CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 526 & 562/ 2001

MONDAY, THIS THE 15TH DAY OF APRIL, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

O.A. NO. 526/2001

Chand S. Sayed
Residing at
Railway Chawl No.9/T 'D' Block,
Opp, Bandra Railway Station,
Bandra, Mumbai. .. Applicant

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through
General manager,
Western Railway, Churchgate,
Mumbai-400 020.

2. Divisional Railway Manager,
Mumbai Division, Western Railway,
Mumbai Central, Mumbai.

3. Chief Manager,
Central Bank of India,
Bandra Branch,
Bandra-400 050. ... Respondents

By Advocate Shri Suresh Kumar.

O.A. NO. 562/2001

Syyed Iqbal Chand.
Residing at
Railway Chawl No.9/T 'D' Block,
Opp, Bandra Railway Station,
Bandra, Mumbai. .. Applicant

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through
General manager,
Western Railway, Churchgate,
Mumbai-400 020.

2. Divisional Railway Manager,
Mumbai Division, Western Railway,
Mumbai Central, Mumbai.

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3. Chief Workshop Manager,
Western Railway,
Parel Workshop, Parel,
Mumbai-400 012. .. Respondents

By Advocate Shri Suresh Kumar.

O R D E R (ORAL)

Both the OAs being interlinked, were heard together and common order is passed.

2. In OA 526/2001 the applicant was allotted Railway quarter No.O/T D Block, opposite to Bandra Railway Station, Mumbai. The applicant was proceeded against before the Estate Officer under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act (pp Act for short) and eviction orders were passed on 27.7.93. The applicant challenged the same before Principal City Civil Court, Mumbai. By an order dated 12.8.1996 the City Civil court set aside the eviction order and also ordered that the quarter occupied by the applicant should be regularised in the name of his son, who is already working in the Railways as Khalasi and is entitled to type-I railway quarter. Thereafter, the respondents issued show cause notice again under Section-4 of the pp Act vide notice dated 03.9.96. After the applicant had brought to the notice of the Estate Officer, that the earlier eviction order has been set aside by the City Civil Court, the Estate Officer passed an order on 14.10.96 withdrawing the notice of 09.10.96 and dropping the proceedings.

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3. The respondents have deducted and recovered Rs.40,927 from the applicant's bank account and his full pension was stopped for 16 months. The DCRG of the applicant has also not been paid and the full amount has been adjusted against the damage rent. The applicant is aggrieved that the respondents ought not to have charged him the damage rent since the eviction order has already been set aside and the applicant cannot be said to be in unauthorised occupation.

4. In the other OA 562/2001 filed by the applicant's son, the applicant prayed that inspite of requesting the respondents not to pay HRA to the applicant, the respondents have continued to pay him the HRA. He is therefore, requesting for a direction to the respondents to deduct the normal licence fee from the salary of the applicant for occupation of the quarter allotted to his father prior to his retirement. The applicant has also prayed for formal order of allotment to the applicant of the aforesaid quarter in view of the judgment of the City Civil Court.

5. The respondents have argued that even though the quarter may have to be regularised in the name of the son, still the applicant being in unauthorised occupation after his retirement, is required to pay the damage rent/penal rent. It has nothing to do with the regularisation of the accommodation in the name of the

son after his retirement. The applicant in OA 526/2001 has to be deemed to be in unauthorised occupation and therefore the respondents' action in recovering the penal rent from the applicant is justified. The learned counsel for the respondents has produced a copy of the judgment in the case of Amitav Kumar Vs. Director of Estate & another reported in 1997 (1) SCSLJ 399 in support of the contention that even though the son may be entitled for the aforesaid quarter allotted to his father, to be regularised in the son's name, the father is required to pay the penal rent for unauthorised occupation. The applicant, therefore, had been extended four months time for retaining the quarter allotted to the applicant. On expiry thereafter, he did not vacate the premise and therefore, he was deemed to be in unauthorised occupation and was directed to pay penal rent. It was argued that his son was eligible to apply for the allotment in substitution of his father. But the issue of allotment to which the son was eligible was not decided for long and the delay was on the part of the respondent Government, therefore, the applicant therein had argued that penal rent should not be imposed upon him. However, the court held that mere fact that an application had been made for adhoc allotment on the basis of the fact that the son was in Government service does not make any difference. Obviously the first petitioner was in unauthorised occupation, under the rules, he is required to pay the penal rent. According

