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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2185/2004

New Delhi, this the 29<sup>th</sup> day of September, 2005

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

S.N. Prasad Johri,  
S/o Shri Ganesh Rai Johri,  
Retired Guard 'A' Spl.,  
Northern Railway,  
Moradabad,

Residential Address:-

S.N. Prasad Johri,  
Railway Quarter No.T-40/C,  
Near Railway Stadium,  
Moradabad

... Applicant

(By Advocate Shri G.D. Bhandari)

VERSUS

Union of India, through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi
2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad,

... Respondents

(By Advocate Shri R.L. Dhawan)

**ORDER**

The question involved in the present OA is whether the respondents could levy and recover penal/damage rent from 01.04.1994 to 29.07.1997 or not?

2. The relief prayed for reads as under:
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- i) to set aside and quash the impugned orders dated 01.06.2004, Annexure-A, and dated 24.06.2004, Annexure-B, whereby the total amount of Gratuity amount has been adjusted towards the alleged damage/penal rent of the Railway quarter and amount of Rs.49,912.54 has been further directed to be recovered from the dearness relief to the pension, being badly vitiated as humbly submitted in the foregoing paras.
- ii) to direct/command the Respondents to recover the normal assessed rent for the period 01.04.1994 to 31.07.1997 of Railway Qtr. No.T-40/C, in view of the compassionate appointment and resultant regularization of the said Railway quarter in the name of Sh. Umesh Johri, Ticket Collector/Moradabad, son of the applicant, on the lines the recovery was made in case of Sh. K.D. Bhaghi and Shri Gurdarshan Singh as humbly submitted in the foregoing paras.
- iii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice.

3. The background facts sans unnecessary details are as follows.

4. Shri S.N. Prasad Johri was appointed on 24.02.1955 as a Guard, and earned various promotions in his service career. In the medical examination held in May, 1992, he was declared unfit to discharge the duties of a Guard, but was found suitable for the post of Booking

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Supervisor in the Commercial Department of the Railways and accordingly he was offered for the said alternative job vide letter dated 11.08.1992. Since the appointment/adjustment to the post of Booking Supervisor would have resulted into substantial loss in his pension and pensionary benefits, he submitted a representation dated 18.08.1992 requesting the authorities to retire him on the basis of medical de-categorization and grant compassionate appointment to his ward. He made further request that he be allowed to retain the Railway quarter, which was allotted to him, for some more time. He stood retired on 31.7.1993. He was granted permission to retain the said quarter till 31.03.1994. A damage rent of Rs.1,16,407.54 had been levied for the period from 1.4.1994 to 31.07.1997. Initially his son, Shri Umesh Johri was denied compassionate appointment but later on the intervention of the Railway Board, was appointed on compassionate basis on 30.07.1997. The applicant submitted various representations for waiving the said damage rent and also to release the gratuity amount, which remained unattended. The applicant's contention is that because of the delay in processing the case for compassionate appointment of his son, he was forced to remain in occupation of the Government accommodation in question and, therefore, the respondents were not justified to impose the damage rent upon him. The over-stayed period cannot be termed as unauthorized occupation more particularly when neither any notice of cancellation of the allotment nor any notice treating him as unauthorized occupant was ever issued and served. It is further contended that since the applicant's son, on his appointment w.e.f. 30.07.1997 has been allowed the benefit of regularization of the said quarter in his favour, the respondents cannot allege that the applicant was in unauthorized occupation of the said quarter and, therefore, only the normal licence fee could be levied and charged by

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them. Reliance was placed on *Gorakhpur University v. Shitla Prasad Nagendra*, AIR 2001 SC 2433. Since the gratuity and other terminal benefits had been with-held by the respondents, the applicant instituted OA No. 1451/2003 seeking almost the same relief as sought in the present OA. The said OA was disposed of by a Single Bench of this Tribunal vide order dated 23.03.2004, with the following observations:-

"5. After hearing the learned counsel of both the parties and after perusal of the materials available on record, it is noticed that the applicant who retired on 31.7.1993 was allowed to retain the quarter upto 31.3.1994. Therefore, the retention of the quarter beyond this period becomes unauthorized. The fact that the applicant was seeking employment of his son, which was ultimately allowed by the Railway Board, will not make the unauthorized retention of the Railway quarter as authorized one. The fact that the applicant's son has been allotted the same quarter afterwards from 30.7.1997 will also not make earlier unauthorized retention of the Railway quarter as legal one. However, the Hon'ble Supreme Court in the case of Union of India and Ors. vs. Madan Mohan Prasad 2003 (1) ATJ 2465 have held that only admitted and undisputed dues could be deducted from the gratuity payable to the applicant. Even though it may appear that the applicant was pursuing appointment of his son but that will not become automatically sanction order in favour of the applicant for retention of Railway quarter. The reliance of the learned counsel of the applicant on the Hon'ble Supreme Court decision in Gorakhpur University (supra) also does not help him. There were several peculiar facts in that case. The University had not taken any decision in respect of the accommodation allotted to the employee in that case. The Hon'ble Supreme Court noted that it was almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the employee itself was again seriously disputed and to some extent justifiable too, the university cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employee. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Court, however, clarifies that order shall not

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have the effect of foreclosing the rights of the University, if any, if the University chose to workout the same, as is permissible in law.

