

**Central Administrative Tribunal , Lucknow Bench,
Lucknow**

O.A. No. 79/2007

this the 15th day of March, 2007

Hon'ble Shri A.K. Singh, Member (A)

Rizwana Begum aged about 42 years widow of late Shri Shazid Ali, resident of L-57/L, Fateh Ali Ka Talab, Alambagh, Lucknow.

..Applicant

By Advocate: Shri Praveen Kumar

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Sr. Divisional Mechanical Engineer (C&W) Northern Railway, Lucknow.
4. The Coaching Depot Officer, Northern Railway, Lucknow.

..Respondents


By Advocate: Shri N.K. Agrawal

ORDER

By Hon'ble Shri A.K. Singh, Member (A)

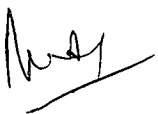
O.A. 79 of 2007 has been filed by the applicant Rizwana Begum (of the address given in the O.A.) against order dated 21.11.2000, by which a huge amount of recovery from the salary of the applicant, has been ordered by the respondents No. 3 and 4.

2. Brief facts of the case are that the applicant's husband Shri Shazid Ali Khan, who was posted as a Head Clerk under Respondent No.2, died in harness leaving behind his widow i.e. the applicant and five minor children on 18.1.1999. The applicant applied for appointment on compassionate grounds in view of the



sudden financial hardship facing the family on account of sudden demise of sole bread earner of the family. The applicant also applied for the retention of quarters in which she was living and which was allotted to her husband. Her request for retention of the quarter was allowed by the respondents vide their order dated 10.5.99 for a period of 2 years, as provided under rules.

3. In response to applicant's request for appointment on compassionate grounds, the respondents directed her to appear at the written examinations which were scheduled to be held on 31.8.99. The applicant cleared the written test and was sent for medical examination thereafter. She was found fit for C-One and below, in the medical test. Respondents, thereafter, issued an order dated 2.7.2000 by which the applicant was sent for training for the post of Commercial Clerk in "C.I-II" category vide order dated 11.10.2000. The applicant was again sent for light training vide order dated 19.10.2000. The applicant, thereafter, was again sent for training as per order dated 23.4.2001. On completion of these trainings, the results were published by Vice Principal of Training School on 27.8.2001. According to the results declared, the applicant was required to appear at the supplementary examination. The applicant appeared at the supplementary examinations as per order dated 20.11.2001 but she could not clear the same. Hence she was offered an alternative appointment on the post of Carriage and Wagon (C&W) Fitter in the grade of Rs. 3050-4590 vide order dated 3.7.2003. In pursuance of the aforesaid order, the applicant was sent for training prescribed for the post vide order dated 28.7.2003. While she was undergoing training

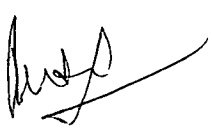


prescribed for the post of C&W Fitter at Training Center, Chandausi, she made another request to the competent authority for regularisation of the quarter retained by her in her name on an 'out of turn' basis. The respondents vide their letter dated 29.7.2003 addressed to concerned Poolholder requested for transfer of the aforesaid accommodation to the Pool of respondent No. 3 and 4. This request was however, not acceded to by the concerned Poolholder. He insisted that another quarter in lieu thereof should be handed over to his charge first and then only the request for transfer of the aforesaid quarter to the pool of respondent No.3 and 4 could be considered. Despite repeated representations for allotment of the concerned quarter, the respondents did not accede to the request of the applicant. In the meantime, the applicant completed her training successfully for the post of C&W Fitter (also known as Technician III) w.e.f. 28.7.2003 to 4.8.2003. On completion of aforesaid training, the respondents issued an order dated 8.8.2006 appointing the applicant on the post of C&W Fitter (Technician III). The applicant, on joining the aforesaid post, made another representation dated 21.8.2006 for regularisation of allotment of quarter in question. She also informed the authorities that she was not receiving any house rent allowance since the time she was deputed for training. Subsequently, the respondents vide their letter dated 21.11.2006 ordered recovery of an amount of Rs. 3910.77 per month from the salary of the applicant w.e.f. 13.1.2001 and Rs. 7821.54 per month w.e.f. 1.5.2002. The applicant submits that her gross salary, per month, is only Rs. 6588/-. After some mandatory deductions, she receives a net salary of Rs. 5037/-