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to the respondents, the judgment applies in the present case also. The learned counsel however admits that the eviction proceedings against the father i.e. applicant in OA 526/2001 have been dropped and set aside and the applicant i.e. applicant in OA 562/2001 will be entitled for regularisation of the father's accommodation in his name as per court's order.

6. I have heard the learned counsel for the applicants as well as the respondents. As far as the first case is concerned i.e. OA 526/2001, it is seen that the City Civil Court had clearly set aside the eviction proceedings in the case of the applicant and had also ordered regularisation of the quarter in the name of the son vide order dated 12th August, 1996. This being the position, it is to be taken that the quarter is deemed to have been regularised from the date the applicant's son got his appointment in Government service. It is also not disputed that he was not entitled to the same type of accommodation as his father. If the accommodation is regularised in the name of the son from the date of his appointment which was in August, 1991 and the father retired in July, 1991 then it cannot be said that the father was in unauthorised occupation. It would be deemed that the father has vacated the accommodation after the regularisation of the accommodation in son's name. I have perused the judgment referred to by the respondents. In my

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considered view, the judgment is distinguishabale in that in the case of the applicant referred to in the judgment he had only applied for regularising the father's quarter in his name and he was not entitled to the same type of quarter. In the present case however, the applicant in Oa 562/2001 is entitled to the same type of quarter as was allotted to his father i.e. Type-I. Further, the City Civil Court has given a clear direction to regularise the quarter in the son's name. I therefore, have to hold that the action of the respondents in recovering penal rent from the applicant in this case is not justified. Accordingly, I direct that the respondents shall refund the amount of penal rent recovered from the applicant's bank account and also the DCRG be released to the applicant immediately. This shall be done within a period of three months from the date of receipt of copy of this order.

7. As far as the applicant in OA No.562/2001 is concerned, it is seen that he had not made any representation to the respondents to regularise the accommodation in his name immediately after the orders passed by the City Civil Court i.e. in August, 1996. All the same, it is seen that the applicant had informed the respondents when second eviction proceedings had been initiated by the respondents in 1996 itself that the City Civil court has ordered in his favour. He had also requested that no HRA should be paid to him and the

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same should be deducted from his salary, but this was not complied with. Now, in view of the court order already passed and though no formal representation was made by the applicant in OA No.562/2001, yet since he had informed the respondents in 1996 itself and the applicant is entitled for the regularisation of quarters as directed by the City Civil Court, the respondents shall therefore consider the applicant for regularisation of quarter allotted to his father in his name with effect from the date he was appointed as a Government servant. Further, the respondents shall recover from the applicant the amount due to licence fee and also the HRA paid during the aforesaid period i.e. from 08.8.1991 till date. This exercise shall be completed within a period of three months from the date of receipt of copy of this order. The applicant in OA 562/2001 shall start paying the licence fee with immediate effect and the respondents shall deduct the HRA with immediate effect. As regards the licence fee for the period from 08.8.1991 and the HRA paid to the applicant till date, the applicant shall pay the arrears of the total normal licence fee within a period of three months and as far as HRA is concerned, the respondents shall communicate the exact amount and the applicant shall pay the same within a period of three months from the date of communication. The respondents shall issue formal orders regarding regularisation of quarter in the son's name within a period of one month from the date of

receipt of copy of this order. Accordingly, both the OAs are allowed. No costs.

A copy of this order be kept in OA 562/2001.

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

dt 15/4/2

to pp counsel/respondent (s)

on 25/4

OC in OA 562/01