6. In my opinion, same principle has been re affirmed by the Hon'ble Supreme Court in the case of Madan Mohan Prasad (supra). The respondents are directed to find out the undisputed claim for being adjusted towards gratuity and other dues payable to the applicant. The remaining amount can be recovered by adjustment from the dearness portion of the pension." (emphasis supplied).

5. In purported compliance of the aforesaid Tribunal's direction, the respondents issued the impugned order dated 01.06.2004 and informed the applicant that a sum of Rs.49,912.54 is due from him towards penal rent and the recovery shall be effected from the relief pension which is being paid to him.

6. The respondents contested the claim laid in the present OA and stated that in terms of rule 16 (7) of Railway Services (Pension) Rules, 1993, the applicant was required to vacate the Railway quarter immediately on his retirement. The applicant was permitted to retain the said accommodation for a period of four months on payment of normal licence fee and for a further period of 4 months upto 31.3.1994 on payment of double the normal licence fee. He did not vacate the quarter on .1.4.1994 and remained under unauthorized occupation till 29.07.1997. He is liable to pay damage rent for the period of unauthorized occupation of the Quarter for the aforesaid period. Under rule 15 of Railway Services (Pension) Rules, 1993, Government dues on account of Railway accommodation are recoverable from the DCRG. After adjusting full D.C.R.G. amount of Rs.66,495/-, the applicant is required to pay the balance amount of Rs.49,912.54 towards damage rent. The Railway quarter in question

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has been regularized in the name of applicant's son from 30.07.1997. A show cause notice dated 13.08.2002 was issued to the applicant to deposit the aforesaid balance amount within 30 days failing which the said amount was directed to be deducted from the Dearness Relief payable, in terms of rule 16 (6) of Railway Services (Pension) Rules, 1993.

7. The Respondents raised the plea of res judicata too, inasmuch as the applicant had earlier filed OA No.1451/2003 seeking identical relief, which was disposed of on 23.03.2994. Reliance was placed on Full Bench judgment of this Tribunal in *Ram Poojan vs. UOI & Ors* (1994-1996 A.T.F.B.J. 244) holding that "allotment of quarter stands automatically cancelled on expiry of the permissible period and recovery of damage rent for the period of unauthorized occupation of Railway quarter is permissible in terms of the provisions in the Railway Board's instructions." Under rule 16 (6) of the aforesaid rule 16 (6) of the aforesaid Rules, recovery can be made from the Dearness Relief payable with the pension to the pensioner without his consent. The applicant was medically de-categorized on 14.05.1992. He was offered alternative appointment as Booking Clerk on 11.08.1992, but he refused to accept the said post and rather requested for his retirement. Applicant's representation for compassionate appointment of his son was considered and rejected being not covered under the Rules and he was informed accordingly on 12.06.1996. Since the matter was re-considered by the Railway Board, applicant's son was offered appointment on compassionate ground vide communication dated 04.12.1996 and was called upon to appear in the suitability test on 31.01.1997. After being adjudged

suitable, he was offered appointment vide letter dated 17.2.1997. The Govt. quarter in question was regularized vide letter dated 03.09.1997 w.e.f. 30.07.1997. Reliance was also placed on *Union of India & Ors v/s Ujagar Lal* (JT 1996 (10) SC 42) that delayed payment of Gratuity was not due to administrative lapses, but on account of non-vacation of quarter and as such the official was not entitled to any interest on such with-held amount.

8. The applicant contested the respondents' stand by filing a detailed rejoinder, while reiterating his contentions raised in the OA.

9. I have heard the learned counsel for the parties at length and perused the pleadings carefully.

10. Before proceeding further, I may note that the applicant's earlier OA No. 1451/2003 had been disposed of vide order dated 23.03.2004, relevant extracts of which have already been noticed hereinabove. Shri G.D. Bhandari, learned counsel for the applicant strenuously urged that since the applicant was not at fault and there had been an undue delay on the part of the respondents in providing compassionate appointment to his son, he may not be made liable to suffer by imposition of damage rent from 01.04.1994 to 29.07.1997. Some instances were pointed out wherein almost in identical circumstances, damage rent had not been approved and the double the licence fee was ordered by the Court, i.e., S/Shri K.D. Bhaghi and Guru Darshan Singh.

