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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

O.A. NO.658 OF 1993

2nd day of November, 1993.

Shri P.T. Thiruvengadam, Member (A)

1. Shri Jeet Singh
R/o Railway Quarter No.183/A-2,
Railway Colony, Paharganj,
New Delhi.
2. Shri Dalbir Singh
working as C&W Khalasi under
Carriage and Wagon Superintendent,
Northern Railway, Tughlakabad,
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,
Chelmsford Road,
New Delhi.
3. Divisional Superintending Engineer (Estate),
Northern Railway, DRM Office,
New Delhi.

...Respondents

By Advocate Shri Shaukat Ali Matto.

ORDER

(CORAL)

Shri P.T. Thiruvengadam, Member

Applicant No.1 retired on 29.02.1992 while working as S.O.M. Horticulture in the Northern Railway, New Delhi. Applicant No.2 was appointed as Carriage & Wagon(C&W for short) Khalasi on 18.06.1989 and was working under C&W Superintendent, Northern Railway, Tughlakabad, New Delhi. Applicant No.1 was allotted Railway Quarter No.183/A-2, ^(Type I) Basant Lane, Paharganj, New Delhi, while in service. It is the case of the applicants that applicant No.2 ^{who} is the son of applicant No.1 ~~who~~ started living with his father with effect from 15.03.1990 and also made an

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application for sharing permission for the said Railway quarter. In the application dated 18.5.1990 it has been mentioned that the applicant No.2 had stopped drawing House Rent Allowance (for short HRA) with effect from March, 1990. The applicant No.2 continued to reside with applicant No.1 till the date of retirement of applicant No.1 and even thereafter. On retirement of applicant No.1, the applicants submitted a representation on 26.02.92 for regularisation of the said Railway quarter in the name of applicant No.2. However, respondent No.3 issued orders dated 17.08.92 whereby the applicants are being threatened with eviction from said Railway quarter and also charging of penal rent from 01.11.1992.

2. This Original Application has been filed with a prayer as under:-

"(i) Direct the respondents to regularise Railway quarter No.183/A-2, Basant Lane, Paharganj, New Delhi in the name of applicant No.2 w.e.f. 1.3.1992 and charge normal rent from applicant No.2 from this date.

(ii) Direct the respondents to release D.C.R.G. equal to ^{16 1/2}~~10~~ months pay which has been illegally withheld from 1.3.1992 when it became due.

(iii) Direct the respondents to pay interest on the D.C.R.G. amount for the period from 1.3.1992 to the date of payment @ 12% per annum.

(iv) Direct the respondents to release the post retirement passes due to applicant No.1 on his retirement".

3. The ld. counsel for the applicants referred to Railway Board's instructions vide No.E(G)85 QR1-9 dated 15.1.1990 and specifically to para 2 of the said

instructions. The relevant para reads as under:-

"2. When a Railway employee who has been allotted railway accommodation retires from service or dies while in service, his/her son, daughter, wife, husband or father may be allotted Railway accommodation on out of turn basis provided that the said relation was a Railway employee eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death and had not claimed any H.R.A. during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases, a residence of the entitled type or type next below is to be allotted."

4. It is the case of the applicants that having applied for permission for sharing accommodation and having foregone the H.R.A. from March, 1990 onwards, i.e, for a period much more than the minimum six months required as per instructions for regularisation of Railway quarter, his request cannot be turned down on the plea that permission for sharing accommodation was not granted by the authorities. In the instructions, there is no specific mention that such permission for sharing is a necessary qualification for regularisation. What is required is only a fact of sharing the accommodation with the retiring Railway employee for at least a minimum period of six months before his retirement and non claiming of H.R.A. during that period.

5. The 1d. counsel for the respondents mainly relied on ^{the} objection that regularisation in such cases can be done only when a specific sanction of sharing the accommodation is given. Such sanction was not issued in this case. As regards the non-payment of H.R.A. from March, 1990, it is the contention of the respondents that such non-payment was at the request of the applicant No.2.

