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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 4th day of Sept. 2008.

Original Application No. 1265 of 2005.

Hon'ble Mr. A. K. Gaur, Member (J)

Mohd. Murtaza, S/o late Mohd. Mustafa, R/o House No. 1076/923 Purana Katra, Allahabad.

. . . Applicant

By Adv: Sri Sajnu Ram

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Senior Electrical Engineer (TRD), D.R.M. Office, North Central Railway, Allahabad.
3. Senior Section Engineer (OHE), Subedarganj, Allahabad.

. . . Respondents

By Adv: Sri D.S. Shukla

O R D E R

The applicant is aggrieved by the order dated 14.08.2005 of the respondents denying him the House Rent Allowance w.e.f. August 2004.

2. The applicant has been working as Khalasi Grade I in the North Central Railway, Allahabad and residing with his family members in his parental house No. 1026/973 Purana Katra, Allahabad since July 1982 i.e. from the date he was appointed with the respondents. According, to the applicant Senior Section Engineer, North Central Railway, Subedarganj, Allahabad is his supervisor and very often he used to compel the applicant to take the Railway Quarter.

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Under the provisions of Indian Railway Establishment Code and Manual Railway Quarters are allotted only to those employees who give their application for the allotment of the same. In the present case no such application has been given by the applicant for allotment of Railway Quarters from the date he is posted at Allahabad. Prior to August 2004 the respondents have paying House Rent Allowance to the applicant regularly. Without consent of the applicant, Senior Section Engineer (Respondent No. 3) allotted Railway Quarter No. 134-D Type I in Colony No. 3 at Subedarganj to the applicant. The grievance of the applicant is that his parents have already died. No one else is residing at his parental house and his three unmarried daughters are living with him and are studying in College and University which is quite near to his parental house. The Senior Section Engineer knowing the fact fully well, allotted the Railway Quarter with ulterior motives vide letter dated 19.03.2004 to the applicant. As there is none else to look after the young daughters in the house, the applicant having no option left finally gave refusal to the allotment of Railway Quarter on 20.03.2004 (Annexure A-3 to the OA). The Senior Section Engineer after receiving the refusal from the applicant, vide order dated 22.03.2004 intimated that due to non availability of adequate staff during emergency the Railway Quarter was allotted to the applicant. His refusal to take Railway Quarter is in violation of Railway Rules. Senior Section Engineer also observed in his letter dated 22.03.2004 that in the event of refusal to

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take the Railway Quarter, the House Rent Allowance given to the applicant will also be stopped (Annexure A-4 to the OA). The applicant became highly disgruntled after receiving the letter dated 22.03.2004. He again gave the representation that considering his family composition and the number of years left to his retirement, there is no need for allotment of Railway Quarter and the allotment of Railway Quarter may be cancelled (Annexure A-5 to the OA). Vide letter dated 01.06.2004, Senior Section Engineer rejected the request of refusal of allotment of the Railway Quarter to the applicant (Annexure A-6 to the OA). Vide letter dated 01.06.2004 respondent No. 3 replied that refusal of the Railway Quarter has been accepted sympathetically.

3. The grievance of the applicant is that the House Rent Allowance is not being charged in the salary bill of the applicant since August 2004 on the plea that allotment of Railway Quarter has been refused by him. Vide letter dated 14.08.2005 the answering respondent intimated the applicant that on his refusal to take Railway Quarter the payment of House Rent Allowance cannot be made. In paragraph 4.8 of the OA the applicant has clearly and specifically submitted that the respondent No. 3 is not the competent authority to pass the order for non payment of House Rent Allowance to the applicant or any employee. The applicant has also asserted that there are several employees who are working alongwith the applicant and are residing in their own parental house or rented house in

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Municipal Area of Allahabad city and are performing their duties by coming and going from their house, and they are being paid House Rent Allowance. The applicant has also declared their names as Bankey Bihari Singh, Ahsan Ali, Dhruv Kumar Sahu, Shri Ram Chandra Dubey, Dinesh Mishra, Lakhan Lal, N.C. Bhattacharjee, Rambaran, Deo Saran, Madho Prasad. The sole grievance of the applicant is that neither Railway Quarter can be allotted to him without consent or written application, nor he can be deprived of House Rent Allowance as per provision of the Indian Railways Establishment Code.

4. The respondents have filed their counter reply and submitted that the decision to stop the payment of House Rent Allowance to the applicant is in accordance with the provision of Rules since the services of the applicant is required for essential/emergency duties on breakdown etc, he should reside at a nearby place from work so that he can be easily available for the above purpose. According to the respondents, since the applicant has refused to live in allotted quarter hence in accordance with rules he is not entitled for House Rent Allowance. The applicant's occupation of Railway Quarter is essential for easy accessibility during emergencies, and for efficient discharge of his duties etc. True copy of R.B.E. No. 46/2000 dated 16.03.2000, R.B.E. No. 163/99 dated 16.05.1998 has been filed as Annexure 1, 2 and 3 to the Counter Affidavit. In paragraph 13 of the reply it has

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been submitted that the respondents were directed to take due action against such erring staff.

5. In the Rejoinder Reply filed by the applicant, he has set forth the example of several employees, who were living at more longer distances in their own houses from Depot of Subedarganj, and they have been performing their duties regularly by coming and going from Allahabad. The applicant has always been attending his duties whenever he was booked and informed, the respondents have wrongly stated that the applicant did not attend even a single Breakdown during last two years in the odd hours. He also submitted that this fact can be verified from the breakdown register. The applicant has also submitted that the respondents are not treating the Traction Depot as essential services and the employees working in the Depot are not treated as emergency/essential staff and that is why they are not being paid breakdown allowance.

