padmanabhan Nair (1985) 1 SCC 429***, we refer to the said judgment in which the Hon'ble Court had held as follows:-

"..... the appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite LPC (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held and in our view rightly that a duty was cast on the Treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent's favour."

The Hon'ble Court, therefore, upheld the High Court's relief on granting interest to the appellant.

In the instant matter, the respondents have not delayed in withholding the retirement benefits of the applicants due to certain systemic delays and latches on their part. On the other hand, the applicants who have been served with the notice of eviction for steadfastly refused to vacate their official accommodation upon a mistaken reliance on the circular that does not refer to automatic retention. Accordingly, as there was no delay or latches on the part of the respondents, the applicability of ***Padmanabhan Nair (supra)*** and ***R. Kapur (supra)*** is distinguishable from the case of the instant applicants.

In ***John Lucas v. Addl. Chief Mechanical Engineer, S.C. Ry. (1987) 3 STC 328 (Bang)(FB)*** the following was observed:-

"The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter could be referred to a Larger Bench/Full Bench and placed before the Chairman for constituting a Larger Bench so that there may not be any conflict between the two Benches. The Larger Bench has to consider the correctness of the earlier decision in disposing of the later application and the Larger Bench can overrule the view taken in the earlier judgment which will be binding on all the Benches."

Nothing has been brought before us by the applicants which would lead to a different decision or dissent. The orders of the Tribunal in O.A. No. 442 of

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2016, reportedly being unchallenged, has reached a finality and we do not find any reason to disagree with the earlier findings of the Tribunal.

7. Accordingly, the O.A. is dismissed with liberty to the applicants to approach the appropriate forum in accordance with law against the proceedings initiated under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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