

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO 937 OF 1996

Present : Hon'ble Mr. D.Purakayastha, Judicial Member

SMT. K. LALITA

VS

1. Union of India through General Manager,
S.E.Railway, Garden Reach, Calcutta-43
2. General Manager, S.E.Rly. GRC., Calcutta-43
3. Divisional Railway Manager,
Kharagpur
4. Sr. Security Commissioner, S.E.Rly.
Kharagpur (RPF)

..... Respondents

For the petitioner : Mr. B.C.Sinha, Counsel

For the respondents : Mrs. B.Roy, Counsel

Heard on : 29.5.97 : Order on : 29.5.97

O R D E R

Being aggrieved by and dissatisfied with the impugned order of outstanding recovery of railway dues from the DCRG of the applicant's deceased husband, the applicant has come up before this Tribunal with this application on the ground that the impugned order dt. 28.6.96 (Annexure-A10) is arbitrary, illegal and in violation of the principles of natural justice.

2. The case of the applicant in short is that her husband died on 31.8.91 while he was in service leaving behind the widow and 4 children. His son, K Madhusudan Rao, was subsequently got compassionate appointment in the same deptt. After the death of the husband of the applicant, she was allowed to stay in the quarter allotted to her husband during his life time, till 14.9.92. But she did not vacate the said quarter thereafter and she was treated as an unauthorised occupant of the said quarter w.e.f. 1.3.92 and eviction order was passed against her on 14.9.92 by the competent authority.

Being aggrieved by such eviction order dt. 14.9.92, the

29/5

petitioner and her said employed son, had approached this Tribunal for quashing of the eviction order and for allotment of the said quarter in favour of her son under the provisions of father and son rule. That application was numbered as OA 1331 of 1992 and was eventually disposed of by this Tribunal on 27.6.94 holding that the application was devoid of any merit and was, therefore, liable to be dismissed. While dismissing the said application, however, the Tribunal observed as below :

" However, during the course of hearing Mr. Sinha (ld. counsel for the petitioners therein) submitted that during the pending of the case, the applicant No. 2 has been transferred to Midnapore in the same capacity. He also produced before me an order to this effect and prays that his prayer for allotment of Kharagpur quarters may now be considered by the railway authorities. In view of such submission, respondents railway are directed to consider the prayer of applicant No. 2, who is to maintain his mother and sisters, for allotment of quarter out of turn, if the same is made within two months from the date of this order"

3. After disposal of that case by the order dt. 27.6.94, the said Kharagpur quarter was eventually allotted to the son of the present applicant by an order dt. 17.1.95 with effect from 1.7.94 as a special case (vide Annexure-A7). This was done with the approval of the DRM/Kharagpur as per directive of the Court order dt. 27.6.94 in OA 1331/92 of CAT, Calcutta Bench.

4. Thereafter, the respondents issued the impugned order of recovery at damage rate from the DCRG of the deceased husband of the applicant from 1.3.92 to 30.6.94. The applicant made a representation on 14.6.96 to the authorities i.e. Sr.

✓ 28/7

Security Commissioner, RPF, SE Rly. Kharagpur (Annexure-A8) to regularise the gap period on payment of normal rent and not penal rent at damage rate since the quarter was ultimately allotted to her son on out of turn basis as per direction of the Tribunal. That representation has not yet been disposed of.

5. The case is resisted by the respondents by filing a written reply denying the claim of the applicant and stating the fact that in the event of death of the husband of the applicant on 31.8.91, his son Shri K. Madhusudan Rao, was appointed as Prob. TC and posted at Jhargram on compassionate ground on completion of training period w.e.f. 17.12.92. Subsequently he was transferred and posted to Kharagpur on 16.6.94 in the same capacity. After the death of the railway employee, at the request of his widow i.e. the present applicant was allowed to retain the said railway quarter upto 29.2.92 but she did not vacated the same thereafter and retained the quarter beyond that date and as such her retention was considered as unauthorised one. Thereafter, eviction case was initiated and finally the Estate Officer, Kharagpur passed the eviction order dt. 14.9.92 against the present applicant. Therefore, the present applicant is liable to pay damage rent as per rules and as such the present application has no merit and should be rejected.

6. In view of the aforesaid submissions by parties, it is to be considered whether the applicant is entitled to get the benefit of regularisation of gap period on payment normal rent as urged by her in her representation dt. 14.6.96 referred to above. The admitted fact in this case is that the husband of the applicant died while he was ~~on~~ in service and on his death, the applicant was allowed to continue to stay in the quarter till upto 29.2.92. Thereafter, she did not vacate the quarter, and consequently, an eviction order was passed. Being

^ applied for allotment under the provision of Rule 4 & 5



aggrieved by the said eviction order, the applicant and her son had come up before this Tribunal and got the observation of this Tribunal as extracted hereinabove and on the basis of the said observation, the quarter was eventually allotted to the son of the applicant w.e.f. 1.7.94.

7. The learned counsel for the applicant, Mr. B.C.Sinha has submitted that on the basis of the representation of the applicant, the Deptt. can realise only normal rent from her for the gap period under the peculiar circumstance and thereby she would not be ~~supposed~~ ^{entitled} to pay damage rent since the quarter was allotted to her son on out of turn as per observation made by this Tribunal in the earlier case filed by the applicant and her son.

8. The argument of the learned counsel for the applicant has been resisted by the learned counsel for the respondents Mrs. B.Roy and she submits that if any compassion or grace is shown or given to the applicant, there would no control of the authorities over the proper allotment of quarters to senior employees who are waiting for a long time. Since the applicant did not vacate the quarter after expiry of the period on 29.2.92, she was an unauthorised occupant and thereby she is liable to pay damage rent as assessed by the competent authority under the rules and there should not be any concession in respect of realisation of damage rent when a person retains quarter unauthorisedly. Mrs. Roy refers to various decisions of the Tribunal viz.

- (i) 1996(34) ATC 434 (FB) [Ram Poojan -vs- UOI]
- (ii) 1997(1) SCSLJ 114 (UOI -vs- Ujagar Lal)
- (iii) 2997(35) ATC 208 (M.P.Kanal -vs- UOI).

Referring these judgements, Mrs. Roy submits that the application should be dismissed as being devoid of any merit.

9. The learned counsel for the applicant, Mr. B.C.Sinha has drawn my attention to the judgement of the Division Bench

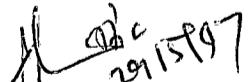
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of this Tribunal passed in a case OA 88/95 (Smt. Dali Das & Anr -vs- UOI) disposed of on 20.6.95 (unreported) (Annexure-A11). In that case similar question was decided by the Tribunal and benefit was given to the applicants therein and directions were given to the respondents to realise only normal rent instead of damage rent as proposed to be recovered by the deptt.

10. I have considered the submissions of both parties. I find that the applicant had made a representation to the authroities to regularise the gap period on payment of normal rent instead of damage rent vide annexure-A8 dt. 14.6.96. This representation admittedly has not yet been disposed of by the competent authority. I find that the Govt. has the competence to exercise jurisdiction for realisation of only normal rent by regularising such gap period if the circumstance so demands to meet the principles of natural justice.

11. In view of the above, I direct the respondents to dispose of representation of the applicant dt. 14.6.96 for regularisation of the gap period on payment of normal rent only. If there is no legal bar to such regularisation according to extant rules, I hope the respondents shall consider the said representation of the application in its proper perspective. The reasoned decision of the respondents shall be communicated to the applicant within 3 months from the date of receipt of a copy of this order.

12. The application is disposed of accordingly without any order as to costs.


(D. PURAKAYASTHA)

MEMBER (J)