6. Having heard both the counsel, I do not agree that in the absence of a formal approval for sharing accommodation, regularisation of the Railway quarter on father to son basis on the date of retirement cannot take place. It is admitted that permission for sharing was submitted well in time and the HRA was also not paid for

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almost 2 years prior to the retirement of the father.

~~NRA was not paid by the son.~~ The mere non-fulfilment of a technical formality particularly since the applicants were at no stage advised that the request for sharing ^{relied} was being rejected cannot be/_ against the claim for regularisation.

7. In the circumstances, it will be fit and proper to direct the respondents ^{as under: (i)} To regularise the Railway quarter in the name of applicant No.2 from the date upto which applicant No.1 was authorised to retain the Railway accommodation after retirement.

8. (ii) In view of these orders regarding regularisation, the applicant No.2 will be charged only normal rent from the date of regularisation.

9. (iii) DCRG amount which had been withheld with effect from 1.3.1992 should be released within a period of 2 months and interest on the DCRG amount @ 10% will be payable with effect from 1.6.1992, i.e., 3 months after the date of retirement of applicant No.1, as already provided in the instructions of Railway Ministry and as applicable to the cases where the delay in the payment of DCRG occurs due to administrative reasons.

10. (iv) Post retirement passes due to applicant No.1 on his retirement will be released without any restriction as applicable in the case of unauthorised retention.

11. 8. O.A. is disposed of accordingly. No costs.

P. J. Thiruvengadam

(P.T. THIRUVENGADAM)
MEMBER (A)
02.11.1993

RKS
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IN THE HIGH COURT OF DELHI AT NEW DELHI

Copy of Order

No. 18653 /DHC/Writs-RKP/2011

Dismissed 27-7-11

From:

The Registrar (General)
Delhi High Court
New Delhi

To

1. The Registrar, Central Administration Tribunal, Principal Bench, New Delhi.
2. Union of India, through the General Manager, Central Railway, Bombay, V.T. Maharashtra.
3. The Divisional Railway Manager, Central Railway, Jhansi, U.P.

Petition against order dt.23.12.94 in OA. No. 658/93 &801/93

CIVILWRIT PETITION NO.7103/2000

Shri P.C.Gupta

PETITIONER

Verses

Union of India & Ors

RESPONDENTS

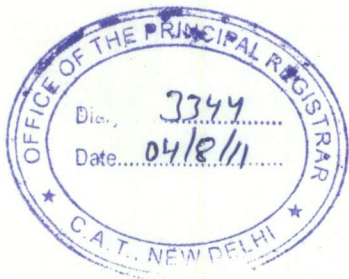
Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 07-07-2011 passed by DIVISION BENCH of this court in the above noted case alongwith a copy of memo of parties.

Please acknowledge receipt.

Yours faithfully

Admn. Officer Judl.(Writs)
for Registrar General



CAT (PB), New Delhi
Receipt No. 291/PL
Date 04/8/11

Receiving Office

11759/25
4/8/11

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

CIVIL WRIT PETITION (CIVIL) NO. 7103 OF 2000

MEMO OF PARTIES

In the matter of: -

Sri P.C. Gupta,

Son of Late Sri R.N. Gupta,

Chief Telecommunication Inspector,

Central Railway, Mathura Jn.

Mathura, U.P.

.... Petitioner

-Versus-

1. Union of India through the General Manager,

Central Railway, Bombay, V.T.

Maharashtra.

2. The Divisional Railway Manager,

Central Railway,

Jhansi, U.P.

...Respondents

Filed on : 20-11-2000

New Delhi.

