

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 118 of 2001.

this the 11<sup>th</sup> day of August 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Smt. prabhawati Devi, w/o late S.N. Roy, R/o 1239/D Manas  
Nagar Colony, Mughalsarai, District Chandauli.

Applicant.

By Advocate: S/Sri S.K. Dey & S.K. Misra

versus.

1. Union of India through the General Manager, E.Rly.,  
Calcutta.
2. D.R.M., E. Rly., Mughalsarai, District Chandauli.

Respondents.

By Advocate : Sri K.P. Singh.

O R D E R

By this O.A., applicant has sought the following  
relief(s):

"(i) That this Hon'ble Tribunal may be pleased to direct  
the respondents to make payment the entire amount  
of settlement dues consisted of P.F., DCRG (gratuity),  
leave encashment 240 days and commuted value of pension  
alongwith 18% interest per annum after regularising  
the quarter no. 1239/D in favour of her son named  
Anil Kumar Roy from the date of appointment in Railway  
service at Mughalsarai i.e. 27.9.93.

(ii) -----."

2. The brief facts, as alleged by the applicant, are  
that her husband was engaged as TTE on 27.1.1960 and continued  
in service till he was declared unfit for service vide letter  
dated 7.12.1992, after which he was retired on 25.12.1992  
(Annexure-2). The grievance of the applicant in this case is  
that her husband was paid only an amount of Rs. 3884/- on  
3.5.93 on account of insurance, but neither he was paid P.F.  
nor DCRG, leave encashment or commutation of pension, as a  
result of which for want of proper medical aid, he died on

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23.7.93. Since the family was in indigent condition, her son namely Anil Kumar Roy was appointed by the respondents on compassionate grounds on 27.9.93. Therefore, after the son was given appointment, she gave an application on 20.12.93 for transfer of allotment of the quarter, which was allotted in favour of her husband, in the name of her son (Annexure-4). She has submitted that as per Railway Board's letter dated 20.11.91 (Annexure-5) the quarter no. 1239/D ought to have been transferred in favour of her son. Even her son gave an application on 24.2.94 for transfer of the said quarter, but no response was given by the respondents (Annexure 6 & 7). She has submitted there were number of instances where-after the son was given compassionate appointment, quarter allotted in the name of the father was regularised in the name of the son. The details have been given in Annexure-8, but without deciding their application, respondents allotted the quarter no. 1239/B type II in favour of her son vide order dated 1.2.2000 and was regularised from the date of appointment on compassionate grounds i.e. 28.11.97. It is submitted by the applicant that till 6.9.96 the said quarter was occupied by Smt. Shyam Dulari Devi, Assistant Teacher. The applicant has, thus, submitted that they have been discriminated against. The counsel for the applicant has also relied on the case decided by this Tribunal in O.A. no. 532/94 decided on 28.8.97 in re. Sanjhari Devi vs. Union of India & ors. She has further submitted that it was retention of the quarter no. 1239/D that her son was suspended vide order dated 13.11.2000 and was subsequently revoked and transferred from Mughalsarai to Gaya vide order dated 27.12.2000 (Annexure nos. 11 & 12). Finding no other remedy, applicant has filed this O.A. claiming the relief(s) as mentioned above.

3. The respondents on the other hand opposed this O.A. and have submitted that the applicant was paid GIS amounting to Rs. 3884/- vide CO7 no. 100167 dated 27.4.93, DCRG and

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pension commutation could not be paid due to retention of railway quarter un-authorisedly even after retirement and still occupied by the applicant. As far as leave encashment is concerned, they have explained that the same has not been paid as no leave was due in his credit as per leave record.

4. They have submitted that the quarter no. 1239/D, Manas Nagar Colony, Mughalsarai was under occupation of her husband who ceased to be in service due to medically declared unfit from 25.12.92 and subsequently expired on 23.7.93. Her son namely Sri Anil Kumar Roy was appointed in Group 'B' category on compassionate grounds. Since he was appointed in Group 'D' category, he was not entitled for type II quarter as such regularisation of railway quarter no. 1239/D in his favour does not arise. They have categorically denied having ~~received~~ any application dated 20.12.93. As far as Railway Board's circular is concerned, they have stated that CPO's sl. no. 169/91 also stipulates as under :

"That when Railway servant retired or dies on duty the Railway quarter occupied by him should be allotted out of turn to his son, daughter, wife or father provided that said relation was eligible for Railway accommodation as Railway servant."

In the present case, since the applicant was not eligible for type II quarter, therefore, this letter would not be applicable in the case of the applicant.

5. As far as the case of allotment of quarter to some other candidates namely Sri Ravi Prakash, they have stated that the said order was made as special case by D.R.M. personally and that was ~~as~~ a temporary measure purely on humanitarian ground till a suitable quarter for which he is entitled, is made available to him, copy is enclosed as Annexure-1 to the Counter. They have further submitted that the application given by the applicant was under process and it was agreed to allot him quarter no. 214/F type I for which her son was entitled and the applicant's son was

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even called by Divisional Operating Manager on 13.11.2000 to submit an application for type-I quarter, but instead of giving an application, he fled away. <sup>by</sup> The noting given <sup>by</sup> the concerned dealing clerk is annexed as Annexure-2 to the Counter. They have, thus, submitted that the applicant is responsible for his own action and cannot blame the department for not allotting type I quarter to her son. As far as the case of Smt. Sanjhari Devi and Smt. Parbati Devi are concerned, they have stated that there is no similarity in those cases as compared with the applicant, therefore she cannot take the benefit from the said judgment.

