CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO.2388/95

HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 27th DAY OF DECEMBER 1996.

1. SHRI MOTA SINGH
s/o Sardar Mool Singh
Retd. Chief Driving Inspector
Northern Railway
NEW DELI

r/o Qrtr. No.208/B-4, Panchkuin Road
NEW DELHI.

2. SHRI TEJINDER SINGH
S/o Sardar Mota Singh
working as Enquiry & Reservation Clerk
Northern Railway
NEW DELHI

r/o Qrtr. No.208/B-4, Panchkuin Road
NEW DELHI. ...APPLICANTS

(By Advocate - SHRI S.K. SAWHNEY)

VERSUS

1. Union of India, through
General Manager
Northern Railway
Baroda House
NEW DELHI.

2. Divisional Railway Manager
Northern Railway
DRM's office
Chelmsford Road
NEW DELHI.

3. Divisional Suptd. Engg. (Estate)
DRM Office
Northern Railway
NEW DELHI. ..RESPONDENTS

(By Advocate - SHRI P.S. MAHENDRU)

ORDER

Applicant No.1 retired on 17.6.92 on medical invalidation from the post of Chief Driving Inspector.

contd. .. 2/-

His son, applicant No.2, was appointed as Enquiry-cum-Reservation Clerk on compassionate grounds on 15.3.93. Applicant No.1 was in occupation of railway quarter No.208/B-4 Pachkuian Road, a type IV quarter, and on appointment of applicant No.2, a representation dated 17.3.93 (A-3) was submitted for regularising the same in the name of the applicant No.2. This was favourably considered and vide letter dated 21.6.93 (A-4), applicant No.2 was ordered to be allotted a type II quarter in lieu of the quarter allotted to applicant No.1. As per A-5, dated 14.7.93, quarter No.131/5 DCM Railway Colony, Delhi, was allotted in the name of applicant No.2, but could not be occupied immediately as, according to the applicants it required urgent major repairs and was made ready only on 4.8.93. It is claimed that applicant No.2 was entitled to regularisation of railway quarter No.208/B-4, Pachkuian Road and allotment of type II quarter in lieu thereof from the date of his appointment, viz., 15.3.93, in view of the provisions contained in Note VI para 3 of Railway Board letter dated 15.1.1990 (A-8) and reiterated vide letter dated 21.8.91 (A-9). The grievance of the applicant's is that respondent No.3 in disregard of the aforesaid rules and without considering the representation (A-10) issued the impugned orders A-11 for recovery of penal rent for the period from 15.3.93 to 6.8.93 from applicant No.1.

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The applicants filed an OA No.1732/1994 against the impugned order, which was decided on 15.12.94 wherein it was held that applicant No.1 was entitled to retain the quarter upto 7.2.93 and on his appointment on 15.3.93, applicant No.2 became entitled to the regularisation and the delay of less than one month could have been easily condoned by the respondents for which applicant No.2 was directed to give a representation. It was further directed that in case the delay is condoned, the respondents may charge only normal rent from 15.3.93 to 6.8.93. A representation dated 31.1.95 (A-12) was filed which has been rejected vide impugned orders dated 7.3.95 (A-1). The applicant No.1 is aggrieved that the respondents have now arbitrarily deducted a sum of Rs.16,351 as penal rent from the DCRG payable to the applicant which was actually paid in February 1994 though he was entitled to it latest by 15.3.93. It is also alleged that the respondents have wrongfully withheld the railway passed on account of non-eviction of railway quarter although the said quarter had been regularised in the name of his son.

2. The respondents in the reply state that in the letter dated 21.6.93 issued by the respondents, the competent authority had passed the order that applicant No.2 may be allotted type II quarter in a non-preferred area and there should be recovery of damage rent as per extant rules and early vacation of type IV quarter should be done. As per Railway Board's instructions, recoveries have to be from the date of cancellation, in case their eligible dependant is already in railway service and is entitled for

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regularisation, and not from the date of issue of orders. In the present case, the applicant No.2 was not in railway service on the date of cancellation of the allotment. The respondents also deny that any show cause notice had to be given before cancellation of the allotment in respect of applicant No.1 since cancellation is automatic on superannuation. Since the house was not vacated after cancellation as per extant rules post-retirement passes could be withheld and the recovery could also be made from the DCRG of the retired railway employee.

3. Arguing before me, Shri Sawhney, ld. counsel for the applicant, drew my attention to para 5 of the ~~Railway~~ RB No.7/90 ('A-8') which states that where allotment of lower type of accommodation has to be restricted to the same area, then, if there is any delay in allotment, licence fee/damages will have to be paid by the retired employee. In the present case, the allotment letter itself says that type II quarter will be in a non-preferred category and hence damage rent could not be asked for on that ground. Similarly, the Railway Board's letter dated 21.8.91 ('A-9'), the question of treating the occupation of the quarter unauthorisedly pending regularisation in favour of the eligible dependant has been considered and it has been indicated that the retired government employee should not be made to suffer due to administrative delays. The ld. counsel also relied on rule 1713 of the Indian Railway Establishment Manual, Volume II, which states that if railway servants are provided

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with railway accommodation equal to or superior to that to which they are entitled, they should pay the rent due for their appropriate quarter for which they are eligible. Thus, applicant No.2 having been allowed regularisation of the type IV quarter would be required to pay only the rent of type II quarter.

4. Shri Mahendru, ld. counsel for the respondents, on the other hand submitted that rule 1711 was applicable to the case of the applicants in respect of recovery of rent. Sub-rule 'b' provided for rent in excess of 10% of emoluments in cases where the residence is not vacated after cancellation of the allotment. Further more, the RB No.7/90 'supra' clearly provides in para 6 that the date of regularisation should be from the date of cancellation only if the eligible dependant is already in railway service. In the present case, this was not so as applicant No. 2 joined railway service after the cancellation of the allotment.

5. I have given careful consideration to the rival contentions and have also gone through the pleadings on record. RB 7/90 'Supra' is of no assistance to the applicants as this is not a case of eligible dependant being already in service on the date of cancellation of allotment. That being so, the recovery of rent is to be governed by rule 1711. The respondents have therefore vide their order dated 7.9.93 'A-1' correctly computed the rent recovery at normal rates for the first four months and thereafter at double the normal rent for another four months. For the remaining period till the vacation of the house, they have therefore correctly charged the damage

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rent. Charging of the rent is not covered by rule 1713 since the type IV accommodation had not been allotted to applicant No.2. The applicant No.1 is therefore required to pay the damage rent for occupation of the quarter beyond the date of cancellation of allotment irrespective of the fact that his son had soon thereafter secured a compassionate appointment. Insofar as the question of repairs to type II accommodation is concerned, it is not necessary for me to adjudicate as to when the house became habitable: I see no reason to question the version of the respondents thereon.

6. The claim of the applicants regarding charging of normal rent therefore fails. The respondents are entitled to recovery of the dues from the gratuity. I also do not agree with the ld. counsel for the applicant that applicant No.1 is entitled to interest on the delayed payment as in this case the quarter not having been vacated the delayed payment is not on account of administrative delay, as held by the Supreme Court in Rajpal Wahi Vs. UOI SLP No.6788-91/88. The same applies in respect of non-release of railway passes.

7. In the light of the above discussion, I find no merit in the application. The same is dismissed. No costs.

(R.K. AHOOJA)
MEMBER (A)

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