

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

**O.A. No. 298/2010**

This the 11th day of February, 2011

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

Nirmala aged about 60 years wife of late Lodi resident of Quarter Type 1-E/2, Miling Tonia Road, Bandariya Bagh, Lucknow

Applicant

By Advocate: Sri Siya Ram

Versus

1. Union of India through General Manager, Northern Railway, Hd. Qrs. Office, Boroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Sr. Divisional Mechanical Engineer (C&W), Northern Railway, Divisional Railway Manager's Office, Hazratganj, Lucknow.
4. Assistant Divisional Mechanical Engineer (CDO), N.Rly, CB, Lko.
5. Asst. Divisional Engineer (HQ), N.Rly, CB, Lucknow.

Respondents

By Advocate: Sri C.B. Verma

**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:-

i) That the respondents be directed to implement the valid allotment letter which has been issued by the Opposite Party No. 4 i.e. CDO, N.Rly, Lucknow in favour of Shri Gauri Shanker Prajapati, Help. Kh. T.No. 390 of CDO, Lko and copy endorsed to the applicant and handing over and taking over be completed and vacation certificate be issued in favour of the applicant immediately.

ii) The withheld DCRG amount of Rs. 143704.00 for non-vacation of Railway Quarter be released, on vacation of aforesaid quarter and an amount of Rs. 18246.75 be recovered on account of HRA, paid by the opposite parties, which was to be refunded by the applicant in easy instalments as per direction and order dated 3.8.04 of CAT/Lko in O.a. No. 580/96 but not recovered by the opposite parties.

2. The case of the applicant is that she retired from service on 31<sup>st</sup> December, 2009 and submitted an application to Opposite Party No.4 for retention of Railway accommodation in her occupation. But the respondents allotted this quarter to one Sri Gauri Shankar

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Prajapati. Therefore, the applicant offered to handover possession of this quarter but the respondents had not taken possession. Instead they have withheld Death cum Retirement Gratuity (DCRG) amount of Rs. 143704.00 on the pretext of penal rent of the said quarter.

3. According to the applicant earlier her husband was also in the service of Railways but unfortunately he died on 31.11.1981 while serving. In his place, the applicant got compassionate appointment as temporary Safaiwali on 7.5.86. Her husband was allotted Railway quarter no.1-E/2 Bandariya Bagh, Lucknow. She continued to occupy that house and applied for allotment in her name w.e.f. 15.5.82. Simultaneously, she also applied for payment of gratuity and funds of her husband but no favourable action was taken by the Railway. Therefore, she filed an O.A. No.580/96. In that O.A., the Railways came forward with a defence that the applicant was not entitled for payment of DCRG amount of Rs. 5129.00/- . In respect of quarter, it was said that in the absence of any allotment in her favour, rent/ damage/paneel rent was due on her which was to be recovered from him. It was also pointed out that the lady applicant was paid HRA@ 150/- per month from May 1986 till June 1996 amounting to Rs. 18246.75/- Thereafter, the payment of HRA was stopped. After considering the pleadings of both the sides, this Tribunal finally decided the aforesaid O.A. on 3.8.2004 saying that justice would be done if the quarter in question is regularized in the name of the applicant and normal rent is charged from her. Simultaneously, it was also observed that HRA paid to the applicant would be refunded in easy installments. Finally, the respondents were directed to make payment of DCRG amount within a period of 4 months to the applicant and also to regularize the allotment of quarter in question w.e.f. 12.5.1986. The HRA of Rs. 18246.75/- was directed to

be refunded in easy installments. This order of the Tribunal has been brought on record as Annexure A-4.

4. It is further pleaded on behalf of the applicant that respondents did not comply with the aforesaid order. Instead they filed writ Petition 47/2005 (Union of India Vs. Nirmala) with a view to harass the applicant. The applicant had however, filed counter affidavit in 2008 in that writ petition which is still pending. But there is no stay order.

5. Meanwhile, the applicant also retired from service on 31.12.2009. She has been paid retiral benefits including Provident Fund, Commutation of Pension, leave encashment and GIS. But her DCRG has been withheld on account of non-vacation of Railway quarter. Though, she applied for regularization of allotment but it was not accepted and the quarter was allotted to one Sri Gauri Shankar Prajapati. She has also made a representation dated 13.5.2010 for releasing the amount of Rs. 143704.00 of her DCRG (Annexure A-3).

6. From the side of the respondents, short counter affidavit has been filed saying that relief No.1 as claimed has already been granted by this Tribunal by means of interim order dated 28.7.2010. In respect of second relief, it is said that the later part pertaining to an amount of Rs. 18246.75/- which was to be recovered as HRA from the applicant has also become nonest. In fact, in para 5 of Rejoinder Reply, the applicant herself has admitted that the aforesaid amount of Rs. 18246.75 has already been recovered as per details given in the paragraph itself. In respect of first part of the second relief pertaining to DCRG, it has been said that an amount of Rs. 150569 has been withheld till the decision of writ Petition No. 47/2005 on account of pending recovery of penal rent due to unauthorized occupation of the above Railway Quarter by the applicant.

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

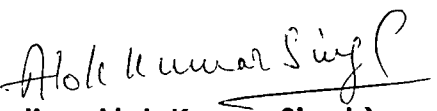
8. It is apparent from the pleadings mentioned hereinabove that the reliefs sought under para 8(i) and later part of relief 8(ii) have become nonest. Now this Tribunal is left only to look into the first part of relief (ii) pertaining to DCRG amounting to Rs. 143704.00. Suffice is to mention here that unless the matter of regularization of the quarter in question is finally disposed of, this relief pertaining to release of DCRG amounting to Rs. 143704.00 of the applicant withheld by the respondent for non-vacation of Railway Quarter cannot be looked into. Firstly, because it may create confusion and secondly, though there is no stay order but the matter is sub-judice before the Hon'ble High court in writ petition No. 47/05. It appears that instead of getting that writ petition decided expeditiously, the applicant has filed this O.A. intermingling some of the reliefs of the previous OA No. 580/96 with a new relief pertaining to release of his aforesaid DCRG which allegedly has now become due to her on account of her own superannuation. It has already been observed above that some of the reliefs sought in the present O.A. have become nonest. As far as remaining relief in respect of release of DCRG of the applicant is concerned, it is not feasible to look into it unless the matter regarding regularization of Railway Quarter in favour of the applicant is finalized. It is true that the respondents have not complied with the earlier order of this Tribunal in O.A. 580/96, although, there is no stay order in the aforesaid writ petition, but for that probably, the proper course would have been to file contempt petition or execution, if the applicant is so advised. But as far as filing of this O.A. is concerned, it is not maintainable for being pre-mature and misconceived on account of the aforesaid reasons.

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9. In view of the above, finally, therefore, this O.A. is dismissed.

No order as to costs.

  
(Justice Alok Kumar Singh)  
Member (J)

HLS/-