

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 394 of 2003

Dated: This the 27th day of August, 2004

HON'BLE MR. S.C.CHAUBE, MEMBER-A

Hazeri, S/o Mulloo, retired Ex-Safei Zamadar under station Manager, Northern Railway, Lucknow aged about 66 years and resident of C/o Sewa, Railway Quarter No. L-56/z 7 Fatehali Railway Colony Charbagh, Lucknow...

...Applicant.

By Advocate: Shri A.C.Mishra

VERSUS

1. Union of India through General Manager, Northern Railway Divisional Office, Headquarter Office, New Delhi.
2. Divisional Railway Manager, Northern Railway Divisional Office Hazratganj, Lucknow.
3. Sr. Divisional Finance Manager, Northern Railway Divisional Office, Hazratganj, Lucknow.
4. Station Manager, Northern Railway, Charbagh Lucknow.

...Respondents

By Advocate: Shri M.K.Singh

O R D E R

By Hon'ble Mr. S.C.Chaube, Member(A)

Through the present O.A. the applicant has sought direction to the respondents to release his

entire gratuity within specified time to pay interest @ 18% per annum on the entire amount of gratuity w.e.f. 01.10.1993 to the date of payment. besides quashing the letter dated 04.12.1998 of respondent no. 2 i.e. Divisional Railway Manager, Northern Railway, Lucknow asking the applicant to pay a sum of Rs. 43,898/-.

2. Briefly, the facts, as per the applicant, are that he was proper allottee of Railway Quarter No. 1-56/27, Fatehali Railway Colony, Lucknow and was allowed sharing permission to keep his son namely Sewa Safaiwala under Station Manager letter dated 11.2.1993 (Annexure A-3). As per rules the son/ daughter of Railway servant if sharing accommodation with his father for six months before the retirement, the said railway quarter is to be allotted out of turn to his son/daughter. Accordingly, the quarter in which the applicant was living, was to be allotted to his son Sewa Safaiwala out of turn before the date of retirement of father on 30.9.1993. However, vide Annexure -A-4 dated 23.4.1996 the Station Superintendent, Lucknow allotted the Railway quarter no. L-56/27, Fatehali Railway Colony to the son of the applicant i.e. Sewa Safaiwala w.e.f. 23.4.1996. Earlier the applicant had informed the Station Superintendent about his retirement on 30.09.1993. Due to issuance of allotment made very late on 23.4.1996 after a gap of more than two and half years from the date of his retirement on 30.9.1993, his son, Sewa was wrongly treated as an unauthorised occupant of the said quarter and an order for recovery of penal rent of the said quarter @ Rs. 1,760/- per month was issued by I.O.W. (Estate) on 13.6.1996. At the same time, entire gratuity of the applicant was withheld without any show cause notice. The applicant's

son Sewa filed O.A.No. 454 of 1996 against the order of penal rent and the same was allowed on 09.08.1999. The Lucknow Bench of the Central Administrative Tribunal allowed the O.A. and issued the following direction:-

" Having regarding to the factual position discussed above and the observations made in the immediately preceding paragraph, we are inclined to allow the O.A. and hold that no recovery of damages @ Rs.1765/- per month be made from the pay of the applicant and incase any such recovery has already been made, the refund of the same shall be given to the applicant. The applicant would pay normal license fee at Rs.10.67/- per month for the quarter, in question. "

Despite several representations the D.C.R.G. of the applicant has not been paid to him. Due to errors and negligence committed by respondents the applicant so far has not been given the payment of D.C.R.G. with interest nor the allotment of the railway quarter no.L-56/z treated as effective from the date of retirement of the applicant i.e. 30.9.1993.

3. The respondents, on the other hand, have admitted that applicant while working as Safai Zamadar under Chief Health Inspector, Station-Lucknow was allotted Railway Quarter No. L-56/z, Fateh Ali Talab Railway Colony, Lucknow. Subsequently, the son of applicant, Shri Sewa working as Safaiwala submitted an application dated Nil through Senior Health Inspector/ Station-Lucknow, who forwarded the same vide noting dated 08.01.1993, which is recommended for further consideration. The respondents have further stated that neither Shri Sewa nor Senior Health Inspector nor applicant disclosed the fact that Shri Sewa was not a regular Safaiwala whereas he was working as CPC Safaiwala

