

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1275 of 2002.

Allahabad this the 16th day of September 2004.

Hon'ble Mr. D.R. Tiwari, Member-A.

Brij Behari Prasad
S/o late Ram Dayal Shau
R/o Block No.329, I.J. Loco Colony,
Mughalsarai, Chandauli, U.P.

.....Applicant.

(By Advocate : Sri S.K. Mishra)

Versus.

1. The Union of India
through General Manager
Eastern Railway,
Calcutta-1.
2. The Divisional Railway Manager,
Eastern Railway, Mughalsarai,
Chandauli.
3. The Senior Divisional Personal Officer,
Eastern Railway, Mughalsarai,
Chandauli, U.P.

.....Respondents.

(By Advocate : Sri K.P. Singh)

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By this O.A. filed under section 19 of Administrative
Tribunal Act 1985, the applicant has prayed for following
relief(s) :

- "(a) To set aside the order dated 24.03.2002 (served by letter dated 24.04.02) Annexure No.A-1 with compilation No.1 and further direct the respondents to implement the judgment of Hon'ble Supreme Court passed in Gorakhpur University and others Vs. Dr. S.P. Nagendra and others in toto in favour of applicant.
- (b) To issue a direction to respondents to treat the allotment of quarter in question (Q.No.329 I.J. Loco Colony/ER/MGS) in favour of Sanjay Kumar Gupta son of applicant from 1992-93 when he was given compassionate appointment on the place of his father and recover normal rent from applicant.

(c) To issue mandamus directing the respondents to refund the D.C.R.G Rs.28,380 of applicant with interest of 18% from 17.04.1992.

(d) To direct the respondent to pay 18% interest from 17.04.92 for commutation value of Rs.34,523/- which has been paid after 80 months on 1.12.98 to applicant.

(e) To issue a mandamus directing the respondents to pay and provide the all balancing retirement benefits of the applicant as leave encashment, P.T. Pass and medical benefits."

2. Filtering out the unnecessary details, the factual matrix necessary to adjudicate the issues involve are that the applicant, at the relevant time, was working as Fitter Grade 1 of Loco Foreman. He was declared medically unfit for all categories and thereafter he was discharged from Railway Service on 17.04.1992. The applicant was allotted Railway Quarter No.329 I.J. ('L' type quarter) in Loco Colony, Northern Railway, Mughalsarai in 1985 and he lived there till his retirement on 17.04.1992 on medical ground.

3. His elder son named Akhilesh Kumar was also working as a Railway employee as Khalasi under Chief Controller, T.R.S/E. Railway, Mughalsarai since 22.03.1990. He applied for co-allotment of the above said quarter in his favour with his father. His representations dated 11.07.1991, 08.12.1992 and 09.10.1995 evoked, no response from the respondents. He was informed orally that L Type of quarter equivalent to Type II quarter and he was not entitled for that. However, it has been alleged that respondents had adopted pick and choose policy in allotment of quarters and quarters No.328-K.L. Loco Colony, 420 W.K. Loco Colony, have been allotted to such persons who are not entitled.

4. The applicant has submitted that his second son named Sanjay Kumar Gupta who was appointed as Assistant Booking Clerk on 16.11.1992 on compassionate ground, also

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made application for allotment of the said quarter No.329 I.J. Loco Colony, Mughalsarai in his favour just after his appointment and after completion of his training on 04.03.1994 (Annexure No.A VI). He was entitled for accommodation according to para 4 of the Master Circular which is given as under :

"Requests from eligible dependents/specified relations of retired Railway employees and of deceased Railway employees who are appointed on Compensationate grounds, may be considered by the Competent Authority only in cases where the compensationate appointments have been made within the prescribed period of 12 months".

It may be noticed that second son applied within one year and he is covered under the Rules mentioned above. It has also been mentioned that he was entitled for out of turn allotment. He has been sharing accommodation with his father and has not claimed H.R.A.