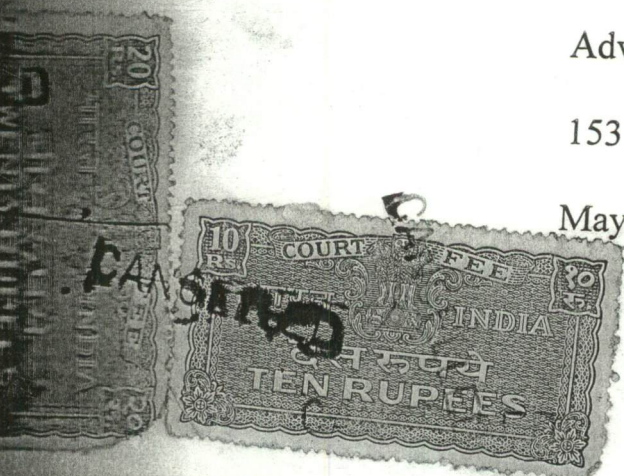
Filed By:

Sumant Bharadwaj
Dr. Sumant Bharadwaj,

Advocate for the Petitioner

153 Supreme Enclave,

Mayur Vihar I, Delhi-91.



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 7103/2000**

% Date of Decision: 07.07.2011

P.C. GUPTA

... Petitioner

Through: None.

Versus

UNION OF INDIA & ANOTHER

... Respondants

Through: Ms.Geetanjali Mohan, Advocate
with Mr. Ketan Madan, Advocate for
respondents.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE M.L.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. Nobody appears on behalf of the petitioner and we find from the record that this Writ Petition was earlier dismissed for non-prosecution on 01.09.2009. It was restored on an application moved by the petitioner thereafter. In these circumstances, instead of dismissing the petition for non-appearance again, we have decided to proceed with

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the matter on merits with the help of learned counsel for the respondent.

2. The issue involved in this writ petition is in a narrow compass. The petitioner, an employee of Central Railway, was promoted as Telecommunication Inspector Grade-III in the year 1974. Thereafter he was promoted in T.C.I. Grade-II in the year 1983 and thereafter as T.C.I. Grade-I with effect from 3.5.1987 along with Shri B.R. Lodh and Shri R.K. Sharma. He was shown as senior to the said two persons.

3. It appears that there was some discrepancy in the said post as had arisen in different regions of the Central Railway. As the promotions to the said post are centralized and it was taking some time, to cope up with the work, the railway decided to make ad-hoc promotions on local officiating basis. Because of this reason, Shri B.R. Lodh and Shri R.K. Sharma were given officiating promotion in their respective basis of work pending regular promotion process. All the three persons namely the petitioner as well as Shri B.R. Lodh and Shri R.K. Sharma were thereafter given regular promotion as T.C.I. Grade-I.

4. It so happened that pending these regular promotions, earlier in the year 1985, Shri B.R. Lodh and Shri R.K. Sharma were given officiating promotion on local basis pending regular promotions. The applicant at that time i.e. in the year 1985, was working in a particular

station (Jhansi) and as there was no such post available, the applicant was not given local officiating promotion.

5. Naturally, because of local officiating promotions accorded to other i.e. to Shri Lodh and Shri Sharma as TCI Grade-I in the year 1985, they were also given higher scale of the said post. On this basis, the petitioner made a grievance that his juniors started drawing higher salary and therefore, he should also have been upgraded. He represented in this regard in the year 1987 which remained un-replied. Thereafter, he approached Central Administrative Tribunal in the year 1996 by means of an application under Section 19 of the Administrative Tribunal Act claiming this relief. The application was contested by the respondents by raising preliminary objection that it was barred by limitation on the ground that higher scale was granted to the two other officials way back in the year 1987 and the petitioner had approached the Tribunal much belated. It was also pointed out that in fact representation of the petitioner was rejected vide letter dated 27.04.1994 and from this date also the petitioner did not approach within stipulated period of one year which is the period prescribed under Section 21 of the Administrative Tribunal Act. On merits also the case of the petitioner was contested stating that when local officiating promotion was given to the two officers that would not justify stepping up of pay of the petitioner.

