

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.219/2003

This the 14th day of July. 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Madan Lal S/O Chuni Lal,
R/O Qr. No.133-A, Railway Loco Colony,
Near Filmistan,
Delhi-110006.

... Applicant

(By Shri P.S.Mahendru. Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House. New Delhi-110001.
 2. Divisional Railway Manager,
Divisional Office, Northern Railway,
Bikaner.
 3. Sr. Chief Health Inspector,
Northern Railway,
Delhi-Sarai Rohilla,
Delhi-110006.
- ... Respondents

(By Shri R.L.Dhawan. Advocate)

O R D E R (ORAL)

Applicant has challenged respondents' order Annexure A-1 dated 14.8.2002 conveying that payment of gratuity amounting to Rs.86,546/- cannot be made to him until the railway quarters allotted to him are vacated by him and thereafter various Government dues would be adjusted against the DCRG amount and the balance paid to him. Earlier on applicant had filed OA No.1373/2002 which was disposed of vide order dated 23.5.2002 (Annexure A-5) with the following observations/directions :

"4. The learned counsel submits that it is due to the non-payment of gratuity that he has not been able to clear the damages imposed on him by the Respondent No.3 on account of non-vacation of the official quarter vide Annexure A-2 dated 26.3.2002. The aforesaid order imposing damages is, according to the



learned counsel, an incompetent order having been passed by Senior CHI/LR/DEE. According to him, such an order could be passed only by a competent officer of the Engineering Department of the Railways. Having regard to this position, I will direct that the respondents to examine the matter in the light of the relevant rules and instructions. If non-payment of gratuity is found to be the reason for applicant's disability in making payments of the damages, the applicant will be entitled, according to the learned counsel, to retain the official quarter without being forcibly evicted there from until the amount of DCRG is paid up.

8. In the aforesaid circumstances, I find it just and proper to direct the respondents not to dislodge the applicant from the official quarter until an order is passed by them as above in respect of payment of the DCRG."

2. The learned counsel of applicant stated that applicant retired from the post of Safai Jamadar on superannuation on 31.10.2000. The learned counsel relied on instruction 8(iv)(e) contained in Railway Board circular No.RBE 100/2001 dated 1.6.2001, which is as follows :

"(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)."

He contended that no penal rent can be charged by respondents unless it has been ordered by the Estate Officer appointed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the PP Act), who alone can determine the recovery of damages or rent from applicant. As no such action has been taken by the Estate Officer in the case of applicant, the entire DCRG amount should be paid to

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him whereafter only he would vacate the railway quarters and pay the normal rent.

3. On the other hand, the learned counsel of respondents has contended that in terms of rule 16(7) of the Railway Servants (Pension) Rules, 1993 (for short the 1993 Rules) applicant had to vacate the railway accommodation immediately on his retirement from the railway service, and that applicant is presently in unauthorised occupation and use of the public premises. He further submitted that in terms of rule 16(8) of the 1993 Rules, full amount of gratuity is to be withheld until vacation of the railway quarters. He also relied on the Full Bench judgment of this Tribunal (Allahabad Bench) in the case of **Ram Poojan v. Union of India**, ATJ 1996 (34) 434, as also order dated 25.6.2003 in OA No.523/2003 (Principal Bench) : **Ashok Kumar v. Union of India**. The learned counsel also stated that applicant has to pay the damages for unauthorised occupation of the railway accommodation rates of which were revised vide Annexure R-2 dated 12.3.1998.

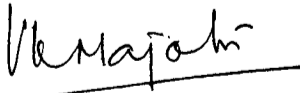
4. It was held in the case of **Ram Poojan** (supra) that it is open under the 1993 Rules in case of unauthorised occupation of railway accommodation by a retiree to withhold gratuity in order to recover the damages worked out. No specific orders are required to cancel the allotment of the railway accommodation. Although in instruction 8(iv)(e) referred to above it is stated that dispute regarding recovery of damages or rent from an ex-railway employee is subject to adjudication by the concerned Estate Officer under the PP Act, in Note (i) below instruction 8(iv)(e) it is stated that in

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respect of railway servants holding Government accommodation allotted by Directorate of Estates. procedure as specified under rule 16(1) to rule 16(7) of the 1993 Rules would be applicable. The accommodation occupied by applicant was allotted by the Directorate of Estates and in the present matter, procedure as laid down under rules 16(1) to 16(7) of the 1993 Rules is applicable under which withholding of gratuity for realising the dues on account of unauthorised occupation of railway accommodation is valid and legal. The present matter is fully covered by the ratios of Ram Poojan (supra) and Ashok Kumar (supra). When respondents have passed the impugned order in pursuance of order dated 23.5.2002 in OA No.1373/2002, applicant has not been dislodged from the railway accommodation till they have issued Annexure A-1.

5. In the result, having regard to what has been stated above, this OA is disposed of directing applicant to hand-over the vacant possession of the railway accommodation within two weeks from the date of receipt of a copy of this order. Thereupon respondents shall workout the arrears due and realise them from the withheld gratuity and the balance amount, if any, shall be disbursed to applicant within one month thereafter.

6. The OA is disposed of accordingly. No costs.


(V. K. Majotra)
Member (A)

/as/