5. After a lapse of more than three years, his second son was allotted the aforesaid quarter on 03.07.1996 (Annexure A-VIII). The applicant has submitted that according to para 4 sub para II in note VI, the date of regularisation should be from the date of cancellation in case the eligible dependent is already in Railway service and he is entitled for regularisation and not from the date of issue of the order. This has all along been followed but in spite of the above clear provisions of the Rules, the applicant has been served with a notice dated 03.09.96 and 19.11.1996 for depositing Rs.18,500/- after deducting Rs.28,380/- from the D.C.R.G. as damage rent (Annexure A-IX and Annexure A-X). The applicant immediately on receipt of the letters dated 03.09.1996 and 19.11.1996 moved representation dated 03.01.1997 to respondent No.2 and another representation dated 23.08.1997 to respondent No.1. However, nothing was heard. Aggrieved by this, the applicant filed original application No.1137 of 1997.

6. After filing of the aforesaid O.A. before this Tribunal, respondents have paid only Rs.34,523/- as commutation value of pension on 01.12.1998 to the applicant after 6 years and 8 months of his retirement without any interest. He has not been paid his D.C.R.G. of Rs.28,380/- and he has also not been provided any facilities of the other pensionary benefits, like medical and Railway passes etc. Applicant has made many representations and the latest dated 31.08.1999 is at Annexure No.XVIII.

7. This Tribunal disposed of the O.A. No.1137 of 1997 and the operative portion of the judgment is as under:

"The OA is accordingly disposed of finally with the direction to the respondent No.2 to consider the representation of the applicant and pass a reasoned order within a period of three months from the date of receipt of a copy of this order. The D.R.M may decide the representations himself or my depute any competent officer to decide the same. The cases of the Hon'ble Supreme Court and this Tribunal mentioned above shall also be taken into account. To avoid delay it shall be open to the applicant to file a fresh copy of the application together with a copies of the judgments cited before this Tribunal. For a period of three months or till the representation is decided, whichever is earlier, recovery shall not be effected. There shall be no order as to costs".

8. After receiving the copy of the order dated 15.02.02, the applicant made a detailed representation dated 25.03.2002. This representation has been decided by the respondents by an order dated 24.03.2002 which is at Annexure No.A-I with compilation No.1.

9. The applicant has challenged the impugned order on various grounds which are mentioned in Sub Paras (I) to (X) of para 5 of the O.A. It has been contended that the impugned order is patently illegal and contrary to law. It has also been submitted that the respondents have failed to apply its mind and has not taken into consideration judgment of Ram Lal Mehta Vs. Union of India and Ors. and Vijay Kishore Vs. Union of India and another.

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10. It has been pleaded that the allotment of the quarter to his second son is contrary to para 5 of Master Manual on Railway employees, as the quarters should have been allotted to him in 1992 when he was given appointment but respondent No.2 deliberately allotted to above said quarter on 03.07.1996. The respondents has challenged the recovery cannot be made from pension as given in Rule 2534 of I.R.E.M. Volume-II.

11. Respondents, on the other hand, have opposed the contention of the applicant and has stated that the Railway Quarter No.329 L.J. type 2 Loco Colony at Mughalsarai was allotted in favour of the applicant during his service period. After his retirement on 17.04.1992 he did not vacate the quarter in question and retain it upto 02.07.1996 unauthorisedly. It has been submitted that on the expiry of the permissible period the applicant was advised to hand-over the said quarter by letter dated 16.04.2002 and he was also informed that failure to do this would result in liability to pay the damage rate of rent. However, the applicant did not follow the instructions and retain that quarter. The said quarter was allotted in favour of his son on 03.07.1996 and then D.C.R.G. was calculated and found that Rs.46,880/- for the damage rate of rent and other dues was due on the applicant, Rs.28,380/- as D.C.R.G. to be paid to the applicant after adjustment of damage rent from his D.C.R.G. Rs.18,500/- was to be recovered from him and accordingly the applicant was asked to deposit Rs.18,500/- to administration. They have further submitted that as per the circular of Railway Board dated 15.01.1990, applicant can retain Railway quarter after his retirement for a period of four months on payment of normal rent. On request by the employees on educational or sickness ground, the period of retention of Railway accommodation

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may be extended for a further period of 4 months on payment of double rent. They have further submitted that his elder son was a class 4 staff and he was not entitled to have allotment of type II quarter in his favour, hence his appeal was regretted by the administration as per extant Rules. They have also argued that the allotment of quarter to his second son who was a Booking Clerk at Dehri-on-Sone (in short D.C.S), a place 80 Km. from Mughalsarai could not be considered as per extant Rules.

12. I have heard counsel for the parties at length and carefully considered the rival contentions and perused the records.

