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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2226/1998

New Delhi this the 31st day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Sh. Kanwar Singh
S/O Shri Mohan Singh
R/O 106/11, Railway Quarters,
Delhi Kishanganj, Delhi-7

.. Applicant

(By Advocate Sh. P. M. Ahlawat)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Superintending
Engineer(E), Northern Railway,
State Entry Road, New Delhi-1

.. Respondents

(By Advocate Shri R. L. Dhawan)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant, who had retired from service as Peon with the respondents w.e.f. 31.10.1987 is aggrieved by the order passed by the respondents dated 1.12.1997 (Annexure A-1). In this order, the respondents have stated that Railway Quarter No. 106/11, Kishan Ganj, Delhi has been regularised in favour of his son w.e.f. 13.1.90. On this ground, they have stated that they are making recoveries from the applicant as given in Paragraphs 3-8 of the impugned order.

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son

2. The applicant along with his son, Sh. Uttam Singh who is also working with the respondents since 10.2.1983 had filed an earlier application (OA 2451/90) which was disposed of by order dated 9.2.95 (Annexure A-2). The applicant has stated that he had obtained the sharing permission of the competent authority for his son, Sh. Uttam Singh, for living with him initially in Railway quarter No. 107/6, Kishan Ganj, Delhi, and subsequently in quarter No. 106/11 which was allotted to him as an alternative accommodation by order dated 30.1.1994. Learned counsel for the applicant has submitted that in view of the observations of the Tribunal in Paragraph 6 of the order dated 9.2.1995, the order of reinstatement of the applicant's son dated 10.1.90 related back to the year 1985 when his services were terminated. He has submitted that the Tribunal had stated that "after reinstatement in service, there remained no break in service or any hiatus continued. Therefore, in the eyes of law, the son continued to be in service of the Railways from 1985 onwards all along." In the present O.A. the applicant has contended that at the time of his retirement from service on superannuation w.e.f. 31.10.1987, the applicant's son was already in service from 1985 and was continued in that service in terms of the respondents order dated 10.1.90, which has been referred to in the Tribunal's order dated 9.2.1995. Learned counsel has, therefore, submitted that there was no reason why the respondents should not

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regularise the aforesaid quarter in favour of his son w.e.f. 1.11.1987 i.e. immediately after the applicant had retired from service. In any case, he has submitted that the date 10.1.90 which has been referred to in the impugned order of reinstatement of his son was not at all as he was relevant/continuing in service. He has, therefore, submitted that relying on the Tribunal's earlier order in OA 2451/90, the impugned order may be quashed and set aside as being in violation of the judgement dated 9.2.1995. He has also prayed for a further direction to the respondents to regularise Railway quarter No.106/11, Kishanganj, Delhi in favour of his son w.e.f. 1.11.1987 keeping in view the aforesaid judgement of the Tribunal.

3. I have seen the reply filed by the respondents and also have/heard Shri R.L.Dhawan, learned counsel. The respondents have stated that the applicant's son had been found suitable after screening and was regularised in Class IV post w.e.f. 10.2.1983. Later his service were terminated but he was reinstated in service w.e.f. 13.1.90. According to them as the services of the applicants son were terminated in 1985 and he was not in service upto 13.1.90, the applicant had remained in ~~an~~ unauthorised occupation of the railway quarter from 1.11.1987 to 12.1.90 and is, therefore, required to pay penal rent for the period of unauthorised occupation of the railway quarter as per rules.

4. A preliminary objection has also been taken by the respondents that as the quarter in question has been

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regularised in favour of applicant's son on 13.1.90 if the son was aggrieved he ought to have been made a party in the OA which has not been done in the present case. Learned counsel has, therefore, submitted that on these grounds, the application may be dismissed.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In this application the applicant who had retired from service with the respondents is aggrieved by the order dated 1.12.1997 which has been addressed to him. In this order, it has been stated that railway quarter No.106/11, Kishan Ganj, Delhi has been regularised in favour of his son w.e.f. 13.1.90 which admittedly is the date on which he was reinstated in service after his termination in 1985. These facts have been dealt with in detail in the earlier application filed by the present applicant and his son in OA 2451/90. Para 6 of the Tribunal's order dated 9.2.95 reads as follows:-

" There is an apparent fallacy in the first objection raised by the respondents. The order of reinstatement dated 10.1.90 related back to the year 1985 when the services of the applicant No.1 were terminated. Such a legal consequence is implicit in "reinstatement". After reinstatement in service or any hiatus continued. Therefore, in the eyes of law, the son continued to be in service of the Railways from 1985 onwards all along."

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From the aforesaid order, it is clear that the Tribunal had disapproved the contentions raised by the respondents, referring to them as an "apparent fallacy". It has been further stated that since the order of 13.1.90, which has been referred to as 10.1.90 in the above Paragraph of the order, related back to the year 1985 when the services of the applicant's son were terminated, the legal consequence of which was that he remained without any break in service. It was further ordered that in the eyes of law, the applicant's son continued to be in service of the Railways from 1985 onwards all along.

7. Taking into account the Tribunal's order dated 9.2.1995, I find merit in the submissions made by the learned counsel for the applicant that in the circumstances of the case, the respondents could not have regularised the quarter in question, in favour of the applicant's son w.e.f. 13.1.90 i.e. the date on which he was reinstated in service. It is also clear from the impugned order dated 1.12.1997 that the respondents have not implemented the directions of the Tribunal in OA 2451/90 as they ought to have been done particularly with regard to Paragraph 7, which clearly states that in the eyes of law the applicant's son continued in service of the Railways from 1985 onwards all along.

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8. In the light of what has been stated above, the preliminary objection taken by the respondents regarding non-joinder of the son is not tenable. A perusal of the impugned order dated 1.12.1997 shows that the order has been addressed only to the applicant who has been charged penal/damage rent on the ground that he is an unauthorised occupant of the railway quarter which was earlier allotted to him till the time it was regularised in the name of his son on 13.1.90. Therefore, I am unable to agree with the contention of the learned counsel for the respondents that the OA suffers from non-joinder of necessary party i.e. applicant's son because the rent to be recovered is from the applicant in this case.

9. For the reasons given above, the OA succeeds and is allowed with the following directions:-

(i) The impugned order dated 1.12.1997 is quashed and set aside;

(ii) The respondents are directed to consider regularisation of the allotment of the quarter No.106/11, Kishan Ganj, Delhi , in favour of applicant's son as prayed for by him, keeping in view the order of the Tribunal dated 9.2.1995 in OA 2451/90, in accordance with the relevant Rules and instructions and subject to his fulfilment of the required conditions;

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(iii) The applicant shall be entitled to the retiral benefits in accordance with the Rules and instructions and they shall also arrange to pay the amount due to the applicant within three months from the date of receipt of a copy of this order.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)