

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. NO. 90/87

Madhav Narhar Pathak,
MA/487/A/, Guard's Line,
Bhusawal

Govind Madhav Pathak,
MA/487/A, Guards Line,
Bhusawal.

Applicants

V/s

The Union of India through
The General Manager,
Central Railway,
Bombay-VT - 400 001.

The Divisional Railway Manager,
Central Railway,
Bhusawal-425 201.

The Deputy Chief Electrical Engineer,
Electric Locomotive Workshop (POH),
Central Railway, Bhusawal-425 201.

Respondents

Coram : Hon'ble Member (A) Shri P. Srinivasan

Appearance

Shri D.V.Gangal, Advocate
for the applicants.

Smt. P.R. Shetty, Advocate
for the Respondents.

TRIBUNAL'S JUDGMENT

Dated : 5.10.1987

This application filed by a retired employee and his son who is at present employed in the Central Railway raises ~~such~~ petty issues which could have been settled at the level of the Administration itself without obliging the applicant to come before this Tribunal.

2. The first applicant (A-1) retired as Goods Foreman on 30.9.1986. He was working in the office of the Divisional Railway Manager, Bhusawal. His son, the second applicant (A-2) who was also working in the Railways at Bhusawal, but in the Electrical Department was living

P. Srinivasan

in the same quarter allotted to the first applicant, during the last three years of his ^(A-1's) ~~(A-2's)~~ service.

A-1 requested the authorities to transfer the quarter to the name of A-2 after his retirement, because the latter was also eligible to the same type of quarter. Pending a decision on this request, both the applicants continued to stay together in the same quarter. The main prayer in this application is that the quarter should have been transferred to the name of A-2.

3. Shri D.V.Gangal, learned counsel for the applicants strongly contends that under the prevailing instructions when the son is also working in the Railways and has been living with the father for three years before the latter's retirement, the son is entitled to be allotted the quarter of the father on the father's retirement. In the present case all the conditions required to allot the quarter to A-2 on A-1's retirement were fulfilled. Eventually the quarter was in fact allotted to A-2, but only from 9.4.1987. The father was allowed to retain the quarter at normal rent till 31.1.1987. For the period 1.2.1987 to 8.4.1987 the father was asked to pay penal rent. This according to Shri Gangal was unfair because the delay in effecting the transfer was not due to any fault of A-1.

4. Smt. P.R. Shetty for Shri R.P.Shetty, learned counsel for the Respondents submits that the quarter was allotted to the father (A-1) from the Commercial Pool while the son was entitled to allotment of accommodation only from the Electrical Pool. Before the quarter allotted to the father could be transferred to the name of his son, the Electrical Pool had to surrender one quarter to the Commercial Pool. The Commercial pool has fewer quarters

Pf - 2

compared to the number of persons eligible for allotment and therefore, allotting a quarter from the Commercial Pool to an official working in the Electrical Pool without a corresponding surrender of a quarter from the latter Pool would cause considerable inconvenience to persons working in the Commercial Pool. The Electrical Pool was eventually able to surrender a quarter to the Commercial Pool only on 31.3.1987 and that was why the transfer could be effected to A-2 only from 9.4.1987. Till such transfer was made, the son could not occupy the quarter on his own right; it was for this reason that penal rent was charged for the period 1.2.1987 to 8.4.1987 from the father in whose name the quarter stood. The Respondents could not act in violation of the rules and this Tribunal should also not direct the Respondents to violate the rules.

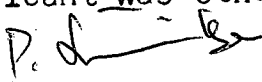
5. I have considered the matter carefully. It no~~u~~ doubt sounds harsh that though eventually the quarter was transferred from the name of the father to that of the son, the father should be charged penal rent for part of the intervening period merely because the transfer could not be effected earlier. At the same time, a rule which is of universal application cannot be relaxed in an individual case on the ground of hardship. Shri Gangal mentioned that in other cases quarters had been transferred from fathers to sons from the date of retirement of the fathers. But in the absence of further details, it is not possible to say if those cases were similar to the present one. However, the Respondents should not have charged penal rent from the father from 1.4.1987 because the Electrical Pool surrendered a quarter from 31.3.1987. To this extent, A-1 has been over-charged. Therefore, I would direct the Respondents to charge normal rent from A-1, and not penal rent for the period 1.4.1987 to 8.4.1987.



6. Shri Gangal then pointed out that because of the delay in transfer of the quarter to the son's name, the father's occupation of the quarter for two months from 1.2.1987 to 8.4.1987 was treated as unauthorised occupation and, as a consequence, two sets of Railway passes to which the father would otherwise have been entitled for 1987-88 were denied to him. Shri Gangal submitted that this was taking things too far. Though the occupation of the quarter for the said period could be subjected to penal rent, in reality it was not unauthorised occupation at all because in the meanwhile, the authorities were processing A-2's application for a transfer of the quarter in his name. It was perfectly legitimate occupation of the quarter for which the first applicant should not have been punished by withdrawing two sets of railway passes due to him. Smt. Shetty Supp

7. Smt. Shetty supported the action of the Respondents and strenuously opposed the contentions of Shri Gangal.

8. After careful consideration I am satisfied that the withdrawing of two sets of passes to the first applicant was wholly unjustified. The first applicant did not commit any offence by staying in the quarter till it was transferred to the name of his son. Both the father and the son had duly made applications and eventually the Respondents did transfer the quarter to the name of the son. While the Respondents may have charged penal rent for the period, they were totally unjustified in taking the view that the first applicant had committed an irregularity justifying a punishment by way of withdrawing railway passes due to him; the withdrawal of passes can be viewed only as a punishment. I would, therefore, direct the respondents to release the passes to which the first applicant was otherwise entitled for 1987-88.

P. d. 


9. Shri Gangal pressed another ground viz. that the respondents should have paid interest on belated payment of gratuity to the first applicant. The first applicant retired on 30.9.1986. The gratuity due to him was paid only on 18.5.1987. Shri Gangal submits that the delay in making the payment of gratuity merited award of interest to his client.

10. Smt. Shetty submitted that payment of gratuity was delayed only because the question of transfer of the quarter to the name of the son was under consideration and till such transfer was effected, the Respondents could not determine the amount to be recovered from A-1 by way of rent. Till the rent liability of the A-1 was finally determined the Respondents could not settle the gratuity payable to him.

11. After careful consideration I see no merit in the claim for interest on gratuity. The applicant retired on 30.9.1986 and the gratuity was paid on 18.5.1987 ie., about 7 months after the date of retirement. It is clear from the facts of this case that there was some difficulty in transferring the quarter from the name of the father to that of son and it was not till April 1987 that this problem could be sorted out. In these circumstances I would not blame the Respondents for the short delay in settling the gratuity payable to the first applicant. The latter's claim of interest thereon is, therefore, rejected.

12. Shri Gangal did not press the other grounds raised in the application which are, therefore, rejected.

13. In the result the application is partly allowed as indicated above. Parties to bear their own costs.


(P. SRINIVASAN)
Member (A)