per month. She has five minor children who are solely dependent on her. Thus, she is bearing the entire liability of her family and hence will not be in a position to keep the body and soul together of the family in the net salary she would receive after these deductions. She submits that the impugned order of recovery deserves to be quashed and set aside on the following grounds:-

- i) that it has been issued without calling for any explanation from the affected employee i.e. the applicant;
- ii) that the instalments of Rs. Rs. 3910.77 per month w.e.f. 13.1.2001 and Rs. 7821.54 per month w.e.f. 1.5.2002 is even higher than the pay of the applicant and if the respondents are allowed to do so, the very purpose of appointing her on compassionate ground will get defeated;
- iii) that the applicant is a Group 'C' employee, and is entitled to the same type of accommodation as allowed to her husband;
- iv) that if the recovery is computed in pursuance of the impugned order, the applicant will have to pay more than Rs. 5-1/2 lakhs in total, which is far beyond her means.
- v) that delay in allotment of the quarter, in question, is on the part of the respondents and not on her part;
- vi) that there is complete non application of mind on the part of the respondents in issuing the impugned order of recovery;



On the basis of the above, the applicant seeks the following relief(s):-

- a) That the Hon'ble Tribunal should quash the order dated 21.11.2006 annexed as Annexure No.A-1 to the O.A. with consequential benefits in her favour

- b) To regularize the quarter in question in her name w.e.f. the date when she was sent for training for the post of Commercial Clerk and also to release her gratuity with interest @ 12% per annum.
- c) To grant any other relief which this Tribunal may deem just and proper under the circumstances of the case.

4. Respondents on their part have opposed the Original Application. At the time of hearing on 23.2.2007, Shri N.K.Agrawal, Counsel for respondents, waived their right to file counter reply and made a request that the case in question be finally heard and decided at the stage of admission itself. Counsel for applicant Shri Praveen Kumar also waived his right to file rejoinder Reply. Accordingly, the O.A. in question was admitted and simultaneously both sides were heard on 23.2.2007.

5. In their oral submissions, Sri Praveen Kumar, counsel for applicant reiterated the points as above. While Sri N.K.Agrawal, Counsel for respondents submitted that retention of the aforesaid quarter, beyond a period of 24 months was not permissible under the Rules and hence its retention by the applicant was unauthorised. The applicant was initially allowed to retain the quarter for a period of 24 months only. He further submits that the respondents, therefore, are well within their rights to make recovery of penal rent from the monthly salary of the applicant for the period of un-authorised occupation of the aforesaid quarter. He also cited a full bench decision of CAT, Allahabad Bench (O.A. No. 936 of 1993 decided on 22.2.1996 in the case of Ram Poojan Vs. UOI and others) wherein the Tribunal had held that para

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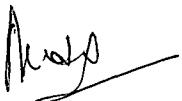
1711 (b) of the IREM Vol. II enables the Railway administration by general or special order to charge a rent in excess of 10% emoluments from a railway servant in the event of breach of any of the conditions enumerated in sub-clauses (i) to (v) of the aforesaid instructions. Para 1711 (b) reads as under:-

“(b) Notwithstanding anything contained in Sub-para (a), Railway Administration may, by general or special order, provide for charging a rent in excess of 10% of the emoluments from a railway servant.”

- i) Who, is not required or permitted to reside on duty at the station at which the residence is supplied to him or;
- ii) Who, at his own request, is supplied with accommodation which exceeds that which is appropriate to his status; or
- iii) Who is permitted to sublet the residence supplied to him; or
- iv) Who sublets without permission the residence supplied to him; or
- v) Who does not vacate the residence after the cancellation of the allotment.

