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RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 6 day of 11 2008.

Original Application No. 648 of 2006

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

Ajay Kumar Sharma, S/o late V.N. Sharma, R/o 140,
Roahan Bagh, Allahabad.

... Applicant

By Adv: Sri S.S. Sharma

V E R S U S

1. Union of India through The General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The Divisional Railway Manger, North Central Railway, DRM Office, Allahabad.
3. The Senior Divisional Electrical Engineer/RSO, North Central Railway, DRM Office, Allahabad.
4. The Senior Section Engineer/OHE Electrical Department, North Central Railway, Subedarganj, Allahabad.

... Respondents

By Adv: Sri P.N. Rai

O R D E R

By means of this OA the applicant has challenged and prayed for quashing the order dated 21.05.2006 and 04.06.2006 compelling the applicant to occupy Type I Railway Quarter No. 38-B, Colony No. 1, Subedarganj as allotted to him by the Senior Section Engineer/OHE, North Central Railway, Subedarganj, vide letter dated 02.05.2006, failing which, payment of HRA will be stopped and disciplinary action will be taken against him.

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2. The brief facts of the case are that the applicant was appointed as Khalasi in the grade of Rs. 196-232 on 23.10.1984, and was posted in Electrical Department of Allahabad Division at Kanpur under the Senior Divisional Electrical Engineer/RSO, Northern Railway, Kanpur. In 1991, the applicant was transferred from Kanpur to Allahabad on request due to his family circumstances as there was none to look after his old ailing parents residing at Allahabad. He was again transferred from Allahabad to Sirathu Railway Station. In 1996, he was transferred from Sirathu to Allahabad on mutual basis Transfer and since then he has been working under the Senior Section Engineer/OHE Subedarganj. The services of the applicant are highly satisfactory and there is nothing adverse against him on any account. There is no complaint against him for not attending Emergency Duty as and when called or regular duty as well. The mobile number of the applicant is also available with the office and whenever he was called, he presented himself on duty within the shortest time without any occasion for complaint against him on this account. The distance from the residence of the applicant to the office is hardly 04 Km and within 5 to 10 minutes the applicant can reach there. The applicant also submitted that, he alongwith his wife, two sons and a unmarried daughter alongwith his parents are residing in rented house No. 140, Roshan Bagh, Allahabad since

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1951. The aforesaid private house is centrally placed and very near to Allahabad Railway Station. The rented house has sufficient accommodation, consisting of three rooms and it is situated in a hygienic atmosphere, good locality of education and civilized persons and very safe for living family members alone in absence of applicant who has to perform shift duties. The elder son of the applicant is studying in MBA (second year) in Govindballabh Pant Institute at Jhunsi and his daughter is appearing in entrance examination for admission in Graduate Classes in Allahabad University (K.P. Degree Girls Collage, Allahabad and Allahabad Degree Collage, Allahabad) and his younger son is studying in 10th class in Agrasen Inter College, Lookerganj, Allahabad which is very near to his house. He also submitted that means of road transport are always easily available at a very cheaper rate for Jhunsi and other colleges. Due to all such facilities the education of his sons and daughter is continuing smoothly and progressing well. The applicant has also been performing his duties without any mental tension because the said house is situated in a very safe area with good helping neighbours. The applicant can rush his place of duty within a period of 5 to 10 minutes on being called at any time. There is also no complaint against the applicant for not reaching in time at the place of emergency duty as and when he was called for the same or for regular duty. The applicant has never applied

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for or made any request for allotment of Railway Quarter. On receipt of allotment order dated 02.05.2006 the applicant vide his letter dated 10.05.2006, requested the Senior Section Engineer/OHE, Subedarganj, Allahabad to cancel the allotment of the said Railway Quarter as he does not require the same.

In his letter dated 10.05.2005, the applicant mentioned that he had never applied for allotment of the Railway Quarter. The applicant has further stated that due to compelling circumstances it is not possible for him to occupy the said Railway Quarter. As, his children are studying, it would be wholly unsafe or difficult for them to go to their college from Subedarganj. He is a low paid employee and unable to bear extra expenditure on this account. According to the applicant it is not safe for his daughter to go to college alone from Subedarganj being very unsafe area. Learned counsel for the applicant invited my attention to the Board's letter No. E(P&A)11/HRA/15 dated 16.05.1988 (RBO No. 98/88), (Annexure A-8) to the OA) deciding that under such circumstances payment of HRA, cannot be stopped and employee should not be compelled to occupy Railway Quarter provided the Railway Quarter is not earmarked for such post. The Railway Board has clearly decided that the employee who has not applied for allotment of Railway Quarter should be paid HRA. It is also submitted by the applicant that the Railway Quarter allotted to him is Type I, a lowest category of Railway Quarter having

