

Central Adminisrative Tribunal  
Principal Bench

O.A.No.2662/2001

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 3rd day of June, 2002

Brij Kishore  
s/o Sh. Sumer  
r/o Quarter No.9/1, Daya Basti  
Northern Railway  
Delhi. ... Applicant

(By Advocate: Shri M.K.Bhardwaj)

Vs.

Union of India through

1. General Manager, Northern Railway  
Baroda House  
New Delhi.
2. Divisional Railway Manager  
DRM Office, (Northern Railway)  
New Delhi.
3. Divisional Superintendent Engineer (Estate)  
Northern Railway, DRM Office  
New Delhi. .. Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R (Oral)

By Shanker Raju, M(J):

Heard the learned counsel on either side.

2. Applicant impugns respondents' order dated 7.9.2001 wherein he has been allotted a Quarter No.23/8, Dayabasti, Type-I Railway accommodation.

3. Learned counsel for applicant, Shri M.K.Bhardwaj, stated that applicant in the past, thrice, had been allotted Railway accommodation but the possession has not been given to him. Being suffering from Asthma and one of the officers allowed him to stay in Quarter No.9/1, Dayabasti in the year May 1997 and HRA for Type-II accommodation has been deducted from his salary. Shri Bhardwaj stated that

he has approached Civil Court in Suit No.348/98 with a prayer to restrain the respondents from forcibly evicting him from the Railway accommodation No.9/1, Dayabasthi and thereafter approached this Court by way of filing OA No.712/2000 wherein by an order dated 10.7.2001 by observing that as the allegations have not been denied the applicant remained as authorised occupant in the aforesaid quarter No.9/1, Dayabasti and the fact that being a much higher scale, he is eligible for allotment, directions have been issued to consider the case of the applicant for a suitable quarter as per his entitlement. Being aggrieved by non-action, applicant preferred Contempt Petition, which has been dismissed by an order dated 27.9.2001 by observation that as the Tribunal had directed respondents to consider for allotment of quarter and no directions were given for making allotment of a quarter as per applicant's entitlement, the CP was dismissed and as the impugned order has been passed by respondents denying him allotment of Type-II Railway accommodation and a Type-I accommodation has been allotted, which is not as per his entitlement, which gives rise to the present OA Shri Bhardwaj states that filing of the present OA cannot be treated as resjudicata. It is also stated that the present accommodation is provided to the Railway servant which cannot be claimed as a right, but the immediate neighbour of the applicant having lesser pay scale was allotted Type-II accommodation, whereas the applicant on a higher pay scale is equally entitled for Type-II accommodation, which is not disputed and borne from the previous order issued by the respondents allotting him Type-II accommodation. Had it been the case of

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the respondents that applicant is not entitled for Type-II accommodation, respondents would not have allotted him Type-II accommodation in the past. It is also stated that once applicant has been held entitled for Type-II accommodation as per his entitlement, the impugned order passed is not in accordance with the directions of the Court earlier and as well as in accordance with the rules and instructions on the subject.

4. Respondents, in their reply, took preliminary objection as to the maintainability of this OA, as barred by doctrine of resjudicata. By Annexure R-2 a decision of the Civil Judge in Suit No.348/98 dated 10.3.2000 and more particularly para 10 of page 3 where a finding has been recorded that applicant was an illegal and unauthorised occupant in quarter No.9/1, Dayabasthi and having approached the Civil Court in an identical relief, he is precluded from raising the same issue and before this Court, being barred by doctrine of resjudicata. Further, it is contended that the earlier, applicant had come before this Tribunal and the directions have been issued for consideration of allotment and in CP having not found at fault, the respondents have not disobeyed the directions of the Tribunal, the CP was dismissed, which precludes him from filing the present OA on the same cause of action.

5. Shri Dhawan also stated that in view of Para 1701 of IREM Vol.II where it has been envisaged that no Railway servant has right to be allotted Railway accommodation and on placing reliance on Full

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Bench Judgement in Liquat Ali and Anr. etc. Vs.