6. The respondents have filed supplementary counter reply denying the facts contained in the rejoinder reply.

7. I have heard Shri Sajnu Ram, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents.

8. Learned counsel for the applicant has vehemently argued that the applicant is living in his own parental house in Purana Katra, Allahabad and has been performing

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his duties efficiently and regularly from the date he was appointed by the respondents. The Railway Employees are being paid House Rent Allowances as per provision of para 1703 of Indian Railway Establishment Code Vol. II. The respondent No. 3 allotted Railway Quarter in question to the applicant which was not required by him vide letter dated 10.03.2004. He also submitted that his three young daughters are studying in College and University. As the parents of the applicant have already died, there is nobody to look after the young daughters. The Railway Quarter allotted to the applicant was cancelled at the request of the applicant and the same has been allotted to Shri Ram Abhilakh, Helper Khalasi Grade I of the same depot. It has also been argued by the applicant that his ~~wife is~~ ^{parents are} no more and there are only three daughters who are studying in college and University near to the house of the applicant. The Depot at Subedarganj, where the applicant is working also does not come within the purview of Essential duties and due to this reason alone the staff working in the said Depot are not at all being paid breakdown allowances.

9. Sri D.S. Shukla, learned counsel for the respondents on the other hand submitted that the applicant's occupation of the Railway Quarter is essential for easy accessibility during emergency with a view to efficiently discharge the duties. He also contended that since the services of the applicant is required for emergency/essential duties on breakdown hence he must

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dated 29.7.08
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reside at a place near from the Depot and from where he can be easily available for essential duties. Since the applicant has refused to live in allotted quarter hence according to rules he is not entitled for House Rent Allowance.

10. Having heard counsel for the parties I am of the considered view that sudden action of stopping House Rent Allowance to the applicant from August 2004 is not very much convincing, without taking any departmental action against the applicant for not attending Breakdown duties and taking recourse to stoppage of House Rant Allowance is a serious matter. A person who has been discharging his duties for the last more than 22 years efficiently and was getting House Rent Allowance from the respondents, no justification has been shown by the respondents to deny the benefit of House Rent Allowance abruptly, solely on the ground that the applicant could not make his presence in several breakdowns which occurred during odd hours in the last two years without specifying any specific date and time. On the contrary in the Rejoinder Affidavit filed by the applicant, the applicant has clearly and specifically stated in paragraph 5 (a) that he attended the following breakdown duties in odd hours during the last two years: -

Sl. No.	Date	Name of Incharge of break down duty	Place of break down
1.	07.01.2004	D.K. Sahu	MNJ
2.	08.03.2008	B.B. Singh	COI
3.	14.03.2004	B.K. Mishra	SRO

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4.	24.03.2004	Randhir Singh	YB
5.	08.06.2004	B.K. Mishra	BEP
6.	13.10.2004	B.B. Singh	Satraini
7.	06.02.2005	B.B. Singh	Meja"

11. In view of the statement of fact mentioned in the supplementary Counter Reply denying the averment contained in para 5 a does not appears to be wrothy of reliance. The respondents have submitted in reply that the applicant never attended a singly breakdown during night hours. All the breakdowns attended by the applicant were during duty hours.

I have carefully seen the averments contained in para 4.8 and 4.9 of the OA, wherein the applicant has clearly asserted that respondent No. 3 is not competent to pass order for non payment of House Rent Allowance to the applicant or any employee and also several employees working in the Depot are coming and going from Allahabad city and all of them are being paid House Rent Allowance and they have also not been allotted Railway. This statement of fact in Para 4.8 and 4.9 of the OA remains uncontroverted by the respondents. In reply to paragraph 4.8 to the OA the respondents have stated that the true facts have been stated in preceding paragraphs and with regard to para 4.9 of the OA the reply of the respondents is that however, on enquiry by the competent authority, the persons so named will be taken due action if found so without any discrimination.

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12. I have also carefully seen the letter issued by the Railway Board with regard to admissibility of House Rent Allowance, in the event of non acceptance or surrender of Railway residential accommodation. In the letter dated 14.02.1996 the Railway Board has decided that the sanction for eligibility to House Rent Allowance in the type of cases mentioned in paragraph 1 above may be issued by such of the Divisional Railway Managers/Chief Workshop Managers in-charge of workshop as are controlling housing pools. These powers are to be exercised personally by the Divisional Railway Managers/Chief Workshop Managers, in consultation with the Associate Finance and are not to be re-designated.

13. In the instant case, it is not clear as to how Senior Section Engineer has exercised power stopping the House Rent Allowance to the applicant in view of RBE No. 163/99 (Annexure 2 to the CA) the sanction of eligibility of House Rent Allowance can only be issued by the Divisional Railway Manager/Chief Workshop Managers in-Charge of workshop. In consultation with the Associate Finance. The argument advanced by the learned counsel for the applicant that the Railway accommodation have also not been earmarked to the staff of the depot of Subedarganj and occupation of Railway Quarter is also not essential in as much as that the respondents himself kept the depot of Subedarganj out of essential duties so that the staff may not be paid breakdown allowance. This vital facts enumerated in para 11 of the rejoinder affidavit has not

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at all been denied by the respondents in para 11 of their supplementary counter affidavit, which reads as under: -

"That the contents of para 11 of the rejoinder reply of applicant are misconceived and hence denied. In this connection, reply given under para 11 of the counter affidavit."

14. In view of aforesaid observation, I am firmly of the view that the impugned order passed by the respondent No. 3 is illegal, arbitrary and without jurisdiction and the same deserved to be quashed and set aside. Accordingly, the OA is allowed. Impugned order dated 14.08.2008 is quashed and the respondents are directed to make payment of House Rent Allowance since August 2004 till date alongwith arrears plus interest at the rate of 7% per annum. No cost.


Member (J)

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