Note- Rent will be recovered from such railway servants who sublet their quarters without permission of the Competent Authority at the rate of 7-1/2 per cent of the total outlay of the quarter including the cost of land.”

6. In para 38 of the aforesaid decision, the learned Tribunal has reiterated the same point and has held that retention of the accommodation beyond the permissible period in view of the Railway Board's circular, has to be deemed to be an unauthorized occupation and there would be an automatic cancellation of an allotment and levy of penal rent/damage according to the rates prescribed in the Circulars issued by the Railway Board from time to time. On the basis of the above, the Counsel for Respondents submitted that O.A. in question is devoid of any merit and



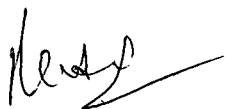
accordingly deserved to be dismissed. He also made a prayer for its dismissal accordingly.

7. I have given my anxious consideration to the submissions made by the Learned counsels on both sides and have also perused the records. I find that, para 1711 (b) of IREM Vol. II relied upon by the respondents in support of their case for charging rent in excess of 10% of the emoluments from a railway servant does not cover the case of dependents of a deceased Railway Servant who are allowed to retain the quarters allotted to the deceased employee for 24 months on compassionate grounds. The cases covered by the above mentioned instructions relate to transfer/retirement /removal etc. of a Railway servant and consequential cancellation/termination of allotment of their quarters. This view finds support from para 14 of full bench decision of the Tribunal in O.A. 936 of 1993 decided on 22.2.1996. Hence I am of the opinion that the above mentioned decision of Central Administrative Tribunal, Allahabad will not apply to the case in question.

8. Instructions relevant to the subject are contained in Chapter VII, para 14, of General Rules of Housing Staff [Railway Quarter Allotment Rules (Revised Edition), 2000] which can be reproduced as under:-

“14. DEATH:- Board's instructions contained in letter No.E(G) 92 RN 2-7 dated 27.8.93 provide that the family of a Railway employee who dies while in service, may be permitted to retain the Railway Quarters for a period of 12 months on payment of normal rent from the date of death of employee.

The above instructions have been reviewed by Board and it has been decided that the permissible period of retention may be increased from 12 months to 24 months in the case of death of allotted Railway employee. This facility



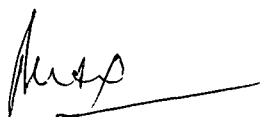
will also continue to be available to audit staff doing Railway audit work. No further extension beyond twenty four months shall be granted. The family of the deceased allottee shall be required to apply for such. This however, not be permissible in cases where the deceased staff/officer or his/her dependents own a house at the place of posting."

9. Para 4 (e) of Chapter V of General Rules of Housing Staff [Railway Quarter Allotment Rules (Revised Edition), 2000] and instructions bearing No. RBE No. 108 of 90 of Railway Board's Orders on Establishments 1990 Volume I and also relevant to the issue. I would like to refer to these instructions, which can be reproduced as under:-

"4(e) When a Railway employee occupying a Railway quarters retired on being medically unfitted the specified (dependant) relative mentioned in para (c) above, will be eligible for allotment /regularisation of the railway Quarter on out of Turn basis, if he/she is appointed on compassionate ground within 24 months from the date of such retirement provided the retiring Railway employee or specified relative (dependents) does not own a house in the place of posting."

"RBE No.108/90- Sub:-Regularisation of allotment of Railway Quarters in the name of dependents/wards, of a Railway servant who retires from service or dies while in service.