and he is not a regular employee. The respondents have, however, admitted that the competent authority due to confusion allowed them to share the said accommodation vide order dated 11.02.1993 (Annexure No. C-2). In his application dated Nil forwarded by Senior Health Inspector on 18.5.1993 it was for the first time clearly mentioned that Shri Sewa, CPC Safaiwala in view of this the sharing of accommodation could not have been allowed in his favour. Accordingly the Station Manager, Lucknow keeping in view the instruction of the Chairman, Area Housing committee that no Railway accommodation shall be allowed to CPC scale employees took a decision on 16.9.1993 that the said accommodation cannot be allowed in favour of Shri Sewa/CPC Safaiwala. In supersession of the earlier permission after the date of retirement of applicant allotted the said quarter in favour of Shri Mobin Hussain, Waiter Khallasi on the basis of his position in the priority list. Accordingly station manager issued an allotment order dated 29.9.1993 (Annexure-C-4). Respondents have further submitted that the permission for sharing accommodation can only be allowed in favour of a regular railway employee. Since son of the applicant was not a regular employee, therefore, permission for sharing accommodation could not have been granted in his favour. They have, however, also admitted that permission granted earlier vide order dated 11.2.1993 for sharing accommodation was void ab-initio due to misrepresentation of the applicant as well as his son, since both of them concealed the fact that his son was not a regular employee. The respondents have further cited the judgment of ~~the~~ ^{of} ~~Supreme Court~~ in the case of Wazir Chand Vs. U.O.I. & Ors. C.A.T. Full Bench, Principal Bench, Vol. II (CAT) 287 upholding validity/adjustment of dues from pensionary benefit. They have further pleaded that the

petition filed by the applicant does not meet the requirement of Section 21 of the Administrative Tribunals Act, 1985. Accordingly, the application is liable to be dismissed on this very ground. The representations submitted by the applicant as well as by his son, according to the respondents, would ^{not} ~~not~~ ^{not} establish that they never vacated the quarter even after retirement of the applicant on 30.9.1993.

4. In his Rejoinder, the applicant has merely reiterated his submissions in the O.A. The applicant has also cited the case of ~~of~~ Ved Prakash Vs. U.O.I. & Ors. (S.L.J 1992 (1) CAT 460 and Savita Samvedi (M.S.) and another Vs. Union of India & Others (C.S.J. (2) 1992 page 188).

5. I have heard the counsel for the parties and perused the records.

6. There is no dispute that the Railway quarter no. L-562 ~~2~~ ² ~~Railway Colony~~, Fateh Ali Railway Colony, Charbagh, Lucknow, was allotted to the applicant. Further, prior to six months of the retirement of the applicant, his son namely Sewa, who was C.P.C. Safaiwala, submitted an application for sharing the aforesaid Railway quarter occupied by his father. It is also not disputed that the request of the son of the applicant for sharing the accommodation with his father was allowed vide Station Superintendent's order dated 11.2.1993 effective from 3.2.1993.

7. My attention was also invited to the decision of Division Bench of this Tribunal in O.A. no. 454 of 1996 against the order of recovery of penal rent from Sewa, son of the present applicant, Hazari. The essential facts of the present O.A. have already been adjudicated upon by Division Bench of this Tribunal as would be amply clear from the following:

Soh...

----- There is no dispute that the railway quarter no. L-56/z-7 at Fateh Ali Colony, Charbagh, Lucknow was allotted to the applicant's father and further that six months prior to retirement of the applicant's father the applicant made an application for sharing of the said quarter. The sharing, so requested by the applicant, was allowed by order dated 11.2.1993 w.e.f. 3.2.1993. The order allowing sharing of the accommodation states that the applicant's father will retire on superannuation on 30.9.1993. It is not disputed by the respondents that the quarter, in question, was a type I accommodation and that the applicant was also entitled to allotment of a type I accommodation. The rules in this regard provides that on retirement/death of a railway servant, his quarter may be allotted to his surviving son/daughter/husband/father out of turn, provided the said relative is eligible for railway accommodation and had been sharing the accommodation with the retiring/deceased railway servant for atleast six months prior to the date of retirement or death. Further the rules provide that the same quarter may be regularised in the name of the relative, if he is eligible for a residence of that type or a higher side. It is not the case of the respondents that the applicant was not entitled to a Type I accommodation. The fact that the applicant was entitled to the allotment of a quarter, in question, is also corroborated by the fact that ultimately on 23.4.1996 the same ~~was~~ accommodation was allotted to the applicant. It is also not disputed by the respondent-s that the applicant was not allowed any HRA after he was allowed to share the quarter, in question, with his father. The respondents also do not dispute that the representation of the applicant dated 15.10.1993 requesting for immediate allotment of the quarter, in question, in his favour was not disposed of and no allotment was made in favour of the applicant till 23.4.1996. The contention of the applicant that he did not hand over the vacant possession of the accommodation on the retirement of his father, because in the first place he had applied for allotment of the said quarter in his name, being entitled to it, is also not in dispute. Further, it is also not disputed that the said accommodation had not been allotted to any other railway employee. The mere fact that the same quarter was allotted to the applicant on 23.4.1996 instead of 1.10.1993 i.e. immediately after his father's retirement, clearly shows that the delay in allotment of the quarter, in question, was attributable entirely to the respondents."

8. Taking into consideration the peculiar nature of the facts and circumstances of the case, the O.A. is allowed. The respondent nos. 2,3 and 4 are directed to release the withheld amount of DCRG in favour of the applicant within a period of three months from the date of communication of this order. No order as to costs.

S. Khan
MEMBER (A)