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Central Administrative Tribunal
Principal Bench

OA No.2511/2003

New Delhi this the 20th day of May, 2004

Hon'ble Shri Shanker Raju, Member (J)

Smt. Leela Vati
W/o Late Shri Kripal,
R/o RZ-30, New Hira Park,
Najafgarh, New Delhi.

-Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the General
Manager, Northern Railway, Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway, Moradabad Division,
Muradabad (UP).

-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Heard the parties.

2. Through this OA deceased applicant represented by LRs seeks retiral dues admissible in accordance with rules.

3. In pursuance of directions of this Court contained in order dated 20.5.2001 in OA-304/99 deceased applicant has been deemed to be compulsorily retired and was paid certain retiral benefits. Being aggrieved with non-payment of retiral benefits, the present OA.

4. Learned counsel for the applicant states that payment of arrears of group insurance and leave encashment has already been paid. PPO has already been prepared but the DCRG of applicant has been

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adjusted towards arrears on account of unauthorised occupation till 1998. An amount of Rs.57,414.76 was due as penal rent out of which Rs.11730/- was adjusted against Government dues. Learned counsel of applicant has drawn my attention to Annexure A-2 letter dated 15.4.2002, addressed to the DRM by Senior Section Engineer whereby it is acknowledged that applicant had vacated the accommodation on 21.2.1995 and the same was allotted to one Sh. Surinder Singh on 19.9.98. He also draws my attention to Annexure-3 dated 20.2.95 duly acknowledged by the concerned authority where the applicant had vacated the accommodation and given the vacant possession to the authorities. In this conspectus it is stated that the calculation of penal rent upto 19.9.98 is without any justification.

5. Learned counsel for applicant referred to a decision of the coordinate Bench of Ernakulam Bench in E.K. Sankaran Nair v. Union of India & Others, 2004 (1) ATJ 490 where in the light of the decision of the Apex Court in Union of India & Ors. v. Madan Mohan Prasad, 2003 (1) ATJ (SC) 246 having taken cognizance of Rule 15 (4) of the Railway Services (Pension) Rules it has been held that penal rent or damage rent cannot be recovered from the gratuity being not an admitted due.

6. On the other hand, learned counsel of respondents referred to the decision of the Apex Court reported in 1997 SCC (L&S) 797 and contended that as the factum of vacation of accommodation on 20.2.95 is a

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disputed question of fact cannot be gone into in this OA and for this sufficient evidence is to be admitted and appropriate forum is to be approached.

7. Learned counsel further referring to the settled principles of law by the Apex Court contended that recovery of the government dues can be effected from any amount of retiral dues, which is in accordance with law.

8. Distinguishing the case of **Madan Mohan Prasad's** case (supra) it is stated that the aforesaid decision pertains to old unamended rules whereas as per Rule 15 and 16 of the Railway Services Pension Rules 1993 and in the light of the Full Bench decision of the Tribunal in **Ram Pujan Vs. Union of India** 1996 ATC (34) 434. Without any specific orders on expiry of the admissible period allotment is automatically cancelled and further retention by a railway servant would be unauthorized occupation entailing penal/damage rent which can be levied or recovered from the gratuity.

9. On consideration of the rival contentions we do not find issue of vacation of government accommodation as a disputed question of fact. Respondents in their own letter dated 15.4.2002 have acknowledged the letter of applicant dated 20.2.95 where the accommodation had been vacated and vacant possession was surrendered to the respondents. The date 19.9.98 is probably the date on which this vacant

accommodation had been re-allotted to one Sh. Surinder Singh. Respondents are entitled to recover penal/damage rent till the date one is in unauthorized possession. On vacation one cannot be treated as unauthorized occupant for which no damage or penal rent can be levied.

10. As regards recovery of dues from gratuity is concerned, though the Full Bench of this Court has ruled that on unauthorized occupation the accommodation gets cancelled and beyond the permissible period one has to be treated as an unauthorized occupant entailing damages. The question before me is whether damage/penal rent can be recovered from the gratuity? Though the decision of the Ernakulam Bench rests upon the decision in Madan Mohan Prasad's case (supra) where it is held that penal rent or damage rent cannot be recovered from the gratuity being not admitted dues, whether it is based upon unamended rules or Act. The damage/penal rent is still held to be non admitted dues while considering the issue. The same objection as put by Shri Dhawan had been put-forth before the Ernakulam Bench. The Bench on the basis of that an amount of overpayment, pay and allowances and arrears of rent having not been ascertained within a period of three months of retirement cannot be recovered from gratuity as per Rules. The Full Bench has dealt with an issue whether penal/damage rent can be recovered from the retired person or otherwise railway servant but what has not been adjudicated is whether the arrears on penal rent



can be recovered after the permissible period and whether these can be recovered from gratuity.

11. In my considered view the decision of the coordinate Bench of Ernakulam is in correct perspective and I respectfully agree with the same as it has followed the decision of Apex Court.

12. In the result, the action of the respondents in recovering the penal/damage rent from the gratuity of applicant cannot be countenanced. Accordingly, this OA is disposed of with a direction to the respondents to refund to the LRs the recovered penal/damage rent and pay back gratuity and other non paid retiral dues within a period of two months. This shall also be paid togetherwith simple interest @ 6% p.a. However, this shall not preclude the respondents from recovering the normal rent pertaining to the accommodation from the L.R's. No costs.

S. Raju
(Shanker Raju)
Member (J)

cc.