In terms of the instructions contained in railway Ministry's letter No.E(G) 66 QRI-11 dated 25.6.1966, E(G) 71 QR1-4 dated 2.3.1971 and E(G) 78 QR 1-23 dated 19.12.1981 etc. if a Railway servant in occupation of Railway accommodation, retires from service or dies in harness, his/her son, daughter, wife, husband or father is to be allotted Railway accommodation on out of turn basis provided that the said relation is a Railway servant and is otherwise eligible for Railway accommodation and had been sharing accommodation with the retired or deceased railway servant for at least 6 months before the date of retirement or death.....It is, however, pointed out that the allotment shall be purely temporary and on adhoc basis, subject to such induction training being regularized as regular appointment in due course. In the event of the employee failing to qualify the final examination and

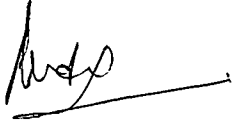


subsequently getting discharged from service, his/her allotment of quarter will be cancelled."

10. Para 4 of chapter V of Chapter V of General Rules of Housing Staff [Railway Quarter Allotment Rules (Revised Edition), 2000] deals with out of turn allotment of quarters to the dependent of a deceased Railway employee, appointed on compassionate grounds. Relevant extract of instructions are reproduced below:-

"4(c) When a Railway Servant who has been allotted Railway accommodation retires from service (normal retirement or dies his /her while in son/unmarried daughter/wife/husband/father/ may be allotted/ regularized Railway accommodation of same or lower type on out of turn basis provided the said relation of the railway servant is eligible for same or higher type of accommodation and further he/she declares without suppressing the fact that he/she had been sharing accommodation with the retiring Railway servant for at least six months before the date of retirement and has not been drawing house rent allowances and the said relations of his family member does not own house at the place of her/his posting.

4 (d) (i) Railway employees who have been allotted Railway accommodation and die while in service and whose son/unmarried daughter/wife/husband/father are given employment on compassionate ground, allotment of quarters to such persons may be made on Out of turn if otherwise eligible on the conditions mentioned in para (c) above. Such allotment may also be considered within 24 months from the date of death even if the quarter has been vacated under occupation of deceased employee and the period of 2 years has not expired on 1.6.98.

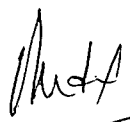
 ii) In case of out of turn allotment of Railway Quarters, it has been decided that relaxation of allotment of Railway Quarters to the married daughter of a retired employee may be done in the following conditions:-

- a) If retired Railway employee has no son,
- b) In those case where married daughter is the only person who is ready to look after the parents and the son is minor and is not in a position to lookafter the parents.

- c) The married daughter had been a Railway employee and who has been living with the retired Railway employee for the last six months in the same quarters and the retired Railway employee given an option for regularizing the same as her favour.
- d) other condition as given in para c will also be required to be filled.
- (e) When a Railway employee occupying a Railway quarters retired on being medically unfitted the specified (dependant) relative mentioned in para (c) above, will be eligible for allotment /regularisation of the railway Quarter on out of Turn basis, if he/she is appointed on compassionate ground within 24 months from the date of such retirement provided the retiring Railway employee or specified relative (dependents) does not own a house in the place of posting."

11. Railway Board's order No. R.B.E. No. 108 /90 which is very specific to the case in question, provides for regularisation of allotments of Railway quarters to the dependents/wards of Railway servants who retires from service or dies while in service (Ref. No.E(G)88 QR1-3 dated 21.6.1990). As per the above circular, if a railway servant, in occupation of Railway accommodation, retires from service or dies in harness, his/her son daughter, wife, husband or father etc. can be allotted accommodation on out of turn basis provided that the said relation is a Railway servant and is otherwise eligible for Railway accommodation and had been sharing accommodation with the retired or deceased railway servant for at list 6 months before the date of retirement or death.

