

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 5/10/2002

Registration No. OA-554 of 1996

Smt. Maheshwari Devi, Wife of late Madhusudan, Ex-Driver in Railway Locoshed in Sonepur Division of N.E.Railway, resident of village & P.O. Shahpur Daudpur, P.S. Shahpur, District Patna, at present residing in Railway Quarter No. T/121 (A and B), Barbatta Railway Colony at P.O. Sonepur, P.S. Sonepur, District Saran

... Applicant

- By Shri M.P.Dixit, Advocate

Versus

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager, N.E.Railway, Sonepur.
3. The Divisional Railway Manager (P), N.E.Railway, Sonepur.
4. The Divisional Railway Manager (Commercial), N.E. Railway, Sonepur.
5. The Divisional Rail Manager (Mechanical), N.E.Railway, Sonepur

... Respondents

- By Shri A.K. Tripathy, Advocate

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial):

O R D E R

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant has prayed for quashing the letter No.C/357/Awas/91/90 dated 13.5.93, as at Annexure-A-4, whereunder the son of the applicant, Dilip Kumar Gupta, has been directed to vacate the Railway Quarter No. T/121(A & B), Barbata Colony, Sonepur, failing which he would be charged damage rent with effect from

1.6.91, till he vacates the same and further that he would be liable for disciplinary action. The applicant has further prayed for direction to the Respondents to release the amount of the DCRG and leave encashment in view of the aforesaid quarter was allotted to her son, Dilip Kumar Gupta with effect from 14.2.92, vide Annexure-A-2, and for regularisation of the allotment of the aforesaid quarter in his name. Prayer for interest at the rate of 25% per annum on the unpaid amount of retiral dues with cost also has been made.

2. The applicant is the widow of late Madhusudan, Ex-Driver, working in Sonepur Loco-Shed of N.E.Railway. Late Madhusudan was allotted the Railway Quarter No. T-121(A&B) situated in Barbatta Railway Colony of Sonepur. He died while in service on 18.3.89. It is stated that the applicant with her son, Dilip Kumar Gupta and other family members were residing in the aforesaid Railway Quarter till the death of her husband and they are continuing to reside therein at present also. The son of the applicant, Shri Dilip Kumar Gupta, was appointed in the Railway Service on compassionate ground as Commercial Clerk and was posted at Hajipur Railway Station. Shri Gupta submitted an application to the Respondent No.2, DRM, N.E.Railway, Sonepur, on 9.11.90, to regularise the allotment of the said quarter in his name out of turn, but, the same was rejected. Thereafter, he, Shri Gupta, preferred an appeal before the Chairman, Divisional Housing Committee of Sonepur Division against the order of rejection of the allotment of the aforesaid quarter in the name of Shri Gupta, which was allotted vide letter No.C/357/Awas/Vanijay/90 dated 14.2.92, as at Annexure-A-2. Accordingly, the applicant handed over the said quarter in the possession of her son, Dilip Kumar Gupta, on 6.3.92, as at Annexure-A-3, and since thereafter, recovery of normal

quarter rent is being effected from his salary.

3. It is the further case of the applicant that she was verbally advised by the Respondent No.3, Divisional Railway Manager (P), N.E.Railway, Sonepur, to get the quarter vacated from her son, Dilip Kumar Gupta, as a condition for settlement of DCRG and other retiral dues. Shri Gupta submitted a representation on 30.9.92, to the Divisional Railway Manager (Commercial), N.E.Railway, Sonepur, pointing out that he has already taken the possession of the quarter in question and he is continuing therein with his widow mother and other dependent children. But, the Divisional Railway Manager (Commercial), Respondent No.4, rejected his prayer vide the impugned order dated 13.5.92, as at Annexure-A-4, whereunder, he (Shri Gupta) has been directed to vacate the quarter immediately, failing which he would be liable for payment of damage rent with effect from 1.6.91, till he would vacate the same. The Divisional Railway Manager (Mechanical), Respondent No.5, was directed to realise the damage rent in accordance with Rules with effect from 1.6.91, from the DCRG amount of late husband of the applicant. Further, disciplinary action was also directed to be taken. Thereafter, the applicant met the General Manager, N.E.Railway, Gorakhpur, along with a representation of his son dated 27.3.93, as at Annexure-A-5, with a request to allot the aforesaid quarter in the name of her son, and also, for not deducting the damage rent from the DCRG amount. She also met the Respondent No.3, Divisional Railway Manager (P) with a request to release the amount of DCRG and other retiral dues on the ground that she had already handed over the quarter to her serving son on 6.3.92, as per the letter of the DRM (Commercial), Respondent No.4, vide Annexure-A-2. But the Respondent No.5, Divisional

