

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 272/1996

Date of Order : 22.7.99

Vipin Kumar Sharma S/o Shri Ramesh Lal, aged about 29 years, R/o Quarter No. 117-B, Railway Colony, Hanuman-garh Junction, at present employed on the post of Guard under Station Superintendent Hanumangarh, Western Railway.

..Applicant.

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
3. The Divisional Mechanical Engineer (P), Northern Railway, Bikaner Division, Bikaner.

..Respondents.

Mr. J.K. Kaushik, counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH :

Applicant, Vipin Kumar Sharma, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 06.12.1995 (Annexure A/1), order dated 25.6.1996 (Annexure A/2) and for a direction to the respondents to refund the amount of damage rent recovered from him alongwith interest.

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The applicant has also prayed for a direction to the respondents to regularise the Railway Quarter No.117-B (type II) or to allot another suitable accommodation out of turn as per Railway Board's instructions.

2. Applicant's case is that his father Shri Ramesh Lal retired from respondents' service on medical grounds with effect from 25.5.1989. At the time of retirement, Railway accommodation/quarter No. 117-B was in his occupation and the applicant was also residing with him. Application for compassionate appointment to the applicant was submitted to the authorities on 13.6.1989 and the applicant was appointed as Guard on 27.7.1991. In the meantime, the applicant continued to occupy the Railway accommodation allotted to his father, Shri Ramesh Lal. The father of the applicant was given permission to retain the said Government accommodation for a period of two months from 25.5.1989 to 24.7.1989 on normal rent vide respondent's letter dated 03.7.1989. It was also intimated to the applicant's father that the allotment of the above quarter and its tenancy in his name are cancelled from 25.7.1989 and he was also directed to vacate the aforesaid quarter by 24.7.1989. The said quarter has, however, not been vacated by the applicant's father or the applicant. The respondents vide their letter dated 06.12.1995 (Annexure A/1) have assessed the damage rent of the said quarter at Rs. 77,770/- for the period from 25.5.1989 to 31.10.1995 and had ordered recovery of the above mentioned amount at the rate of Rs. 1010/- per month from the applicant. The respondents vide their letter dated 25.6.1996 have advised the applicant that the said quarter has not been regularised in his name. Feeling aggrieved, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed their reply.

4. The contention of the applicant is that as per the directions of Hon'ble the Supreme Court in regard

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to compassionate appointments to the wards of Railway servants, the respondents should have given the compassionate appointment to the applicant without any delay. But the respondents have taken more than two years to give him compassionate appointment. It is further argued that had the applicant been given the compassionate appointment within 12 months of the date of retirement of his father, the applicant would have been entitled for out of turn allotment of Railway quarter. The contention of the applicant is since the compassionate appointment has been delayed by the respondents, he should not be made liable to pay damage rent of the quarter occupied by him. On the other hand, the respondents while contesting the application have asserted that allotment of residential accommodation and appointment on compassionate ground are two different things and are independent of each other. It is the contention of the respondents that even if the compassionate appointment is given within 12 months, retention of the Government accommodation beyond the permitted period would attract damage rent. In this case, the father of the applicant had sought permission to retain the said quarter only for two months and while giving the permission for retention of the said quarter for two months it was clearly mentioned that the allotment of the said quarter in the name of applicant's father stood cancelled with effect from 24.7.1989 and as such the applicant's father was liable to pay damage rent for the retention of the quarter beyond 24.7.1989. The relevant rule in this regard is reproduced below :-

" R.B.E. No. 157/89

Subject : Regularisation/out of turn allotment of Railway quarter in the name of eligible dependent of a Railway servant who retires or dies while in service - Rental liability for retention of Railway Quarter.

