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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2436/1990

New Delhi this the 15th of May 1995

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Hon'ble Mr. K. Muthukumar, Member (A)

Shri Ved Prakash Sharma,
S/o Shri Chandi Prasad Sharma,
Working as Sr. Pharmacist
Jagadhari Railway Hospital,
Haryana. ... Applicant

(By Advocate: Shri P.L. Mimroth)

Vs.

1. Union of India, through
General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Supdtg. Engineer (Estate)
(Ex-Officer Chairman Delhi Area Housing
Committee), Northern Railway,
D.R.M.'s Office;
New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Ambala,
Haryana.
4. The Medical Superintendent,
Northern Railway Hospital,
Jagadhari Workshop,
Jagadhari,
Harayana ... Respondents

(By Advocate: Shri P.S. Mahendru)

O R D E R (Oral)

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Shri Ved Prakash Sharma was working as Senior Pharmacist in Central Hospital, New Delhi while the post was transferred temporarily to Jagadhari Hospital in exchange with the post of Pharmacist in a lower grade. Consequent on this applicant who was working on the post was posted to Jagadhari. The Delhi Area Housing Committee, Northern Railway, issued an order

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cancelling the allotment of quarter in which he was residing consequent on his transfer. Aggrieved by that he filed O.A. No. 1770/1989 in which he took the stand that on his temporary transfer he was entitled to retain the quarter in which he was residing prior to the transfer in accordance with the Railway Board Circular in that regard. The respondents contended that the applicant did not make any representation in that regard and that the application was premature. The Bench found that the applicant should have first made a representation before rushing to the Tribunal and therefore by an order dated 28.11.1989 disposed of the O.A. directing the applicant to make a representation within a fortnight and with a further direction to the respondents to take a view in the matter providing further that till the representation was disposed of the applicant should be allowed to continue in the quarter paying rent according to rules. A copy of this judgement was received by the applicant on 17.1.1989 and he made a detailed representation on 30.1.1990, while the applicant was expecting a reply to his representation the impugned order dated 17.8.1990 was issued from the DRM's Office addressed to C.H.S., Northern Railway, New Delhi and D.M.O./N. Rly, Hospital, Jagadhari (Haryana) signed by the Divisional Superintendent Engineer/ Estate, Northern Railway, New Delhi. It was asked in that letter as to whether any representation had been received from Shri Ved Prakash Sharma as directed in the Judgement of the Central Administrative Tribunal in its O.A. No. 1770/1989 and as to whether

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his transfer was a permanent one. It was further indicated in that letter that the market rent to be recovered from Shri Ved Prakash Sharma's salary was as follows:

From 7.10.88 to 6.12.88	Normal rent @ Rs.50/-PM	= Rs. 100.00
From 7.12.77 to 30.5.88	Double the rent @ Rs.100/-PM	= Rs. 583.00
From 1.6.89 to 30.9.90	Market Rent @ Rs.849/- PM	= Rs.13,584.00
Total:		= Rs.14267.00

and w.e.f. 1.10.90 till vacation @ Rs.849/- P.M.

2. The respondents started recovering substantial amount from the pay of Shri Sharma. Under these circumstances being aggrieved by the fact that his representation was not disposed of and that his salary was being reduced without taking a decision on the representation the applicant Shri Sharma filed this application seeking to set aside the impugned order dated 17.8.1990 which directed recovery of Rs. 14,267/- and for other consequential benefits. It has been alleged in the application that as Shri Ved Prakash Sharma's transfer was a temporary transfer he was entitled to the benefit of para 401(6) of the Indian Railway Establishment Code Vol.I, and the extract of the Railway Board's letter dated 17.12.1993.

3. The respondents in their reply contended that the applicant's transfer was not a temporary transfer though the post was transferred temporarily. They have further contended that as the representation of the applicant having ^{been} received after the time limit stipulated in the order of the Tribunal, the same could not be considered and disposed of and that the action taken by the respondents was

perfectly in order and does not deserve any judicial intervention.

5. We have heard the learned counsel on either side and have also perused the materials on record.

6. The question whether market rent could be charged from Shri Ved Prakash Sharma for the continued occupation of the quarter after his transfer to Jagadhari would to a great extent depend on a decision whether his transfer was a temporary transfer or a permanent one. According to the applicant the transfer was treated as temporary one; but the respondents claim that the transfer was a permanent one. In the judgement in O.A. No. 1717/89 the Tribunal did not pronounce on the issue but directed the applicant to make a representation and the respondents to take a view in the matter within a reasonable time. The time limit prescribed for making a representation was a fortnight. The applicant received a copy of the order on 17.1.1990 and thereafter he made the representation on 30.1.1990. This is not disputed by the respondents. The learned counsel for the respondents, Shri P.S. Mahendru, argued that since it was not stated in the order that the representation was to be made within a fortnight after receipt of a copy of the order, it should be understood that the Bench intended that the representation should be made within a fortnight from the date on which the order was pronounced. With great respect to the learned counsel we are not in a position to accept this argument. Unless

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a copy of the judgement ^{was} ~~is~~ received by the applicant he might not have been in a position to make a proper representation making reference to the judgement. There is no case that the applicant delayed the obtaining of a copy of the order. Therefore the period of 15 days prescribed in the judgement for making a representation should be counted only from the date on which the applicant received a copy of the judgement. Under these circumstances we are of the considered view that the respondents should have considered the representation submitted by the applicant on 30.1.1990 i.e. within 15 days of receipt of a copy of the judgement and taken a decision as to whether the transfer of the applicant was a temporary one or a permanent one according to the rules and instructions on the subject. Charging of market rate of rent or allowing Shri Ved Prakash Sharma to retain the quarter on payment of rent as per the rules should have depended as the result of the decision. Such a decision was not taken by the respondents. We are, therefore, of the considered view that the recovery of the market rent without disposing of the representation is wholly unjustified.


7. Shri Ved Prakash Sharma, the original applicant, is no more. It is stated at the Bar that the terminal benefit of Shri Sharma has not yet been disbursed to the legal representatives, on the ground that rent is due from him. Therefore, it is in the interest of justice, that a direction is given to the respondents to consider the representation of Shri Ved Prakash Sharma within

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a reasonable time framed to take decision and then only ^{take} decision about the rent to be recovered.

8. In the result the application is disposed of directing the first respondent to consider the representation submitted by Shri Ved Prakash Sharma on 30.1.1990 (Annexure A -2) of the O.A. or to take a decision on the representation having due regard to the circumstances explained in the representation and keeping in view of the fact that Shri Ved Prakash Sharma is no more and that his family has to depend on the terminal benefit entirely within a period of one month from the date of communication of a copy of this order. We also expect that the respondents would disburse the terminal benefits to the family without delay. There is no order as to costs.


(K. Muthukumar)
Member (A)


(A.V. Haridasan)
Vice Chairman(J)

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