Railway Manager (Mechanical) directed her to produce "No Dues Certificate" for releasing the DCRG amount and other retiral dues. He also insisted for vacating the quarter before issuing "No Dues Certificate". The son of the applicant again submitted a fresh application on 16.8.96 to the Respondent No.2 through the Respondent No.4 vide Annexure-A-6. But, the Respondent No.4 informed him that the release of DCRG amount was not concerned with his office and the question of allotment of quarter had already been decided by the Divisional Railway Manager, Sonepur, and, therefore, the advice for recovery of damage rent would be sent from there only i.e. from Mechanical Department only.

4. Thus, it is stated that the applicant handed over the quarter to her son on 6.3.92 on the basis of allotment letter of Respondent No.4 vide Annexure-A-2 and, therefore, there is no reason for withholding the DCRG and leave encashment dues and to regularise the allotment of the aforesaid quarter to her when many others similarly situated persons have been given the said benefits.

5. The Respondents Railways in their counter have resisted the prayer of the applicant, firstly, on the ground of limitation. It is said that the impugned Annexure-A-4 was issued on 13.5.93 and the application was filed in 1996 i.e. to say beyond the period of limitation as provided under section 21 of the A.T. Act. The maintainability of the Original Application is also challenged on the ground of clubbing reliefs for releasing the retiral benefits and also for setting aside the impugned letter regarding the recovery of damage rent, vide Annexure-A-4.

6. It is the further case of the Respondents that late husband of the applicant was compulsorily retired on the ground of medical decategorisation on 31.5.88 and he died on 18.3.89. However, the quarter allotted to her late

husband was not vacated by her and she continued to reside in the quarter unauthorisedly. It is said that according to the relevant Rules a compassionate appointee may claim out of turn allotment of Railway quarter in his name, if the compassionate appointment is made within 12 months from the date of death/retirement of a Railway servant. The son of the applicant, Shri Gupta, was appointed as Commercial Clerk on compassionate ground on 30.10.90 i.e. after expiry of 12 months from the date of the death of his father and was posted at Hajipur Railway Station. So, he was not entitled for allotment of the quarter out of turn. Moreover, according to the Railway Board's guidelines vide letter dated 13.12.90, as at Annexure-R-1, the retiral dues including gratuity or special contribution to PF is liable to be withheld for non-vacation of the Railway quarter in all cases of cessation of service including death of an employee. Accordingly, the applicant is liable to pay damage rent for unauthorised occupation of a Railway quarter in term of the Railway Board's letter dated 23.6.89 as at Annexure-R-2. It is further stated that as per the Rules, the Railway quarter, in case of death of an employee, may be retained by the family member on payment of normal rent for a period of six months after death/retirement and on the expiry of this permissible period, the allotment of the quarter in the name of a deceased employee stands automatically terminated and the retention becomes unauthorised action. The applicant having an unauthorised occupation of the quarter is liable for payment of damage rent. The allotment of the quarter in the name of son of the applicant vide Annexure-A-2 is not valid as the Divisional Railway Manager, Sonepur, has already rejected his claim for allotment of the said quarter in his name. Thus, the applicant is residing in the said

quarter by not a valid order of allotment. Therefore,

the DCRG and other retiral dues are withheld due to non-vacation of the Railway quarter as per the circular contained in Annexure-R-1 and the applicant as well as his son, Dilip Kumar Gupta, is liable to pay the damage rent for unauthorised occupation of the Railway quarter.

7. Heard Shri M.P. Dixit, the learned counsel for the applicant and Shri A.K.Tripathy, the learned counsel for ~~the~~ respondents and perused the record.