No.E(G) 86-RN/4-14, dated 23.6.1989

The matter has been reviewed and it has been decided that while considering cases for regularisation/out of turn allotment of Railway quarters in the name of eligible dependent of a Railway servant who retires or dies while in service, the rental liability for

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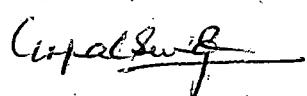


retention of Railway quarters may be fixed as under:-

- (a) For first 6 months from the date of death, normal rent at flat rate.
- (b) From 7th month onwards damage rate as prescribed in Board's letter No. F(X)I-86/II/9, dated 01.4.1989, in addition to any other action for eviction that the Administration may take.
- (c) In case compassionate appointment is made within 12 months of the date of death of the employee, the appointee is eligible for out of turn consideration for accommodation. As such the same accommodation could be regularised if the appointee is eligible for the same or higher type. Otherwise he/she will be allotted the type for which he/she is eligible on out of turn basis as and when a quarter is available. In this case, the retention beyond 6 months by the family should be treated as unauthorised and damage rate should be charged.
- (d) In the case of retirement also the damage rate should be charged for retention beyond the permissible period.

2. Necessary steps may please be taken to bring the above position to the notice of all concerned on your Railway/Organisation."

5. It would be clear from the above that damage rent for retention of Government accommodation beyond the permitted period is to be levied and recovered from the occupant. It is also seen from the records that the applicant for the first time submitted a letter on 09.3.1994 stating therein that he is living in quarter No. 117-B allotted to his father Shri Ramesh Lal since the date of his appointment i.e. 27.7.1991. In this letter, he has also requested to deduct HRA from his salary. It is also seen from the records that though the applicant was living in the said quarter allotted to his father right from the beginning, but he continued to draw HRA from 27.7.1991, the date of his appointment in Railway service. Though the applicant was appointed on 27.7.1991, he did not submit a formal request for allotment of Government accommodation or for regularisation the allotment of the quarter allotted to his father, in his name immediately thereafter. A perusal of records reveal that first reference in this regard was made by applicant's father on 28.1.1993. The applicant thus took it for granted that the said quarter would be regularised in his name.



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6. In the light of above discussion, we come to the conclusion that the applicant and his father have been unauthorisedly occupying the said quarter from 25.7.1989, the date from which the allotment of the said quarter in the name of his father stood cancelled and are liable to pay rent as per rules.

7. The question as to who should pay the damage rent of the said quarter is also to be decided in this case. As has been discussed earlier the allotment of the said quarter was cancelled with effect from 25.7.1989 and the applicant was appointed on compassionate ground with effect from 27.7.1991. In our opinion, damage rent for the period from 25.7.1989 to 26.7.1991 should be recovered from the father of the applicant. It is seen from the records that the DCRG of the applicant's father has been withheld. The damage rent for the above mentioned period should rightly be recovered from the DCRG of the applicant's father. The damage rent for the period from 27.7.1991 till the quarter is vacated by the applicant or till the said quarter is regularised in his name should be recovered from the applicant. The respondents have already assessed the damage rent and ordered recovery vide Annexure A/1. The operation of this order was stayed by this Tribunal vide order dated 20.9.1996.

8. In the light of above discussion, we do not find any justification to intervene in the implementation of respondents letter dated 06.12.1995 at Annexure A/1 and letter dated 25.6.1996 at Annexure A/2. The O.A. is accordingly dismissed with no order as to costs. The stay granted earlier stands vacated.

Gopal Singh

(GOPAL SINGH)

MEMBER (A)

A.K. Misra

(A.K. MISRA)

MEMBER (J)

1/ Copy
3/27/88
S.C.G.

Copy of order is also brespoendents
Sent to Counsel for Respondents
Shri V.D. Vyas on 30-7-88
Vehicle no. 236. dt 30.7.88

Copy Received by Sh. V.D. Vyas Guard -
for Respondents. AD placed w/ P.R.

1/20
6/8/88

Part II and III destroyed
in my presence on 12.7.88
under the supervision of
Section Officer () as per
order dated 6.5.88

Section Officer ()