11. It is further contended that though this Tribunal vide order dated 23.3.2004 directed the respondents "to find out the undisputed claim for being adjusted towards gratuity and other dues" but no steps had

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been taken by the respondents to carry out such an exercise. On the other hand, by an order dated 01.06.2004, the applicant was informed that according to the aforesaid judgment in OA No.1451/2003, Rs.46,912.54 is due from him "towards penal rent" and the Accounts Officer had been advised to recover such amount "from the relief with the pension being paid." It is stated that there was no application of mind in passing the aforesaid order as no opportunity of hearing had been afforded prior to passing the said impugned order. Since the impugned order results into civil consequences on retirement, the applicant should have been afforded an opportunity of hearing and denial of the same renders the aforesaid communication illegal and arbitrary and, therefore, it should be set aside. Furthermore, the respondents never initiated any proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and as such the impugned order not only violates the provisions of the said Act, but also violates the principles of natural justice. The aforesaid contention has been seriously disputed by the respondents, who raised the plea of res judicata too.

12. On bestowing my careful consideration to the entire aspect of the matter, I find that the order dated 03.09.1997, which directed the period from 01.04.1994 to 29.07.1997 be treated as unauthorized retention of Govt. accommodation has not been impugned in the present OA. It would be expedient, at this stage, to take note of the contents of the aforesaid letter, which read thus:-

*"Reg: Regularization of Railway Qtr. No.T/40-C  
(Type-II) near Railway Station in favour of Sh.  
Umesh Johri, Ticket Collector under  
S.S./Moradabad.*

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*The Qtr. No.T-40/C (Type-II), near Railway Stadium under occupation of Shri S.N. Prasad Johri, Guard Gr. 'A'/Spl. MB under SS/MB declared medically unfit and retired on 31.07.1993. His son Sh. Umesh Johri appointed on compassionate ground as Ticket Collector under SS/MB on 30.07.1997. Hence the above noted quarter is hereby regularized in favour of Shri Umesh Johri, TC/MB under SS/MB w.e.f. 30.07.1997.*

*Vide DRM/MB's letter No.729ET-1/10/93 Inspector/4 dated 30.12.93 and 14.10.93, retention permission was granted from 01.08.93 to 30.11.93 on normal rent, from 01.12.93 to 31.03.94 on double rent and the period from 01.04.1994 to 29.07.1997 be treated as unauthorized.*

*This has reference to Master Circular."*

13. A bare perusal of the relief clause extracted hereinabove would also lead to the said inescapable conclusion that the aforesaid communication dated 03.09.1997 remained unchallenged in the present proceedings. What cannot be achieved directly could not be allowed indirectly is the well settled principle of law. Since the applicant has filed to attack/challenge or impugn the said communication in a direct manner, no relief indirectly on the said subject could be allowed to the applicant in the present proceedings. Similarly, it is well settled that one cannot approbate and reprobate in the breath. I may also note, at this stage, that vide order dated 23.03.2004 which disposed of applicant's earlier OA No.1451/2003, the co-ordinate Single Bench of this Tribunal in para-5 especially observed that the mere fact that the applicant was seeking employment of his son, which was ultimately allowed by the Railway Board, will not make the unauthorized retention of the Railway quarter as authorized one. This specific finding has attained finality between the parties and therefore, I am bound by the said findings.



14. Reliance placed by the applicant on *Gorakhpur University v/s Shitla Prasad Nagendra* (supra) had already been held to be inapplicable in the facts and circumstances of the present case by the earlier co-ordinate Single Bench. Similarly, *Union of India & Ors v/s Madan Mohan Prasad*, 2003 (1) ATJ 246 (SC) on which reliance was placed earlier also held to be inapplicable.

15. I may further note, at this stage, that the applicant seeks quashing of the two orders, namely, 01.06.2004 as noticed herein above as well as 24.06.2004 vide which the applicant was informed that a sum of Rs.49,912.54 was due towards unauthorized occupation of the quarter in question and also provided the details of the recovery. The said communications stated in specific that an amount of Rs.1,09,980/- was due towards penal rent out of which Rs.66,495/- has been adjusted from his Gratuity and the balance of Rs.43,485/- plus Rs.6,427.54 (electricity bill) i.e. a total of Rs.49,912.54 is due from the applicant, which would be recovered from his pension relief. I do not find any illegality, arbitrariness or infirmity in the aforesaid impugned communications. Accordingly, the OA being devoid of any merits is liable to be dismissed. The same is dismissed. No costs.

(Mukesh Kumar Gupta)  
Member (J)

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