6. They have further explained that her son was placed under suspension w.e.f. 13.11.2000 and not from 27.12.2000 and he had already been paid subsistence allowance for the said period in April 2001. They have further submitted that the applicant is the mother of the railway employee and <sup>like</sup> she ~~is~~ herself not a railway employee, therefore, she has no right to apply for railway quarter in favour of her son. <sup>above,</sup> In view of the facts as explained/ the respondents have submitted that the O.A. may be dismissed with costs.

7. I have heard both the counsel and perused the pleadings as well.

8. The counsel for the applicant has relied on the following judgments:

- (i) 2003 (1) ATJ SC 246.
- (ii) 2001 (3) ATJ SC 545
- (iii) 2001 (3) ATJ 371.
- (iv) 2000 (2) AWC 1416 (LB)
- (v) 2002 (2) ATC 588.

On the basis of these judgments, counsel for the applicant submitted that so long the respondents have not decided their application for regularising the quarter in favour of the son, the respondents could not have charged damage rent for the said quarter and secondly they could not have <sup>withheld</sup> ~~withheld~~ DCRG and commutation of pension on the ground that they have not vacated the quarter allotted in

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avour of her husband . In the instance case, the respondents have not issued any letter so far asking the applicant to either vacate the house no. 1239/D, nor they have issued any letter asking the applicant to deposit the damage for over-stayal in the said quarter. They have simply withheld DCRG and commutation of pension after the applicant's husband was retired from service. We find that in the judgment given by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Madan Mohan Pra~~s~~ad, the apex court has held as under :

"Railway Pension Rules 1950-Rule 323-Gratuity & leave encashment-non-vacation of railway quarter after retirement-cannot be a ground to withhold DCRG and the leave encashment- Further penal rent/damages does not fall under the term 'admitted' or 'obvious' dues within the meaning of Rule 323- Tribunal rightly allowed the claim of respondent for payment of DCRG and leave encashment with interest- However, the amount towards normal rent, electricity and water charges which are admitted and obvious dues can be deducted by the authorities, if still due."

9. Perusal of the above judgment would clearly show that the respondents could not have withheld the DCRG of the applicant's husband on the ground that they were still in occupation of the Govt. quarter. We are bound by the judgment given by the Hon'ble Supreme Court under Article 141 of the Constitution of India. Accordingly, following the same I hold that the respondents could not have withheld the DCRG of the applicant's husband after his retirement on the ground that they were in occupation of the Govt. quarter. Accordingly, respondents are directed to pay the amount of DCRG of to the applicant within a period of three months from the date of receipt of copy of this order after deducting the normal house rent including electricity and water charges, if not already paid.

10. As far as regularisation of the quarter is concerned, I am satisfied that the same could not have been regularised in favour of the applicant's son because he was given compassionate appointment in Group 'D' <sup>and</sup> in accordance with

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law, he would be entitled to only Type-I quarter, while the quarter which was allotted to his father was Type-II quarter, therefore, he has no legal right to get the same regularised in the name of her son. We say so specifically keeping in mind the conduct of the applicant's son, who was called-upon to give an application for allotment of <sup>Type-I</sup> quarter, but instead of doing so, he ran away, meaning thereby he did not want to be allotted Type-I quarter. If for this conduct, applicant's son was suspended, we cannot say that the same was illegal or arbitrary. In any case, since the suspension or transfer order is not challenged before us, we do not wish to say ~~anything~~ more than this. The fact remains that admittedly applicant's son had already been transferred from Mughalsarai to Gaya vide order dated 27.12.2000, therefore, she has no right what-so-ever to continue in the Govt. quarter <sup>at Mughalsarai, 18</sup>. There are specific rules available in the department in such circumstances for getting the quarter vacated. If ~~the~~ respondents feel that she is occupying the quarter unauthorisedly, they can always take action against her in accordance with law for getting the said quarter vacated <sup>and for claiming the dewaldas. 18</sup>. Therefore, it is for the respondents to take ~~an~~ appropriate action in that regard.

11. Applicant's contention that since in some other cases, the house was regularised in the name of son, so it can be done in the case of the applicant also does not stand scrutiny of the law because if some wrong orders were passed in favour of one individual, Court cannot give direction to the respondents to repeat the same mistake, nor can it be enforced by invoking Articles 14 & 16 of the Constitution of India. We have already stated that since the applicant's son was appointed as Group 'D' employee, he would be entitled only to Type-I quarter, which was offered to him by asking him to apply for the same, but since the applicant's son did not give his application, he cannot be <sup>helped</sup> ~~regularised~~. therefore, applicant's second prayer that the quarter no. 1239/D should be regularised in the name of her son is rejected.

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12. In view of the above discussions, O.A. is partly allowed with no order as to costs.

  
MEMBER (J)

GIRISH/-