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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J _ O _ D _ H _ P _ U _ R .


Date of Order : 2.3.2001

O.A. No. 122/1999

Hasan Abbas S/O Late Sh Tahajib Hussain aged about 34 years,
R/O Block No.19, Qtr. No.F TPT Railway Colony, Suratgarh,
at present employed on the post of Trains Clerk in the office
of Station Superintendent Suratgarh, District Sriganganagar,
Northern Railway.

... Applicant

Vs

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1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
 2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
 3. Senior Section Engineer (Erstwhile known as Coaching Depot Officer), Carriage and Wagon Depot, Northern Railway, Suratgarh.

... .. Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. R.K. Soni, Counsel for the Respondents.


CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

O _ R _ D _ E _ R

(PER HON'BLE MR. A.P. NAGRATH)



The applicant, Hasan Abbas, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the order of recovery of damage rent and for a direction to the respondents to refund the amount of rent recovered from him alongwith interest.

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2. Applicant's father Late Shri Tahajib Hussain was in Railway service, and was in occupation of Railway Quarter No. B-21-G, at Suratgarh. The applicant was staying with his father in that quarter. His father expired on 24.12.1991. The applicant applied for appointment on compassionate grounds and he came to be appointed as Train Clerk vide respondents' letter dated 03.11.1993 (Annexure A/3), after completing training course at Chandosi, starting from 17.5.'93. During this period he continued to occupy the quarter B-21-G, which was allotted in the name of his Late father. It appears that the respondents vide order dated 27.4.'95, declared the applicant in unauthorised occupation of the said quarter. It is stated by the applicant that earlier he had been asked by the department to submit certain papers for regularising the allotment of the said quarter in his favour and ^{he} duly complied with that requirement. The applicant submits that the respondents' action treating him as in unauthorised possession of the said quarter and directing him to deposit an amount of Rs.34,275/- was arbitrary, ex facie illegal, discriminatory and deserves to be quashed. The respondents have started recovery an amount of Rs.705/- per month from his salary with effect from February, 96 onwards. His contention is that the respondents have no right to make such recovery as no pre-decisional hearing was given to him, and also that the respondents cannot claim recovery of damage rent without taking recourse to the specific legal mode provided under Section 7 and 14 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The applicant contends that once a particular mode of doing a thing has been prescribed, that thing must be done according to that prescribed mode only and other modes of doing it are necessarily forbidden. The applicant vacated the said quarter on 13.5.96.

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3. The respondents in their written reply have taken preliminary objections to the maintainability of the O.A., on the ground that the applicant had hidden material ^{fact} that he was given due notice vide letter dated 14.8.95 for vacating the quarter and letter dated 22.2.'96 levying damage rent thereon. The other ground taken by the respondents is that the application is barred by limitation because the applicant has filed this O.A., on 26.4.'99 while the notice for damage rent was issued on 22.2.'96.

4. Learned Counsel for the applicant has submitted that the recovery from the salary of the applicant every month is recurring cause of action and till this continues, limitation does not come in the way. We agree with the argument put forth by the learned Counsel for the applicant that every month ~~xxxx~~ when applicant does not receive his full salary, cause of action continues and thus we hold that this application is not barred by limitation.

5. The respondents have opposed the pleadings of the learned Counsel for the applicant on the ground that the applicant had not even applied for allotment/regularisation of the said quarter in his favour. They contend that the applicant should have vacated the accommodation before 24.1.92 and after that date his continued possession was correctly declared as unauthorised occupation under the rules. It has been stated that the Pool holder of this accommodation is Divisional Mechanical Engineer, and he is the competent authority under the rules to allot/cancel or recover damage rent against the quarter in his pool. Policy in this regard is contained in the Railway Board letter dated 15.1.'90. As per the respondents they are not required to take recourse to proceedings before the Estate Officer under Public Premises (Eviction of Unauthorised Occupant) Act, 1971, where specific departmental rules have been prescribed.

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6- We have heard the learned Counsel for the parties and perused the records.

7. We find in O.A. No. 272/1996-Vipin Kumar Sharma Vs Union of India & Ors. decided by this Bench of the Tribunal on 22.7.'99, ~~The controversy involved therein~~ was similar i.e., whether an appointee on compassionate ground if, appointed after one year of the date of death of his father (retirement in the case of Vipin Kumar Sharma), was ~~xxxxxxx~~ entitled to regularization of the quarter in his favour. The relevant rule, which was taken note of in Vipin Kumar's case is reproduced below :



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

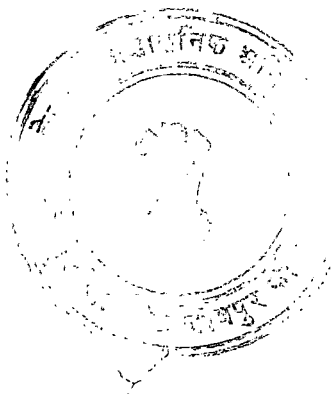
Subject : Regularisation/out of turn allotment of turn allotment of Railway quarter in the name of eligible dependent of a Railway servant who retires or dies while in service - Rental liability for retention of Railway quarter.

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 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 Rail way/Organisation."

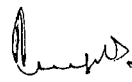



8. It was held in that case as under :

"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 Annex. A/1 and letter dated 25.6.1996 at Annexure A/2. The O.A. is accordingly dismissed with no order as to costs."

9. In the instant case also, the applicant was appointed on 03.11.1993 after completion of training which itself started on 17.3.'93. The applicant's father had died on 24.12.'9 and one hear period was over on 23.12.'92. Consequently, under the rules, the applicant could not claim for regularisation of the said quarter in his name, and damage rent became payable.

10 In the light of the above discussion, we do not find any merit in this case. We, therefore, dismiss this Original Application, but in the circumstances without costs.


(A.P. NAGRATH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

J

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[Signature]

Part II and IN destroyed
in my presence on 2-2-3-07
under the supervision of
Section officer () as per
order dated 19-1-19-2

[Signature]
Section officer (Records)