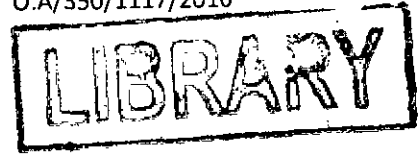


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**



O.A/350/1117/2016

Date of Order: 29.7.19.

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

Gurtiboina Appala V.G.Shankar,
Son of late G.Jagannadha Rao,
Residing at Quarter No. 4C/2/3,
Unit No.3, Type-II,
Old Settlement, Kharagpur,
District- Paschim Medinipur, Pin- 721301.

.....Applicant

Vrs.

- 1) The Union of India, Service through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700043;
- 2) The Divisional Railway Manager, South Eastern Railway, Kharagpur Division, Kharagpur, Dist-Paschim Medinipur, Pin-721301;
- 3) Senior Divisional Finance Manager, South Eastern Railway, Kharagpur Division, Kharagpur, Dist-Paschim Medinipur, Pin-721301;
- 4) Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur Division, Dist-Paschim Medinipur, Pin-721301;

.....Respondents

For the Applicant(s): Mr. S.Chakraborty, Counsel

For the Respondent(s): Mr. R.K.Sharma, Counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant, an employee of Railways, who retired on superannuation on 28.02.2014, being aggrieved by alleged whimsical, arbitrary, unlawful action of the Respondent authorities withholding of Death-cum-Retirement Gratuity even after two years of his superannuation, has preferred this O.A. to seek the following reliefs:

"8.1 To consider the representation dated 08.07.2016 made by the applicant to the Respondent Railway Organization;

8.2 To pass a direction or directions upon the Respondent authorities to release immediately the Death-Cum-Retirement Gratuity of the applicant along with statutory interest till date of issuance of the same;

8.3 Show cause in terms of prayer (a) and (b) and after hearing the cause make the rules absolute;

8.4 A direction as to costs of the proceedings to the applicant;

8.5 Any further order"

2. The admitted facts of the case run thus:

Sri G.A.V.G.Shankar, the applicant, was working as Hd. TE under Sr. DCM, S.E.Railways, Kharagpur in Commercial department. His wife, viz. Smt. G.Mina Shankar, was working as Matron under CMS/Medical Dept/Kharagpur. A Railway Qrts. No. 412/3 (Type-III) was allotted to Smt. Mina Shankar as Medical Pool Quarter. The said quarter was regularized under 'husband and wife rule' while the applicant was working in Commercial Department. After retirement of the applicant on 28.02.2014, he was requested to release/vacate the said quarter. But due to demise of applicant's wife, while in service, her son was appointed as Peon on compassionate ground. As per rule, permission was given to retain the said Railway Quarter for a maximum period of 08 months, i.e. upto 31.10.2014. Due to lower Grade Pay of applicant's son (as he was working as Peon in Finance Department, S.E.Rly., Kharagpur) the said quarter No. 412/3 (Type-III) could not be regularized in his favour. Further, the said quarter was under the Medical Pool. This was informed to the applicant as reminder dated 26.08.2016. Applicant vacated the quarter on 26.12.2016, which was unauthorisedly occupied by him since 01.11.2014.

The DCRG bills, amounting to Rs. 5,61,617/- was sent to Accounts Department, Kharagpur, on 22.03.2017 after deducting Rs. 3,28,092/- as damage rent and electric and water charges, which is yet to be released.

3. The applicant has alleged that the Respondent Railways Organization have acted whimsically, arbitrarily, illegally and in clear violation of the law of the land in withholding his DCRG inasmuch as the Respondents sought to have considered the prayer of the applicant to regularize the said quarter in favour of his son applying 'Father-Son Rule' and allow the applicant and his family to retain the same quarter even after his superannuation. The Respondents have failed to appreciate that the DCRG is a legal right of any Govt. employee and no employer can illegally withhold it at their whims.

In support of his contentions, the following decisions have been cited:

- (1) **State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Ors.,**
Civil Appeal No. 6770 of 2013 (Arising out of special Leave Petition (Civil) No. 1427 of 2009) and Civil Appeal No. 6771/2013 (Arising out of special Leave Petition (Civil) No. 1428 of 2009); rendered by the Hon'ble Apex Court.
- (2) **Lallan Thakur Vs. UOI & Ors., W.P.No. 29595(W) of 2016,** decided on 21.09.2017 by the Hon'ble High Court of Calcutta.
- (3) **Ram Ranjan Mukherjee & Ors. Vs. Mining and Allied Machinery Corpn. Ltd.,** reported in (2000) 3 CAL LT 468 (HC), rendered by Hon'ble High Court of Calcutta.