The benefits under these instructions are also applicable even in cases where the employees possessed minimum qualification and are sent for training. These instructions apply w.e.f. the date of reporting for such training in the case appointments made on compassionate grounds. In such cases, allotment of Railway accommodation to the appointee is to be regularised provided



other conditions regarding eligibility are fulfilled. Rules also provide that the allotment shall be purely temporary and on adhoc basis and subject to the condition that on successful completion of the induction training, he or she gets a regular appointment in due course. In the event of the employee failing to clear the induction training tests and consequently getting discharged from service, his/her allotment of quarter will be cancelled. The rules do not provide for any time limit for retention of the aforesaid quarter in such cases. Thus, under these instructions, quarters allotted to the employee can be regularized provided other conditions of eligibility are fulfilled as per these instructions. These conditions enumerated in these instructions can be summarised as under:-

- a) that the railway servant is eligible for same or higher type of accommodation
- b) that he/she declares without suppressing the fact that he/she had been sharing accommodation with the retiring Railway servant for at least six months before the date of retirement /demise of the Railway servant
- c) that he/she has not been drawing house rent allowances
- d) and the said relations of his family member does not own house at the place of her/his posting.

12. When I examine the case of the applicant in the above background of these Rules, I find that the applicant is the wife as well as the dependent of the deceased Railway employee Shazid Ali Khan, who was working on the post of Head Clerk under respondent No.2 before his demise. There is no dispute that she has been staying with her husband throughout before his death along with her children and hence the minimum time limit of 6 months of stay with the deceased Railway servant before his



demise is also fulfilled. It is also on record that she has not been drawing her house rent allowance since the date she was sent for training either for the post of Commercial Clerk or for the post of C&W Fitter. She was also officially allowed to retain the relevant quarter for a period of 2 years. The entire case of the applicant has to be reviewed on the basis of totality of facts as well as extenuating circumstances of the case and not in isolation. It is on record that the applicant after the death of her husband Shazid Ali Khan was offered appointment on the post of Commercial Clerk and she was also sent for training vide order dated 11.10.2000 of the respondents. When she could not successfully clear the tests, she was offered an alternative appointment on the post of C&W Fitter in the grade of Rs. 3050-4590 vide order dated 3.7.2003. She was again sent for training for the said post vide order dated 28.7.2003. On successful completion of the aforesaid training, she was appointed to the post of C&W Fitter vide order dated 8.8.2003.

13. I also find that the applicant made several representations to the competent authority for allotment of the retained quarter to authorities for 'out of turn basis' as provided under rules. I also find that there was also no serious objection from the respondents in this regards. The objections were raised only by the Pool holder of the aforesaid type of accommodation and that too on purely technical grounds. The Pool holder advised the respondents to surrender an accommodation of the same type from their pool in lieu of the quarter retained by the applicant which was not acceded to by the respondents. Applicant has thus, received punishment for no

fault on her part. In the case of **Bhoop Vs. Matadin Bhardwaj** (1991) 2 SCC 122, the Apex Court held that "a party cannot be made to suffer for no fault on his own". If the case of the applicant is subjected to judicial scrutiny, I find that she has been unjustly treated by the respondents. The authorities should realise that her children could not have been left on the streets, or on the mercy of God during the period of trainings of the applicant for the posts of Commercial Clerk / C&W Fitter. Since on successful completion of training, she has been regularized now on the post of C&W Fitter, she is eligible to be allotted the retained quarter officially and on a permanent basis as per Railway Board's instruction No RBE 108/90. It is also not in dispute that the applicant is a Group 'C' employee and is entitled to the same type of accommodation as was allotted to her late husband. It is also on record that she was not receiving any house rent allowance during the period she had spent on training. Now that she has been regularized on one of the posts offered. She is entitled to the benefit of Railway Board instructions contained in order No. 108/90. It is my considered view that the period of training should be added to the period of 24 months for which she was officially allowed to retain the quarter in question.

14. In the second place, I also find that the order of respondents for recovery of Rs. 3910.77 per month w.e.f. 13.1.2001 and Rs. 7821.54 per month w.e.f. 1.5.2002 from applicants' salary every month, strikes at her fundamental right to life as enshrined in Article 21 of the Constitution of India. Article 21 of the Constitution

of India lays down that State will provide for protection of Life, and personal liberty to a citizen of India. Article 21 reads as under:-

“21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.”