6. It is significant to mention here that the aforesaid two officials were posted in Jhansi Division as a result of de-organization which came under Central Railway whereas the petitioner at that time was posted in Mathura Junction which came under Northern Railway. Higher posts i.e. TCI-Grade-I were available in Central Railway because of which the aforesaid two juniors could get promotions on officiating basis and no such post was available in Northern Railway.

7. The Tribunal accepted both the contentions and dismissed the OA of the petitioner as time barred as well as on merits. Challenging the order of the Tribunal, the present Writ Petition is preferred by the petitioner. After perusing the impugned order, the pleadings and also after considering the submissions of learned counsel for the respondents we are of the opinion that the impugned order passed by the Tribunal does not suffer from any infirmity and is without any blemish and is right in holding that the OA filed by the petitioner was time barred. As per the petitioner's own averments he came to know about the higher pay granted to his juniors on officiating promotion in the year 1987. Even the representation filed by him was rejected on 27.04.1994. As per Section 21 of Administrative Tribunal Act, limitation of one year is provided from the date of rejection of the representation. However, the OA was filed by the petitioner much after the expiry of one year. The case is squarely covered by the ratio

of judgment of the Supreme Court in **S.S. Rathore Vs. State of M.P.**, (1989) 4 SCC 582 .

8. Even on merits we do not find any justification in the demand raised by the petitioner. The issue is now authoritatively determined by the Supreme Court in **UOI Vs. Sushil Kumar Paul**, (1998) 5 SCC 268 as well as **UOI Vs. O.P. Saxena**, (1997) 6 SCC 360. Taking note of these two judgments, the Tribunal has discussed the case in the following words:

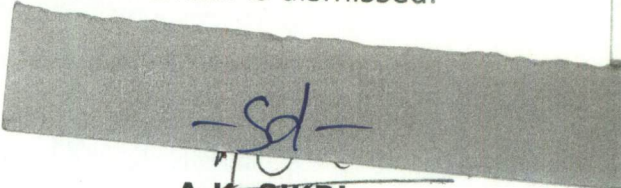
*"5. The applicant has tried to derive benefit from the order in the case of S.R. Srivastava (supra) but much development has taken place in the administrative law on the point since then. The said order has been superceded by horde of judgments. The ratio of Full Bench of the Tribunal in the case of **B.L. Somavajulu & Ors. Vs. The Telecom Commissioner & Another**, OA 1412/93 decided on 20.11.1996 is very clear in the kmatter. In a similar case in **Union of India Vs. Sushil Kumar Paul** (1998) 5 SCC 268: 1998 SCC (L&S) 1336: AIR 1998 SC 1925 where stepping up of pay was claimed with reference to the pay of a junior, whose pay had risen since he had the benefit of ad-hoc officiation on lower post as well as promotion post before regular promotion, the Tribunal's directions for stepping up the senior's pay overlooking the Govt. of India, Department of Personnel and Training's OM dated 04.11.1993 on the subject were held to be not sustainable by the Hon'ble Supreme Court. Their Lordships in that case applied their earlier decision in **Union of India Vs. O.P. Saxena** (1997) 6 SCC 360: 1997 SCC (L&S) 1667.*

6. It is not uncommon that in a vast organization like the Railways in order to meet administrative exigencies local arrangements have to be made by according ad-hoc promotions to certain officials, which may be followed by regular promotion. The

senior officials posted in other areas cannot be allowed the benefit of stepping up of pay to the level of the pay of the junior officials who received the said advantage on account of ad-hoc promotion as there was no provision of law/rules entitling them to the same advantage."

9. Even a Division Bench of this Court in identical circumstances in a decision dated 28.01.2010 (in Writ Petition (C) No.6048/2008 titled as R.P. Arora Vs. UOI & Ors.) refused to grant higher pay relying on the principle that stepping of pay would not be applicable.

10. We do not find any merits in this Writ Petition which is dismissed.


A.K. SIKRI
(JUDGE)


M.L. MEHTA
(JUDGE)

JULY 07, 2011
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