8. Admittedly, the late husband of the applicant died on 18.3.89, and the son of the applicant, Dilip Kumar Gupta, was appointed on compassionate ground as Commercial Clerk and was posted at Hajipur Railway Station. Shri Gupta submitted an application on 9.11.90 to the Divisional Railway Manager, N.E.Railway, Sonepur, Respondent No.2, to allot and regularise the railway quarter in his name out of turn, which had been allotted to his father and in which he was/is residing with his widow mother and other dependants.

The prayer of Shri Gupta was rejected. Shri Gupta preferred an Appeal before the Chairman, Divisional Housing Committee of Sonepur Division, which was allowed vide letter dated 14.2.92 as at Annexure-A-2. After the allotment of the quarter in the name of the son of the applicant, she handed over the same to her son, Shri Gupta, on 6.3.92 vide Annexure-A-3. Shri Gupta began to pay normal rent from his salary thereafter. Thus, admittedly, the applicant retained the Railway quarter allotted to her deceased husband from 18.3.89, i.e. to say, from the date of the death of her husband till 6.3.92, when she handed over the quarter to her son, vide Annexure-A-3. It is also admitted position that the applicant was not paid gratuity and leave encashment dues as admissible to her late husband till the date she handed over the quarter

to her son on 6.3.92 or till date.

9. It appears that the son of the applicant, Dilip Kumar Gupta, submitted his representation on 30.9.92 to the Divisional Railway Manager (Commercial), N.E.Railway, Sonepur (Respondent No.4) intimating him about the taking of the possession of the quarter and, therefore, for regularising the allotment of the quarter in his name. But, the Divisional Railway Manager (Commercial), Sonepur, turned down his request and intimated him that according to the decision of the competent authority, he should vacate the quarter immediately and, according to the Rules, damage rent would be recovered from 1.6.91 till he vacates the quarter, otherwise, disciplinary action would be taken against him, vide the impugned letter dated 13.5.92, as at Annexure-A-4. Thus, it appears that for the first time, the Respondents Railways directed the son of the applicant to vacate the quarter on 13.5.92. But, the applicant was never intimated to vacate the quarter after the death of her husband on 18.3.89. She was never intimated that the damage rent would be recoverable from the retiral dues of her husband till she vacated the quarter on 6.3.92. It appears from the Annexure-A-4, ^{was} that the son of the applicant/intimated that as per the Rules, the damage rent would be realised with effect from 1.6.91. In other words, the retention of the quarter by the applicant and her son was unauthorised occupation from 1.6.91, for which damage rent as per the Rules was directed to be recovered from the salary of the son of the applicant.

10. It may be pointed out that according to the Railway Board's letter dated 13.12.90, as at Annexure-R-1, "The Death-cum-Retirement Gratuity and special contributions to PF should be withheld in full for non-vacation of

the Railway quarter not only after superannuation, but in all cases ^{of} cessation of services, namely, retirement, death, etc. Further, the amount withheld should remain with the Administration only in the form of cash without conversion into any type of security lest the very purpose of withholding full DCRG should get defeated. It may also be kept in view that the gratuity should be released as soon as the quarter is vacated so that there is neither any hardship to the retired employee or its family nor there is any claim for payment of interest on withheld gratuity for reasons of any administrative lapse." (Emphasis supplied)

Thus, from the Railway Board's letter itself, it is clear that the amount of gratuity or special contributions to PF can be withheld only till the quarter is vacated and the same has got to be released as soon as the quarter is vacated.

11. The applicant, in the instant case, who is the widow of the deceased employee vacated the quarter on 6.3.92, of course, in favour of her son, who is a compassionate appointee. It may be pointed out that the son of the applicant was allotted the quarter in question by allotment letter dated 14.2.92, as at Annexure-A-2, and there is nothing on the record to show that this allotment order was cancelled by the competent authority. The learned counsel for the respondents contended that the allotment of the quarter in the name of the son of the applicant was not validly issued by the competent authority. But, as said above, there is nothing on the record to show that the allotment in favour of the son of the applicant was cancelled with direction to him to vacate the quarter. It was on his representation on 30.9.92, that he (the son of the applicant) was intimated to vacate the quarter ^{and} as per the Rules.