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hardly one or two rooms with very bad condition for want of maintenance and the same is not safe at all for his family members. In view of aforesaid circumstances the applicant is not in a position to occupy the said Railway Quarter under any circumstances. The applicant also placed reliance upon an identical decision rendered by this Tribunal in OA No. 1265/05 : *Mohd. Murtaza Vs. Union of India and others.*

3. In the reply filed by the respondents they have stated that the applicant belongs to essential category meant for the emergency and breakdown duties and day to day maintenance work of OHE. The role of the essential staff is to maintain/restore OHE in its best conditions to ensure safe running of the trains (Goods M/express and Passengers Trains) without causing any detention and disturbance to punctuality. The respondents have further submitted that it is also incorrect to say that Railway Quarter is not earmarked for him. In fact some fixed percentage of quarter based on the sanction strength of such staff who are utilized for maintenance of OHE as well as attending breakdown emergencies are earmarked on priority basis as per priority register meant for the purpose as per circular RBE No. 46/2000 (Annexure SCA-1). It is also submitted by the respondents that the Railway has never forced the applicant to occupy the Railway Quarter. The simple rule is that the

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essential/breakdown attending employees who give refusal to occupy the Railway quarter in writing are not entitled for HRA. As per Railway Board's letter No. RBE 46/2000 dated 16.03.2000, the employees whose nature of duties is of emergency type are required to take possession of the Railway Quarter allotted by the Railway Administration and if they do not occupy the Railway Quarter allotted to him they are liable to be taken up under DAR 1968. The respondents have further submitted that on account of refusal to occupy the Railway Quarter, only HRA has been stopped under Railways rules and nothing adverse has bee done against him. The respondents also submitted that during the night hours (22.00 hours - 0400 hours) even after blowing the hooter/siren, the applicant could not be present, since he has no railway quarter at a near by place and lives at Roshan Bagh, which is situated at a distance of 6-7 Kms. From where neither the hooter/siren can be heard nor an employee like the applicant can ensure his presence at the place of work. Respondents also mentioned that at the place of incident, maximum employees are required to ensure that traffic may be restored by reaching at the breakdown site at the earliest and for want of sufficient employees, the restoration work will automatically be delayed which is not in the interest of Railway and Nation as well as the Railways.

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4. In the written arguments filed by the respondents they have submitted that the applicant was not always available in emergency duty with a short notice. The applicant himself has admitted in his application dated 28.05.2006, that he received short notice to attend breakdown at 6.00 AM on 23.05.2006 to reach Allahabad Railway Station which is hardly 1 Km from his private residence and thus taken half an hour to reach Allahabad Railway Station. It is further submitted that the Railway Quarter of emergency staff is situated within one Km from the working Depot of the staff and during the emergency breakdown, the blowing of hooters is clearly heard by the staff colony, but the same cannot be heard from the applicant's private residence which is situated at a distance of 4 Kms. From the working depot.

5. I have heard Shri S.S. Sharma, learned counsel for the applicant and Shri P.N. Rai, learned counsel for the respondents. It is seen from the counter affidavit filed by the respondents that not occupying the Railway Quarters by the emergency/essential staff amounts to misconduct and the applicant is liable to be taken under DAR 1968, but in the case of the applicant only HRA has been stopped. In my considered view the HRA has been stopped by the respondents in a most arbitrary manner without considering the grievance of the applicant and without specifying any specific ground in the order disallowing the HRA. It

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is also seen from the record that the applicant is working as Helper Khalasi and the post of Helper Khalasi does not come within the category of essential staff and no Railway Quarter has been earmarked for him. I have considered this important aspect of the matter and found that there is not an iota of evidence to indicate that Helper Khalasi is an essential staff and Railway Quarter should be earmarked for them. Railway Board's letter No. 46/2000 (Annexure SCA 1 to the supplementary counter reply) does not apply in the case of the applicant. In my considered view the respondents have utterly failed to give any evidence supported by rule in this regard. There is nothing on record to show that any DAR proceedings were ever initiated against the applicant by the respondents for not taking Railway Quarter.

6. The case decided by this Tribunal in OA No. 1265/05 : *Mohd. Murtaza Vs. Union of India and others* relied upon by the applicant is squarely applicable to the facts of present case. Learned counsel for the applicant has also placed reliance on the letter dated 14.02.1996 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 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.

7. 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 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 and are not to be re-designated. The contention 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.

8. In view of the above the OA is allowed. Impugned orders dated 04.06.2006 (Annexure A-1 to the OA) and 02.05.2006 (Annexure A-2 to the OA) are quashed and set aside, the respondents are directed to make payment of House Rent Allowance since 1991 till date without interest. No cost.

/pc/

Anil Gaur
(A.K. Gaur)
Member (J)