



Item No.1

**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.45/2020
(S.W.P. No.1493/2005)

Tuesday, this the 25th day of May, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Tarun Shridhar, Member (A)

Yog Raj, aged 60 years,
S/o Shri Sain Dass,
R/o J. No. 215,
East Railway Colony, Jammu.

... Applicant

(Mr. Karman Singh Johal, Advocate)

Versus

1. Union of India,
Through Secretary, Ministry of Railways,
Shastri Bhawan,
New Delhi – 1.
2. Divisional Superintending Engineer,
Northern Railway, Ferozpur (Pb).
3. Estates Officer,
Northern Railways – DRM Office,
Ferozpur (Pb).
4. Assistant Engineer (Northern Railways),
Jammu.

... Respondents

(Mr. P S Chandel, Advocate)

**O R D E R (ORAL)****Mr. Justice L. Narasimha Reddy:**

The applicant was working as Technician (MCM) in the Carriage & Wagon Department of Northern Railway and was posted at Jammu Tawi in the 1990s. He states that when he was not provided with any official accommodation, he constructed a *jhuggi* in the outskirts of Eastern Railway Colony, Jammu and started residing therein.

2. The railway administration issued a notice on 21.7.1997, requiring the applicant to vacate the land encroached by him. He got issued a legal notice to the respondents. However, the said notice was challenged by certain individuals, including one Tara Chand. The respondents started deducting Rs.630/- per month from the salary of the applicant from 01.01.1996 onwards, alleging that he encroached the land. The applicant retired from service on 30.04.2005. The respondents did not release the gratuity, nor did they reimburse the amount deducted from the salary.

3. The applicant filed S.W.P. No.1493/2005 before the Hon'ble High Court of Jammu & Kashmir seeking a direction to the respondents to release the gratuity and to pay the deducted



Item No.1

amount to him. He contends that once he retired from the service, the respondents are under obligation to pay him the gratuity and other retiral benefits. Reference is made to the notice issued in the year 1997 and it is stated that he has nothing to do with the encroachment.

4. The respondents filed a detailed counter affidavit. It is stated that the applicant has encroached the land to the extent of 27.56 square meters and made an unauthorized construction and thereafter, inducted the 3rd party to it. They contend that the notice issued in 1997 was challenged by certain 3rd parties and the concerned Court has set aside the notice, giving liberty to the respondents to issue a fresh notice and accordingly, another notice dated 27.05.2002 was issued. Reliance is placed upon Rule 15 of Railway Services (Pension) Rules, 1993

5. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as TA No. 45/2020.

6. Today, we heard Mr. Karman Singh Johal, learned counsel for applicant and Mr. P S Chandel, learned counsel for respondents.



Item No.1

7. It is not is dispute that the applicant was an employee of the Railways and he retired from service in the year 2005. In the ordinary course, the respondents were under obligation to release the gratuity and other retiral benefits. However, it is alleged that the applicant encroached upon 27.56 square meters of land in the Railway Colony, Jammu Tawi and constructed a house there. A notice was issued in the year 1997, it was not challenged by the applicant. Certain 3rd parties, challenged the same and on a technical ground, it was set aside by the concerned Court, leaving it open to the respondents to issue a fresh notice. Accordingly, a fresh notice was issued on 27.09.2002.

8. In case the applicant has encroached any land of the Railways, he has to vacate the land and thereafter claim the benefits. If on the other hand he has nothing to do with the encroachment, he has to make his stand clear. What is a bit surprising is that he did admit that he constructed a *jhuggi* in the outskirts of Eastern Railway Colony, Jammu. Paragraph 2 of the legal notice dated 22.08.2004, got issued by him and filed as Annexure –B, reads:-

“That your department had not provided any accommodation to my client for residential purpose as such he had constructed a *jhuggi* on outskirt land of East Railway Colony, Jammu and is residing therein since 1984.”



Item No.1

9. This being the case, the applicant cannot simply say that he has nothing to do with the land, which is subject matter of the notice issued by the Railways. Even now, the applicant can vacate the premises under his occupation or he can make his stand clear, so that the Railways can recover the land. The Government property cannot be exposed to such uncertainty or encroachment.

10. We, therefore, dispose of the T.A., directing that in case the applicant vacates the premises in which he has constructed a *jhuggi* or help the Railways in evicting any 3rd party, the feasibility of releasing the gratuity shall be considered by the respondents. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 25, 2021
/sunil/rk/ankit/sd