4. Per contra, Respondents would contend that withholding of DCRG in case of post retirement retention of Railway quarters is permissible in view of the following provisions:

"13.0 Withholding of DCRG etc. in the case of post-retirement retention of Railway Quarter"

To prevent unauthorised retention of railway accommodation by the retired Railway employees, Railway Administration should take following steps to discourage them from such action :-

(i) 'No Claim' certificate should not be given unless the employee after retirement has vacated the railway quarter and cleared all his arrears of rent, electricity and other charges, etc.

(ii) The retirement/death gratuity or special contribution to P.F., as the case may be, should be withheld in full for non-vacation of railway quarters not only after superannuation but in all cases of cessation of service, namely, voluntary retirement, death etc. Further, the amount withheld should remain with the Administration only in the form of cash without conversion into any type of security lest the very purpose of withholding full D.C.R.G. should get defeated. It may also please be kept in view 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 his/her family, nor there is any claim for payment of interest on withheld gratuity for reasons of administrative delay.

(iii) One set of post-retirement pass should be disallowed for every month of unauthorised retention of Railway quarters by retired employee in terms of provisions of Railway Servants [Pass] Rules. The concerned retired employee may be allowed the privilege of post-retirement passes, after the period, during which the forfeited passes would have been admissible, is over. A show cause notice to this effect may be issued to the retired employee before disallowing the pass.

(iv) The provisions under Sub-Rule [8] of Rule 16 of the Railway Services [Pension] Rules, 1993, as reproduced below for ready reference, shall be strictly followed.

Note: In respect of Railway servants holding Government accommodation allotted by Directorate of Estate, procedure as specified under Rule 16[1] to Rule 16[7] of Railway Services [Pension] Rules, 1993 would be applicable.

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[Ref: No. E(G)2000 QR1-23 dated 1/6/2001]

Sub-Rule [8] of Rule 16 of the Railway Services [Pension] Rules, 1993

" (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 licence 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 Officers 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 Unauthorised Occupants) Act, 1971 (40 of 1971)".

[Ref No. F(E)III/97 PN1/14 (Amendment) dated 24/5/2000]"

We note that Rule 13, extracted supra, is explicit about its applicability to "post retirement retention of Railway Quarter", whereas Rule 9 of Pension Rules empowers only the President to withhold or withdraw ^Bthe pension. Therefore, Rule 13 of Pension Rules runs contrary to and inconsistent with Rule 9 of Pension Rules.

5. **In State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Ors.**

(supra) Hon'ble Apex Court has succinctly held that right to receive pension is recognised as right to property. Pension/Gratuity is hard earned benefit which accrues to employee and is in nature of "property". A person cannot be deprived of pension/gratuity without authority of law, which is constitutional mandate enshrined in Article 300A. Pension and gratuity are not bounties and employees earn these benefits by dint of his long, continuous, faithful and unblemished service.

In **Lallan Thakur Vs. UOI & Ors.** (supra), Hon'ble High Court of Calcutta held that even if Railways have such specific provision of law permitting them to withhold gratuity for realizing house rent or for compelling retired employees to vacate quarters, same was not very favourably looked upon by courts. Decision to withhold retirement gratuity for realization of damage rent was not permissible act on the part of the Respondents. Gratuity, unless coming under permissible and specified cases for non-disbursement, could not be withheld either for compelling retired employee to vacate quarter or to realize house rent for unauthorized occupation of quarter and directed to release gratuity amount of petitioner.

In **Ram Ranjan Mukherjee & Ors. Vs. Mining and Allied Machinery Corpn. Ltd.** (supra) the Hon'ble High Court of Calcutta considered whether the employer can withhold the payment of gratuity on the plea that they were not vacated the premises; whether the employer could deduct or adjust the dues purportedly payable by the petitioners on account of their house rent, electricity charges, water tax etc. from their amount of gratuity and whether the employer is liable to

pay interest @ 18% on the amount of gratuity due and payable by it to the employees.

The Hon'ble Court held that payment of gratuity to the employees under the Payment of Gratuity Act, 1972 is a mandatory statutory obligation which cannot be trifled with by adaptation of a method which runs counter to the statute. The statutory obligation of payment of gratuity cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not. There is a mandate of the Payment of Gratuity Act that gratuity is to be paid to the employee on his retirement or to his dependents in the event of early death.

6. We heard the Ld. Counsels and perused the materials on record.
7. The issue that fell for determination is whether DCRG could be withheld for non-vacation of quarter and be partially reduced for realisation of damage rent.
8. The Respondents have furnished a copy of a letter dated 18.02.2019 which reads as under:

"1) The Railway Quarter in question bearing No. 412/3 (Tyoe-III) at south side/KGP is originally pertaining to Medical Department and subsequently the same was regularised under husband & wife rule while Sri Shankar working under Commercial Department. But the son of Sri G.A.G.V. Shankar is working under Sr. DFM/KGP Office and till date neither Sri Shankar nor Sr. DFM/KGP had approach to the Comml. Department to release the same for regularization in favour of son of Sri Shankar. Moreover, Medical Department has also requested to Commercial Department for releasing of the said Quarter in their pool as the same was originally of Medical Department on superannuation of Sri Shankar. Hence, the communication regarding ineligibility to get the quarter does not arise.