15. It is an established law that if an administrative decision is likely to have an effect on the fundamental rights of a citizen, the matter becomes quasi judicial in nature and the person likely to be affected by the aforesaid decision/ order has to be provided reasonable opportunity to show cause against the action proposed to be taken. He shall also be given opportunity of hearing in person. This obviously has not been done in this case while passing the impugned order of recovery dated 21.11.2006. Hence the order in question which has been passed in clear violation of Principles of Natural Justice is bad in law. Hence the same deserves to be quashed and set aside on this ground itself.

16. In the 3rd place, I also find that the total gross salary of the applicant is Rs. 6588/- as detailed in Annexure No.A-20 of the O.A. Her net salary after mandatory deductions works out to Rs. 5037. Hence the impugned order of recovery of an amount of Rs. 3910.77 per month w.e.f. 13.1.2001 and Rs. 7821.54 per month w.e.f. 1.5.2002 suggests a total non application of mind on the part of the respondents. If this amount, in question, is allowed to be recovered from the salary of the applicant, it will be difficult for her to keep her as well that of her five children's body and soul together in the meager amount of salary available to her (after recovery) every month. This decision, if allowed to continue, will bring conditions

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of starvation for the entire family. This, in turn, will constitute serious assault on her right to life as enshrined in Article 21 of the Constitution of India. In a State governed by rule and law, the Protection of life, liberty and property of a citizen is the first and foremost duty of the State. Even during the olden days of our history, the right to life, liberty and property of the citizen was considered to be the most sacrosanct and the State was duty bound to protect the same. As stated in 'Raghuvansham' the immortal work of the great Sanskrit Poet Kalidas "a king was duty bound to protect the life, liberty and property of a citizen even at the cost of his life. When the sacred law 'Nandini', a property of his Guru, Vashistha, was under attack by a lion, King Duleep offered his body as supper to the lion in lieu of 'Nandini' in performance of his sacred duty to protect the life and property of a citizen

“क्षतात् किल त्रायदिद्भ्युदग्रः
क्षत्रस्य शब्दः भुवनेषु रूढः ।
राज्येन किम् तद्विपरीत हेतो
प्राणै रूपकोशमलीमसैर्वा ।
मान्यः सः मे स्थावरजंगमानाम्
संघस्थितिप्रत्यवहारहेतोर
गुरुरपीदम् धनमाहिताग्ने
नश्यद्पुरस्तादनुपेक्षणीयम् ।”

(Raghuvansam - Kalidas)

17. In the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. [Reported in 1999 (3) SLJ 152] their Lordship of the Supreme Court, in para 30 of their judgment have also observed:-

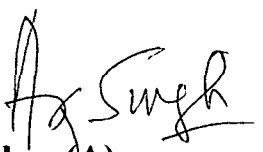
“On joining Government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental Rights in favour of the Government. The Government only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the constitution including the Directive Principles of the State Policy. The employee on



taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employees like instrumentalities of the Government or statutory or autonomous corporation etc. is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or any other statutory Rules including certified standing orders.

The fundamental rights including the right of life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in service rules only ensures non-violation of the rights to life of the employees."

18. It is a tragedy that State in the present State of our civilization has taken this decision of recovery of such a huge amount from the salary of the applicant which, will, no doubt, bring her as well as her entire family on the brink of starvation. This constitutes a serious assault on her as well as her family's fundamental right to Life. Hence, the order in question is highly illegal and unconstitutional and deserves to be quashed and set aside. I order accordingly. In consequence thereof, the respondents are directed to regularize the allotment of quarter, in question, in the name of the applicant from the date she was first deputed for training for the post of Commercial Clerk and thereafter, was regularized on the post of C&W Fitter. Respondents will release the gratuity of the applicant forthwith along with interest @ 6% per annum. In consequence, the O.A. is allowed with no order as to costs.


Member (A)

HLS/-