

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Allahabad, this the 29th day of September, 2011

Hon'ble Mr. Sanjeev Kaushik, Member-J

Original Application No. 694 of 2005
(U/s 19 of Administrative Tribunal Act, 1985)

1. Riaz Ahmad, Ex-Driver, Nizamuddin, r/o Quarter No. 316 EF Type II, Goods Shed Colony, Leader Road, Allahabad.
2. Mustaq Ahmad, S/o Riaz Ahmad, r/o Quarter No. 316 EF Type II, Goods Shed Colony, Leader Road, Allahabad.

..... ***Applicant.***

By Advocate : Shri K.S. Rathore

V E R S U S

1. Union of India through General Manager, NCR, Allahabad.
2. Divisional Manager (Commercial), D.R.M. Office, Nawab Yusuf Road, Allahabad.
3. Senior Divisional Mechanical Engineer, D.R.M. Office, Nawab Yusuf Road, Allahabad.
4. Senior C. Controller, N.C. Railway, Allahabad.
5. General Manager, N.R., Baroda House, New Delhi.

..... ***Respondents***

By Advocate : Shri Anil Kumar

O R D E R

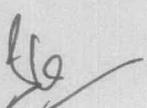
The instant Original Application has been instituted under section 19 of Administrative Tribunals Act 1985 seeking quashing of order dated 07.05.2005 passed by the respondent No. 4.

2. The brief facts of the case are, the father of the applicant Riaz Ahmad was working with the respondents and he was declared medically incapacitated by an order 27.10.1993. On 07.03.1994 PPO was also issued by Northern Railway, Baroda House, New Delhi in favour of the father of the applicant. The applicant moved an application for appointment in place of his father as his father has been retired on medical grounds. By

an order dated 11/12.12.1996 the applicant was offered appointment on Parcel Clerk and accordingly was sent for T-7 training at Chandausi Training School of Railways. It is averred that an application was made on 27.06.1994 to the respondents for allowing the applicant to retain the railway accommodation as his case for appointment on compassionate grounds was under consideration. The respondents/Railway administration initiated proceeding under P.P. Act 1971 for vacation of quarter in question. By an order dated 12.02.1999 the proceeding against the applicant under P.P Act was dropped on the pretext that the applicant has already been appointed in service with the Railways. An observation was also made that the respondents to reconsider the case of the applicant for regularization of accommodation. By an order dated 22.09.1989 (Annexure -5 of O.A) the claim of the applicant for regularization has been rejected. Subsequent to that the applicant approached this Tribunal by way of O.A No. 1611/1999, which was disposed vide order dated 10.08.2001 with direction to the respondents to consider and decide the representation of the applicant within a period of 4 weeks by passing speaking order. It is averred that in pursuance to the direction given by this Tribunal the applicant submitted a detailed representation on 29.08.2001. It is further submitted that by letter dated 07.05.2005 issued by respondent No. 4 it was informed to the applicant that his case for regularization is still pending, hence the O.A.

3. Pursuance to the notice issued by this Tribunal the respondents appeared and filed detailed Counter Reply and contested the claim of the applicant.

4. It is averred in para 6 of the Counter Reply that on retirement of Sri Riaz Ahmad the applicant applied for permission to retain the Railway



accommodation in question for 8 months from 28.10.1993 to 27.06.1994, which was allowed by the respondents. It was ordered that for first four months normal rent will be charged and after four months double rent of normal rent will be charged. On expiry of 8 months a notice was served upon the applicant on 05.05.1995 for vacating the said Railway quarter but the applicant did not vacate the quarter in question and remained in unauthorized occupation of the Railway quarter and that is why the proceeding before Estate Officer was initiated against the applicant, which was ultimately disposed of by an order dated 12.02.1999 with direction to the respondents to consider the case of the applicant for regularization of quarter in question as he has been appointed on compassionate grounds on declaration of his father as medically incapacitated by the respondents. It is averred that in pursuance to the direction dated 10.08.2001 given by the Tribunal in O.A No. 1611/1999 the claim of the applicant was re-appreciated and the same was rejected by an order dated 05.12.2001, copy of which is appended as Annexure CR-I. Against the said order, the applicant preferred an appeal, which too was rejected by an order dated 27.03.2002/Annexure CR-III.

5. I have heard Sri K.S. Rathore, learned counsel for the applicant and Sri Anil Kumar, learned counsel for the respondents.

6. Learned counsel for the applicant vehemently argued that the order dated 05.12.2001 was never communicated to the applicant and, therefore, when the instant O.A has been filed the applicant has not sought quashing of order said dated 05.12.2001. He further submitted that by an order dated 12.02.1999 the proceeding under P.P. Act was dropped with direction to the respondents to re-consider the case of the applicant for regularization as he has already been appointed with the

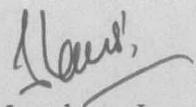
respondents. He argued that despite this fact the respondents have rejected the claim of the applicant without any valid reason. On the other hand learned counsel for the respondents has submitted that the applicant has not stated true facts as the applicant has already filed an appeal against the order dated 05.12.2001 to the competent authority , which too was rejected by an order dated 27.03.2002, therefore, the argument advanced by the learned counsel for the applicant to this effect is false. He argued that the applicant has not vacated the house till today and is in unauthorized occupation of the same, therefore, the applicant is not entitled for any relief.

7. Faced with the situation learned counsel for the applicant make a statement at the Bar let a direction be given to the respondents to reconsider the case of the applicant for regularization of quarter in question in accordance with rule. Sri Anil Kumar , learned counsel for the respondents stated that once his case has already been rejected, therefore, the same cannot be reconsidered.

8. I have considered rival submissions. It is not disputed that father of the applicant was retired on being declared medically unfit and thereafter, as per rules, the applicant was given appointment on compassion. Now the applicant is an employee of the respondents department. Though an employee cannot retain the government accommodation without valid order in his favour but it is the fact that the applicant remained in possession unauthorisedly and the proceedings were also initiated under P.P. Act but the same was dropped on 12.02.1999 by the competent authority. The order for reconsideration was also considered by the respondents and the same has been rejected by the respondents by an

order dated 05.12.2001 on the ground that the applicant was not in service for the period for which he sought regularization, therefore, prayer of the applicant for regularization cannot be accepted. However, keeping in view the fact that the applicant is in service of the respondents/railway administration , let the respondents will reconsider the case of the applicant for allotment of quarter equal to status of the applicant within a period of two months. If the applicant is found to be entitled to retain the quarter in question in accordance with rules, the same be regularized in his favour.

9. In view of the above the instant O.A is disposed of. No costs.


Member-J

Anand/