2) The Railway Quarter no. 331/4 at South Side/KGP has been allotted in favour of Petitioner's son from ADRM/KGP's pool due to ineligibilities of getting the quarter was regularized in

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favour of Sri Shankar (412/3-Type-III/KGP) and the son of Sri Shankar the Gr. D staff of Sr. DFM/KGP Office. As such, necessary correspondence if any required towards quarter to done by Finance Department. Hence, Comml. Department has no role in this regard.

3) As per extent rule on permissible retention period concerned SSE (Works) was advised to take over the possession from G.A.V.G.Shankar and necessary proceeding under P.P. (unauthorized occupation) Act-1971 was initiated and also his DSCRG was pending on account of unauthorized occupation by Sri G.A.V.G.Shankar.

4) Incidentally it may be indicated that the case has become infructuous since the applicant G.A.V.G.Shankar has vacated his railway quarter on 26.12.2016 and the gratuity bill has been sent to the accounts department for Rs. 251617/- for passing and payment on 22.03.2017 from Personnel Branch, after deduction of Rs. 328092/- as damage rent and electric and water charges from total DCRG Rs. 561617/- as per rules.

We would note therefrom that the Respondents have themselves observed that "Incidentally it may be indicated that the case has become infructuous since the applicant G.A.V.G.Shankar has vacated his railway quarter on 26.12.2016."

9. We would discern that the applicant who was a retired employee, was compelled to retain the railway quarters due to delay in allotment of a suitable quarter to his son who was appointed as Group 'D' staff of Sr. DFM/KGP office on compassionate ground after the death of his mother while in harness.

10. We would further discern the following facts:

The employee retired from Railway service on 28.02.2014. The permissible period of retention was until 31.10.2014. A vacation notice was served on 22.10.2014. An eviction proceeding vide Eviction Case No. E/97/2016/L-III between Divl. Commercial Manager Vs. Sri G.A.V.G.Shankar Ex. Hd. TTE/KGP was initiated against him.

He preferred O.A. 1117/2016 before this Tribunal against non-payment of DCRG.

On 22/23.05.2017 the Estate Officer/S.E.Rly./KGP in regard to the eviction proceedings, observed in eviction notice as under:

".....after scrutinizing all the grounds and going through the merit of the case, it is clearly concluded that the you are an unauthorized occupant of the railway quarter no. 412, Unit-3 at KGP.

Sufficient opportunity have been given to you to apply for retention of the said quarter after his retirement, however the same has not been done by you timely.

This proves that you have nothing to say regarding your unauthorized occupancy of the aforesaid quarter.

Hence considering all above facts I opine that hearing is not at all required in the instant case. The case is disposed off and the following order is passed suo moto for compliance.

Considering all above facts I opine that hearing is not at all required in the instant case. Hence the case is disposed off and the following order is passed suo moto for compliance.

"You are hereby directed to vacate the Railway quarter No. 412, Unit-3 South Side/Kharaqpur under SSE(W) south within 7 days from the date of the issue of the order.

If the quarter is not vacated by you within the stipulated period water and electricity connection to be disconnected immediately from the quarter and;

you will be evicted from the quarter by fixing a suitable date within next 7 days.

Necessary penal rent as per extant rule will be recovered from your DCRG for such Unauthorised occupation of the aforesaid railway quarter for the period from date of unauthorized occupation i.e. 01.04.2016 to till the quarter is evicted and taken over by SSE(W) South".

Whereas, the applicant had already vacated the quarter on 26.12.2016; Therefore, long after he had vacated the quarter, he was declared as unauthorised occupant, and, without any assessment of penal/damage rent, he was served with an eviction notice. Yet, his payable DCRG of Rs. 561617/- was reduced to Rs. 251617/- after deducting Rs. 328092/- towards damage rent and electric and water charges for which no prior

notice or assessment order was ever served upon him, as nothing of the sort is mentioned either in the order of Estate Officer or in the pleadings. The applicant having vacated Railway quarters long before he was declared as in unauthorised occupation and issuance of Eviction notice against him, he could not have been held responsible for unauthorised occupation and slapped with recovery.

No scrap of paper has been annexed to prove that the assessment of penal/damage rent was done in accordance with law.

We also note the implication of the decisions supra.

11. Such being the position, and having noted the implication of the decisions enumerated supra and the clear mandate therein that a person cannot be deprived of his Gratuity without the authority of law and the DCRG could not be withheld for realisation of Damage Rent or reduced to the disadvantage of the employee, we direct the Respondents to refund the deducted amount with interest @ 8% p.a. within three months.

The O.A. is disposed of accordingly. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)