

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No. 659/1993.

(12)

New Delhi: this the 16th July, 1997.

HON'BLE MR. S. R. ADIGE, MEMBER(A).

P. L. Sharma,
S/o Late Shri Diwan Chand Sharma,
Retd. Accounts Clerk,
Northern Railway,
DRM's Office,
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.

(None appeared for the respondents)

JUDGMENT

HON'BLE MR. S. R. ADIGE MEMBER(A).

Applicant prays for release of gratuity (Rs. 9190/-), leave encashment (Rs. 4728/-) and balance PF (Rs. 2000/-) due to him on his retirement on 30.9.81 along with compound interest @ 18% per annum from that date.

2. Applicant while in service was allotted a Type III quarter in Moradabad. He retired on super annuation on 30.9.81. Admittedly he did not vacate it at the end of the permissible period for retention under rules. On 12.6.84 (Annexure-A2), the President, Area Housing Committee, Moradabad intimated that the quarter was being regularised in the name of applicant's son Sanjay Sharma w.e.f. 4.3.82 who had been appointed as a Clerk on that date. On 3.8.84 (Annexure-A3) applicant submitted/cation report of the quarter stating that he

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had given possession of the same to his son, and prayed for release of retiral benefits. On 1.6.85 (Annexure-R2) Chairman, Central Housing Committee, Moradabad intimated DRM, Moradabad, disapproval of the regularisation of the quarter in Sanjay Sharma's name and directed him to vacate the quarter without delay. Thereafter applicant filed a civil suit No. 518/85 against UOI for recovery of Rs. 19,999/-.

The claim was deemed against respondent Railways vide order dated 22.10.86 (Annexure-R4). Applicant has stated in rejoinder that respondent Railways filed an application against the judgment/order and informed the Court that it had no jurisdiction in the matter (consequent to the setting up of the Administrative Tribunals), and as such the order passed was illegal and they were not bound to make payment.

3. When the case was called out, Shri G. D. Bhandari for the applicant was present and was heard. None appeared for respondents even on second call. As this is a old case, I am disposing it of after hearing Shri Bhandari.

4. Admittedly applicant retired on superannuation on 30.9.81. He has admitted in para 4.2 of his OA that respondents permitted him to retain the premises on usual term for 4 months, and he should have handed over vacant possession on or before 31st January, 1982. On his own admission he did not do so, and thus retention beyond 31.1.82 was unauthorised. The President Area Committee intimated on 12.6.84 to the authorities that the quarter had been regularised in the applicant's son Sanjay Sharma's name w.e.f. 4.3.82, the date of his appointment as Clerk, and on that basis applicant sent letter dated 3.8.84

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(Annexure A-3) intimating handing over possession of quarter to his son, but that reregularisation was set aside by DRM vide letter dated 1.6.85 (Annexure R-2) firstly because Sanjay Sharma had been appointed more than 5 months after the date of superannuation of applicant, and thus did not fulfil the requirement contained in Railway Board's letter 27.2.71 of having shared accommodation as a Govt. servant with applicant for 6 months prior to the latter superannuation, and secondly because the quarter in question was of Type III, whereas Sanjay Sharma was entitled only to Type II accommodation.

5. It is not clear what action, if any, has been taken by either side on respondents' letter dated 1.6.85 disapproving of the regularisation of the quarter in the name of Sanjay Sharma.

6. During hearing Shri Bhandari argued that the Divl. Rly. Manager was not competent to set aside the President Area Committee's communication dated 12.6.84. It is not possible to agree with this argument. As the senior functionary in the Division, I hold that the DRM was competent to set aside the communication of the President Area Committee if he found the regularisation was not in accordance with rules, which in the present case in view of what has been noted in Para 4 above, it clearly was not.

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7. Be that as it may, consequent to the appointment of Sanjay Sharma in the Railways and intimation of regularisation of the quarter in his name by letter dated 12.6.84 w.e.f. 4.3.82, which was subsequently cancelled by DRM by letter dated 1.6.85 (Annexure R-2), it was necessary for Respondents to have kept the liabilities of the applicant as regards retention of the accommodation beyond the permissible limit, separate and distinct from any liability on account of his son Sanjay Sharma's failure to comply with the orders dated 1.6.85. If Sanjay Sharma has any grievance in respect of those orders it gives him a separate cause of action which he can agitate separately in accordance with law, if so advised.

8. In the light of what has been stated above, this O.A. is disposed of with a direction ^{to} Respondents to determine the exact liabilities in respect of the period of unauthorised occupation of the quarter by the applicant as ~~distinct~~ from any liabilities incurred by his son Sajay Sharma. Thereupon Respondents should assess the exact sum of penal license fee/damages if any realisable from the applicant for the period of such unauthorised occupation in accordance with rules and instructions on the subject in case the same has not been done as yet. This

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execise should be completed as expeditiously as possible and preferably within three months from the date of receipt of a copy of this judgment, and upon its conclusion if it is found that any balance out of the gratuity, leave encashment and part of P.F. retained by the Respondents is still due to the applicant, the same should be released to him forthwith.

9. This O.A. stands disposed of in terms of Para 8 above. No costs.

Adige
(S.R. ADIGE)
Member (A)

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