

In the Central Administrative Tribunal  
Calcutta Bench

OA No.1226 of 1997

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

Smt. Indrasan Devi

..... Applicant

- VS -

- 1) Union of India, service through General Manager, South Eastern Railway, Garden Reach, Calcutta.
- 2) General Manager, S.E. Rly., Garden Reach, Calcutta.
- 3) Chief Operation Manager, S.E. Rly., Garden Reach, Calcutta.
- 4) Chief Security Officer, R.P.F., S.E. Rly., Garden Reach, Calcutta.
- 5) D.R.M.(P), S.E. Rly., Kharagpur.
- 6) Chief Area Manager, S.E. Rly., Shalimar, Howrah.

..... Respondents.

For the Applicant : Mr. B.C. Sinha, Advocate

For the Respondents: Mr. P. Chatterjee, Advocate

Heard on : 10-5-1999

Date of Judgement : 10-5-99

ORDER

This is a second application filed by the applicant Smt. Indrasan Devi seeking relief by way of direction upon the respondents to pay the DCRG amount of her deceased husband after deduction normal rent of the quarters w.e.f. 7.7.1990 and to pay interest at the rate of Rs.18% on pension from 7.7.1990 till the date of payment is made. The applicant along with her son filed one application bearing No. 1490 of 1993 seeking relief by way of direction upon the respondents to quash and set aside the impugned order dated 20.9/23.11.93 of the Estate Officer and to allot a quarters in favour of her son who is

eligible for the said quarters. The said application was contested by the respondents. After hearing, the Tribunal passed the following directions upon the respondents :

"Application is allowed. The respondents are directed not to disturb the position of applicant No.1 and 2 and they are further directed to allot the quarters so long occupied by the applicants in the name of the applicant No.2 as per rules. The above action shall be taken by the respondents within a period of three months from the date of communication of the order".

2. After having this order from the Tribunal, respondents appointed the applicant on compassionate ground vide letter of appointment dated 6.9.91 and he joined on 9.12.91. Thereafter, he was allotted a quarters No.10/5, Unit No.3, North Colony, S.E. Railway, Garden Reach vide letter dated 26.6.96 w.e.f. 21.1.92. Grievance of the applicant, in short, is that the respondents withheld DCRG money amounting to Rs.49,500/- as unauthorised occupation of the quarters by the applicant w.e.f. 7.7.90 to 21.1.92. Feeling aggrieved by the decision of the authority the applicant approached this Tribunal.

3. Respondents filed a written statement denying the claim of the applicant stating inter-alia that applicant's husband expired on 7.7.90 and he was holding occupation of the railway quarters No.10/5, Unit -3 at Garden Reach and his name was struck off w.e.f. 7.7.90 and his son Shri Monoj Kumar Singh was appointed on 21.1.92 as Junior Trains Clerk on compassionate ground. The said railway quarters has already been allotted in favour of Shri M.K. Singh, Trains Clerk in compliance with the Court's direction dated 23.8.85 and the DCRG money has been paid to the legal heir on 11.3.98.

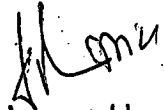
4. Id. Advocate Mr. Sinha appears on behalf of the applicant and submits that after passing of the judgement by the Tribunal in O.A. No.1490 of 1993 on 23.8.95 the applicant was entitled to retain the quarters until alternative quarters was allotted in favour of the son of the deceased employee as per direction of the Tribunal. Thereby,

department was not justified to realise the damage rent or penal rent for the occupation of the quarters from 7.7.90 to 21.1.92. He also has drawn my attention to the judgement dated 23.8.95 in OA.1490 of 93 (Annexure A-5 to the application) which indicated that respondents were authorised to realise normal rent not penal rent.

5. Id. Advocate Mr. Chatterjee on behalf of the respondents submits that there is a direction in para 6 of the judgement to allot the quarters in favour of the applicant No.2 as per rules. Thereby, the applicants were rightly treated as unauthorised occupants of the quarters from 7.7.90 to 21.1.92 till allotment of the new quarters.

6. I have considered the submissions of the Id. Advocates of both the parties and I find that in view of the judgement passed by the Hon'ble Apex Court in 1991 SC 469 (Smt. Phoolwati Devi - Vs- Union of India) the legal heir of the deceased employee who died in harness is entitled to retain the quarters till compassionate appointment is granted to the son of the relative. But in the instant case, the applicant was granted compassionate appointment within 15 months from the date of death of the deceased employee relying on the judgement of the Hon'ble Apex Court as referred to above and respondents were further directed not to disturb the position of the applicants till alternative quarters is allotted in favour of the applicant No.2 as per rules. In view of the aforesaid circumstances, I find that it is wholly unjustified on the part of the respondents to realise the damage rent or penal rent for the period from 7.7.90 to 21.1.92. In view of the aforesaid circumstances, I hold that entire action of the respondents regarding realisation of damage rent or penal rent is highly arbitrary, illegal and liable to be quashed. However, respondents are directed to realise the normal rent from the applicant. On perusal of the written statement filed by the applicant, I find that respondents did not make any averment categorically whether any penal rent has been realised from the DCRG money of the applicant. Id. Advocate Mr. Chatterjee also could not enlighten the fact regarding recovery of damage rent or penal rent as stated by the Id. Advocate Mr. Sinha. It is stated by the respondents

If the penal/damage rent was realised from the applicant, that should be refunded <sup>after deduction of Normal rent</sup> to the applicant with interest at the rate of Rs.12% from the date of recovery till payment is made within 3 months from the date receipt of this order. In view of the aforesaid circumstances, application is allowed awarding no cost.

  
( D. Purkayastha )  
Member (J)