13. During the course of argument, Sri S.K. Mishra learned counsel for the applicant relied on the following judgements :

- (i) Union of India & Ors. Vs. Madan Mohan Prasad, 2003 (1) A.T.J 246 (S.C.)
- (ii) Som Dutt Vs. Union of India and Ors. 2003 (2) A.T.J. 654 (C.A.T. Principal Bench).
- (iii) Gyan Prakash Sharma Vs. Govt. of NCT of Delhi & Ors. (C.A.T. Principal Bench, New Delhi) decided on 15.05.2001.
- (iv) Smt. Prabhawati Devi Vs. Union of India and Another decided on 11.08.2003 by Allahabad Bench.
- (v) Ramlal Mehta Vs. Union of India, 2001 (3) A.T.J. 371.
- (vi) Gorakhpur University & Ors. Vs. Dr. Shitla Prasad Nagendra & Ors. 2001 (3) A.T.J. 545 (S.C)

Whereas the learned counsel for the respondents relied on Full Bench of this Tribunal in the case of Ram Pujan Vs. Union of India and Ors.

14. The most important point which merit adjudication is regarding withholding D.C.R.G. after the retirement of the Railway employee in case he does not vacate the Railway Quarter. Hon'ble Supreme Court in the case of

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Madan Mohan (Supra) has held as under:

"It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is 'admitted' and 'obvious' dues. The payment resulting in penal damages is neither 'admitted' nor 'obvious' dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either 'admitted' or 'obvious'.

Perusal of above judgment is clearly shows that the respondents could not have withheld/adjusted the D.C.R.G. of the applicant on the ground that he was still in occupation of the Government Quarter. I am bound by the judgement given by the Hon'ble Supreme Court under Article 141 of the Constitution of India. Accordingly, following the same I hold that respondents could not have adjusted the D.C.R.G. of the applicant on that ground. Accordingly, respondents are directed to pay the amount of D.C.R.G. within a period of three months from the date of receipt of a copy of this order.

15. The next important point which falls for consideration is the allotment of the said quarter to his second son Sanjay Kumar Gupta who was entitled for the same and he was subsequently allotted the Quarter on 03.07.1996. The contention of the applicant has forced in what he says that his son was appointed on compassionate ground on 16.11.1992 and he was covered under para 4 of the Master Circular mentioned above (supra). It is difficult to understand as to why the respondents did not allot the quarter in question in the year 1992. The only argument given by the respondents in their counter affidavit is that he was working at D.O.S. which is 80 Km. away from Mughalsarai is not ~~convenient~~^{Convincing}. The applicant in their rejoinder affidavit have stated that D.O.S. comes under the Mughalsarai Division and he was not ~~entitled~~^{& allotted} any quarter at

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D.O.S. and the applicant's son all along ~~commuted~~ from D.O.S. to Mughalsarai daily. Respondents have not been able to demonstrate that he was allotted a quarter at D.O.S. and they have not been able to negate the contention of the applicant that he was coming and going from Mughalsarai ~~only~~ ^{daily}. The ground that he could not be allotted a quarter because his duty was at the distance of 80 Km is very specious one and is not acceptable.

16. The argument of the respondents while rejecting the representation of the applicant by a reasoned and speaking order that there was a distinction between the case in hand and the case of Gorakhpur University is not tenable as every case is decided on its own fact and facts in the Gorakhpur University case ~~where~~ ⁱⁿ no doubt different but the ratio of the case should have been taken into account. More-ever they have not taken into account the case of Ramlal Mehta (Supra) and Vijay Kishore (Supra) while deciding the representation of the applicant. In view of these facts, the O.A. is bound to succeed.

17. The O.A. is allowed and impugned order dated 24.03.2002 (Annexure No. A-1) is quashed. Respondents are directed as follows:

"(i) Regularise the quarter in question in the name of his second son ~~student~~ from the date he has applied for quarter after completing his training.

(ii) Refund the D.C.R.C. amount already adjusted against the damage rent.

(iii) pay the interest to the applicant at the rate of 9% per annum for commutation value of Rs.34,523 which has been paid to him on 1.12.98.

(iv) Pay other retiral benefits in accordance with Rules.

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Respondents are further directed to process the case within a period of three months from the date of receipt of copy of this order.

No costs.

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Member-A.

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