

This the 8th day of April, 2011.

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Hari Nath Prasad Pandey aged about 63 years son of late Sri G.S. Pandey r/o Plot No. 4, Saroj Vihar, Mulayam Nagar, Ismailganj, Lucknow..

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India , through

1. The General Manager, Northern railway Baroda House, New Delhi.
2. The Chief Works Manager, Lock Workshop, Charbagh, Lucknow.

Respondents

By Advocate: Sri B.B.Tripathi for Sri M.K.Singh

ORDER (Dictated in Open Court)

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

a) to quash the order dated 6.5.2008 and rejection order dated 25.2.2009 with all consequential benefits.

b) To refund the deducted amount as indicted in the impugned orders and not to adjust the same from the gratuity along with interest @ 12% p.a. on delayed payment till the date of actual payment from the date of retirement.

2. The applicant's case is that while in service he was allotted a Railway accommodation No.L/9-B Charbagh, Lucknow on 23.2.1985. He retired from service on 31.10.2006 from the post of Sr. Section Engineer , Loco Workshop. Earlier, he was sanctioned an House Building Advance of Rs. 2,51,000/- for construction of house but the construction of house was not completed at the time of his retirement. He sought permission for retention of house for four months on 27.10.2006 and then on 6.2.2007 which was allowed on 26.3.2007 (page 18 of the OA.). Thereafter, it is said that house was completed and he got it insured. The insurance certificate has been brought on record. An electrostat copy of electricity bill dated 30.10.2007 has also been taken on record today itself, which is in the name of applicant showing his private house at Mulayamnagar, Lucknow. It is said that according to the terms and conditions of the order dated 26.3.2007, he was refrained from handing over the keys to the Inspector of Works, directly, failing which strict action would be taken against him. In view of this, when he

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intended to vacate the house in June, he sent a written information (Annexure 5 and A-7) saying that it may be allotted to some body else so that he may hand over the keys to him in view of the written instructions of the Railways. On 4.7.2007, it was allotted in favour of Sri R.C. Kureel but he did not take possession. Then it was allotted to Sri D.S. Mishra and then only the keys were handed-over by him on 2.5.2008.. But to the utter surprise of the applicant, he received a letter dated 6.5.2008 (Annexure A-1) from the Railways showing a penal rent 19107/- per month for alleged unauthorized occupation of the aforesaid quarter from 1st July, 2007 to 1.5.2008. Then he made a representation which was rejected on 25.2.2009 (Annexure A-1A).

3. Both the official respondents have filed Counter Affidavit wherein, permission for retention of the house in question upto 30.6.2007 has not been denied which was accorded by them vide their letter dated 26.3.2007. They have also not disowned letter dated 26.3.2007. In para 2 of this letter, the applicant was directed to handover the keys of the quarter to the person through I.O.W. in whose name this quarter is allotted. In para 3, it was specifically directed that he shall not handover the possession of this quarter directly to the Inspector of Works.

4. Any of the documents filed by the applicant have not been denied. A letter dated 2.6.6.2007 addressed to the Chief Works Manager by the applicant shows that he informed the Railway authorities that permission for retention of the house is going to expire on 30.6.2007 and he intends to shift in his new private house in mid June, 2007 and therefore, it may be allotted to some body so that key may be handed over. Though receiving of this letter has been denied but the seal of the railways appended on the left margin has been admitted. Then vide allotment letter dated 4.7.2007 (Annexure A-6) it was allotted in favour of Sri R.C. Kureel but it appears that he did not take possession of that house. Then on 1.5.2008, it was allotted in favour of Sri B.S. Mishra (Annexure A-7). Then the keys were handed over to him on 2.5.08 which has not been disputed by the respondents.

5. Still, the official respondents have maintained that since the applicant was in unauthorized occupation of that house from 1st July, 2007 to 1.5.2008, his gratuity amount was correctly adjusted.



6. In the Rejoinder Reply, the applicant has reiterated his pleas and also denied the averments made in the C.A.

7. I have heard the learned counsel for the parties at length and perused the material on record.

8. At the outset, it may be mentioned that the applicant was concededly permitted to retain quarter till June 2007 vide letter / order dated 26.3.2007 (page 18 of OA.) .As mentioned hereinabove., in view of para 2 and 3 , specific directions were given to the applicant to hand over the keys through Inspector of Works in favour of the person to whom this quarter is allotted and not to give its possession directly to the Inspector of Works. Keeping in view these conditions, the applicant informed the authorities vide his letter dated 2.6.2007 that he intends to vacate the quarter in mid of June, 2007 i.e. prior to the cut of date upto which he was permitted to retain the quarter. The seal of the railways appended on the margin has been admitted. Instead of denying its receiving specifically, it has been merely said that it was not forwarded to the Railway authorities. Apparently, it is a fragile pleading. Moreover, it has no significance also because concededly , this quarter was allotted to one Sri R.C. Kureel on 4.7.2007 i.e. in the very next month. It is also conceded that Sri Kureel did not take possession. There is a specific averment on behalf of the applicant that he shifted in his newly constructed private house which he had built up after taking House Building Advance. This averment is substantiated by insurance paper of the house hold and also the electrostat copy of a electricity bill mentioned herein before, which is of the month of October, 2007. Therefore, although the applicant had shifted to his private house but keys remained with him having regard to the written and specific instructions of the Railway itself to handover the key in favour of whom the quarter is allotted. When Sri Kureel did not take possession , then it was allotted to Sri D.S. Mishra on 1.5.2008. There is no dispute on this fact also. Immediately, thereafter, the applicant handed over the keys on 2.5.2008..

9. From the above, it becomes crystal clear that the applicant had already shifted in his newly constructed private house before expiry of his extended period. But of-course, the keys remained with him till it was handed over to Sri

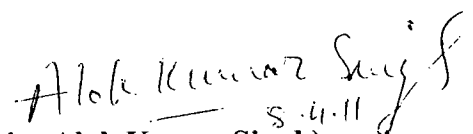
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D.S. Mishra, in whose favour the quarter was allotted on 1.5.2008. But the applicant cannot be held responsible for the alleged unauthorized possession of the quarter in question for the aforesaid period only because he retained the keys with him. He had no other option but to retain the keys in view of the above instructions contained in the aforesaid letter asking him not to hand over the key/possession directly to the Inspector of Works. Not only that, he was further directed to hand over the keys to the person to whom it was allotted and accordingly he complied with those directions. Therefore, the railways authorities were at fault to have adjusted his gratuity amount on account of his alleged panel rent to the tune of Rs. 19107/- per month in respect of the aforesaid period. Therefore, the advice dated 2.7.2008 issued by the respondents is without any basis.

10. The applicant then moved a representation dated 29.1.2009 which was rejected vide order dated 25.2.2009 (Annexure A-1A). On the above analogy, this order/ letter is liable to be quashed.

11. Learned counsel for applicant has been fair enough to concede that the amount of gratuity is not probably payable at present on account of some criminal case pending against him and therefore, he does not want to press relief contained in sub para (b) in respect of interest @ 12% on the delayed payment of gratuity at this stage.

12. In view of the above, O.A. is partly allowed and order dated 6.5.2008 and 25.2.2009 are quashed. No order as to costs.


(Justice Alok Kumar Singh)
Member (J)

HLS/-