he was liable for payment of damage rent with effect from 1.6.91, vide letter dated 13.5.92 (Annexure A-4). Thus, the applicant vacated the quarter on 6.3.92, and the son of the applicant was intimated after the allotment of the quarter in his name, to vacate the same, vide letter dated 13.5.92. There appears no question of realising the damage rent from the salary of the son of the applicant with effect from 1.6.91, as he was then not in possession of the quarter by virtue of it being allotted in his name. The quarter was allotted in the name of Shri. Gupta of the deceased father, and was in occupation of the applicant, for which the retiral dues on account of gratuity and leave encashment were withheld. In any view of the matter, the applicant had already handed over the quarter pursuant to the allotment order dated 14.2.92, in favour of her son on 6.3.92, and the retention of the gratuity and leave encashment amount since thereafter, was not proper and valid. The learned counsel for the applicant rightly contended that the amount of leave encashment should not, in any case, be withheld under the Railway Rules for non-vacation of the quarter.

12. In view of the aforesaid discussions of the factual position, I am of the considered view that the withholding of the gratuity and leave encashment amount, since after the quarter was vacated on 6.3.92, by the applicant, ^{not} was in accordance with the circular of the Department itself (Annexure-R-1) as referred to above. Accordingly, the applicant is entitled to the payment of the amount of DCRG and leave encashment or any other retiral dues with interest at the rate of 12% per annum with effect from 6.3.92.

13. So far the prayer for quashing the Annexure-A-4

is concerned, it is addressed to Dilip Kumar Gupta, the son of the applicant. As said above, by this impugned letter, he has been intimated to vacate the quarter as per the order of the competent authority and to make payment of damage rent according to the Rules from 1.6.91, till he vacates the quarter. He has also been intimated that disciplinary action may be taken against him for not vacating the quarter. The Divisional Railway Manager (Mechanical) has been directed to realise the damage rent from his salary with effect from 1.6.91. As said above, the mother-applicant of Shri Dilip Kumar Gupta has brought on record Annexure-A-2, which is the allotment letter of the quarter in favour of Shri Gupta dated 14.2.92, and Shri Gupta is residing continuously on the basis of the allotment letter. It appears that Shri Gupta has already filed representations vide Annexure-A-5 and Annexure-A-6 to the General Manager, N.F. Railway, Gorakhpur, and to the DRM, N.F.Railway, Sonepur on 27.3.93 and 16.8.96, for allotment of the quarter in his favour pointing out the order as contained in Annexure-A-4, regarding direction to vacate the quarter by the Divisional Railway Manager (C), N.F. Railway, Sonepur. Shri Gupta is not an applicant before me. There is no order on the record to show that the damage rent as assessed as per the Rules is being deducted from the salary of Shri Gupta. The representation of Shri Gupta is also pending before the authority. In the circumstances, the prayer to quash the Annexure-A-4, and to regularise the allotment of the quarter in the name of Shri Dilip Kumar Gupta, the son of the applicant, does not appear maintainable in this O.A. and it is, accordingly, negatived without expressing any opinion on the merit.

14. The learned counsel for the respondents contended that the OA is hit by limitation as the late husband of the applicant died on 18.3.89, and she filed this O.A. on 1.11.96. As said above, the matter relates to the payment of the amount of gratuity and leave encashment to the applicant. According to the circular of the department the amount of gratuity was required to be withheld till the quarter ~~was~~ vacated. The applicant vacated the quarter on 6.3.92, and the son of the applicant filed an application for releasing the dues on 30.9.92. The Respondents Department in spite of vacating the quarter by the applicant continued to withhold the due amount. According to the settled principle, the gratuity is pension and for non-payment of which, the cause of action arises with the expiry of every month. In this view of the matter I am of the opinion that the OA is not hit by limitation.

15. In view of the aforesaid discussions, the Respondents are directed to release the DCRG, leave encashment or other retiral dues to the applicant as admissible under rules to her deceased husband with interest at the rate of 12% per annum with effect from 6.3.92 within three months of the date of receipt of a copy of this order. So far, the prayer for quashing the Annexure-A-4 and for regularisation of the allotment of the quarter in the name of the son of the applicant is concerned, it is held as not maintainable.

16. The OA is partly allowed with no order as to costs.

SKS

LJha
5-10-2000
(Lakshman Jha)
Member (J)