Union of India & Others, ATFBJ 1994-96 Page 193, it is contended that allotment of Railway accommodation cannot be claimed as a matter of right and it should remain in the hands of the Railway authorities and it should not be good for Tribunals or Courts to give any directions in this regard.

6. In this back ground, it is stated that as applicant has already been allotted a Railway accommodation and has not taken possession, he has also not complied with the directions given in the letter. It is also contended that he has no right to be provided with quarter, being not a condition of service.

7. On merits too, it is stated that the applicant has not filed any representation giving full details. It is contended that by letter dated 19.6.1998, information has been sought from the applicant regarding previous Type-II quarters allotted to him, but he failed to furnish the requisite information to the respondents. It is also stated that from the salary of the applicants, no rent has been recovered. In this view of the matter, it is stated that the present OA is not maintainable and is liable to be rejected.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, the preliminary objection of resjudicata as alleged by the respondents has no legs to stand and rejected on the ground that

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fact of filing previous Suite No.348/98 has been taken note by the Tribunal in their earlier order where a specific finding has been recorded to the effect that respondents, who had not handed over possession to the Railway accommodation allotted to him in the past and while in hospital and suffering from Asthama and his family was allowed to reside in Railway accommodation No.9/1, Dayabasthi, by an officer of respondents. In this view of the matter, the contention that applicant was trespasser was rejected therein. As in the decision of the Tribunal it has been held that applicant is not a trespasser, the aforesaid decision does not operate resjudicata. The matter was not finally concluded therein. On consideration in compliance of earlier orders, respondents issued impugned order, giving rise to a fresh cause of action.

9. In so far as allotment of Government accommodation being not a condition of service and not a right, the resort to Full Bench decision, cannot be disputed. However, in the present case, it is to be decided whether applicant who has been allotted Government accommodation in Type-I has a right or entitlement as per the rules and instructions to be allotted Type-II accommodation. This question and eligibility of the applicant for allotment of quarter has already been dealt with by the earlier Court, by recording a finding and on the basis that applicant had been allotted Railway accommodation thrice and a specific finding to the effect that applicant is eligible for allotment of quarter in Type-II, having attained finality against which respondents have not

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filed any appeal, cannot be disputed and to be followed in this case also. As such I held that applicant is entitled for being allotted a Government accommodation Type-II.

10. As regards the contention that no HRA has been paid, I find that HRA for Railway accommodation in Type-II has been deducted from the salary and has not been paid to the applicant. Apart from as regards the rent or otherwise to be payable by the applicant, during the period of his stay in the Government accommodation Type-II, can be taken up by the respondents in accordance with law. Nothing has been brought on the record to indicate that any proceedings under P.P. Act or for claiming recoveries for damage rent against the applicant has been instituted by the respondents. In this view of the matter, the question of payment of rent or otherwise cannot be decided in this OA and the law shall take its own course.

11. As the impugned order has been issued by respondents without considering the entitlement of the applicant and the observations of the Court earlier, where it has been held that applicant is entitled for Type-II accommodation, the same is not legally sustainable. Applicant has also drawn my attention to the pay slip of one of employees residing in Type-II accommodation having lesser pay scale than the applicant, he has been allotted Type-II accommodation. Applicant, who is getting higher pay scale than Shri Jugga and more particularly the finding of the earlier Court that applicant has much higher priority and eligible for allotment of Railway quarter as claimed

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by him, the respondents' action cannot be countenanced and is discriminatory and is violation of Articles 14 and 16 of the Constitution of India.

12. In the result, having regard to the reasons recorded above, the present OA is allowed to the extent that the impugned orders are quashed and set-aside. Respondents are directed to allot to the applicant a Type-II quarter and till then he be allowed to stay in Type-II quarter which has been earlier allotted him or in the alternative to regularise quarter No.9/1, Dayabasthi. In so far as the rent or otherwise pertaining to the Government accommodation No.9/1 Dayabasthi is concerned, Shri Bhardwaj contends that rent on account of stay in accommodation is being deducted from his salary. Respondents are at liberty to recover rent etc. from the applicant after giving him an opportunity, in accordance with law. The aforesated process should be completed within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

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