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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12.11.2002

OA 538/93

Heera Lal Sharma s/o Shri Ram Kishan Sharma r/o Railway Quarter No.1-80-A,
Loco Colony, Phulera, Retired Passenger Train Driver.

... Applicant

Versus

1. Union of India through the General Manager, Western Railway,
Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur.

... Respondents

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CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.U.P.MAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.P.Mathur

For the Respondents ... Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

This application is filed for a direction directing the respondents to pay the gratuity and issue travelling passes to the applicant, which have been withheld by the order dated 3.8.93 (Ann.A-1). The applicant also has sought a direction that the railway quarter, which the applicant was occupying, may be allotted in the name of his son Shri Vinod Kumar Bhardwaj. There is a further relief in the application that the respondents may be directed to pay the salary from 11.12.91 to 18.3.93. The applicant also may be given the leave encashment of 240 days and he may be given increments in the salary he earned between 11.12.91 to 18.3.93 and his salary may be refixed on the basis of that he was on duty during that



period. Lastly, the applicant also prayed that he was entitled to No Accident Award.

2. In the application, the applicant has stated that he retired from service w.e.f. 31.7.93 as Passenger Driver, Loco, Phulera. Prior to that, the applicant was promoted vide order dated 20.3.91 and transferred from Phulera to Bandibui. The applicant protested the transfer and ultimately refused to join the transferred post due to certain domestic circumstances. On the basis of his refusal, he was debarred for promotion for six months. However, subsequently, he was promoted vide order dated 11.9.91. In those circumstances, the applicant approached this Tribunal in OA 527/91, stating that he was entitled for promotion w.e.f. 14.2.91 when the persons junior to him were promoted. After considering his case, this Tribunal passed the order dated 2.3.93 observing that the applicant was entitled to get his name noted for the purpose of transfer to Phulera, whenever the vacancy arises at Phulera. This Tribunal also observed that for the purpose of his promotion to Phulera there should be a clear vacancy and in case these conditions are fulfilled, the applicant may be transferred to Phulera and the order in that behalf should be issued within one month from the date of that order. Even though the applicant prayed for the wages from 14.2.91 but this Tribunal directed that the same cannot be determined and the applicant should file a separate OA, if he so chooses, in that behalf. It is now brought to our notice that in pursuance of the directions of this Tribunal, vide the said order dated 2.3.93, the promotion order was given to the applicant on 17.3.93. For the wages between 14.2.91, the date of his earlier promotion, and 17.3.93, the date of his subsequent promotion order, the applicant made a representation for the payment of salary and other allowances and also for the payment of gratuity that was withheld by the respondents. In pursuance of the said representation, the respondents issued an endorsement dated 3.8.93 (Ann.A-1) stating that certain amounts have been withheld. Annexure A-1 states that in addition to the other

amount the amount pertaining to the rent of the quarter, the applicant was occupying, also was the amount due and in order to realise this amount, the gratuity has been withheld. It is further stated that the gratuity withheld would be released to him after he vacates the quarter. Thereafter, it is also mentioned that an amount of Rs.45975/- has been withheld on account of outstanding railway claims, which were on account of non-vacation of the quarter. In the relief, the applicant has not sought for quashing of this order, filed at Annexure A-1, on any account.

3. By filing the counter, the respondents have denied the case of the applicant. They have stated that in pursuance of the directions of this Tribunal in OA 527/91, the applicant was promoted on 17.3.93. They have also stated that during the period of his earlier promotion on 11.12.91 to the latter promotion on 17.3.93 the applicant has not worked. Therefore, he is not entitled for any wages during that period, nor he is entitled to any other emoluments on the basis ^{if} as he worked during that period. They have also stated that during this period since the applicant did not work, he was not entitled for any mileage allowance, since the applicant himself refused to join the promotion post, vide earlier promotion dated 11.12.91, and he joined to the post only after the latter promotion was given on 17.3.93. During this period he did not join duties as per the promotion order but meanwhile he retired from service w.e.f. 31.7.93, immediately after the subsequent promotion. Therefore, the applicant is not entitled to any relief regarding the period between 11.12.91 to 18.3.93 on the basis of "no work no pay" principle. In fact, he was transferred to Phulera only on the basis of name noting, as per the direction of this Tribunal. Therefore, the applicant is not entitled to any relief prayed for in this application. Moreover, the reliefs prayed for by the applicant are barred by time, and the present application, for the multiple relief, is not maintainable under Rule 10 of the Central Administrative Tribunal (Procedure) Rules. It is further stated in the counter that the applicant did not vacate the quarter allotted to him on the date of his retirement,

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w.e.f. 31.7.93. On the other hand, he was requesting for the allotment of the same quarter to his son, to which he would not be entitled. It is also stated that his son was working only as a Thalasi and he was not entitled for Type-II category quarter, which the applicant was occupying on the basis of his designation. The applicant has been residing in the said quarter without vacating it on one pretext and other. Therefore, the applicant was liable to pay the penal rent in addition to the regular rent payable. It is further stated that only to realise the said rent his gratuity has been withheld and if the applicant pays the entire rent payable towards the quarter, his gratuity will be released.

4. The learned counsel for the respondents practically reiterated the same arguments what have been pleaded in the counter.

5. On the basis of the arguments and pleadings of the parties, three points are required to be considered by us. (i) Whether the applicant was entitled to wages or emoluments during the period 11.12.91 to 18.3.93 ? (ii) Whether the applicant is entitled to the relief for allotment of quarter in favour of his son after his retirement, and (iii) whether the respondents can ~~be compelled to~~ withhold the gratuity till the payment of the arrears of rent. So far as the point No.(i) is concerned, it is an admitted fact that it was the applicant who did not join at the post on the basis of his promotion. He refused promotion for his domestic reasons. Thereafter, there was no order giving him posting anywhere except the second promotion order, that was given to him by virtue of the direction of this Tribunal in OA 527/91. When the applicant himself refused to join the post of his promotion, he would not be entitled to any relief during the period he did not join any post. It is also a part of the service condition that an employee, on his transfer, must go to the place where he is transferred, in obedience of the order of transfer, which the applicant has not done. This *prima-facie* shows that the applicant has not come with clean hands. When the applicant himself did no join on the promotion post

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and he did not work anywhere in the railway department till the second promotion order was given, he is not entitled for any wages during that period. The second promotion was only on the basis of the directions given by this Tribunal, otherwise it was incumbent on the part of the government servant to go to the place to which he is transferred either on promotion or otherwise. From this view, it is followed that the applicant is not entitled to any relief during the period 11.12.91 to 18.3.91 and the contention of the learned counsel for the applicant that this period should be treated as waiting for posting cannot be accepted. In the result, we have to hold the point No.(i) against the applicant. So far as points No.(ii) and (iii) are concerned, we decide them together. The fact that the applicant was occupying the railway quarter earlier to his retirement is an admitted fact. It is also an admitted fact that w.e.f. 31.7.93 the applicant has retired from service. It is also a part of the service condition that any employee, after retirement, immediately should surrender the quarter occupied by him, to the department. After the grace period, as provided under the rules, no government servant shall occupy the quarter meant for the other government servant. In case, if a government servant persist to occupy the quarter even after the grace period, he would be liable to pay the penal rent. But in the instant case, the contention of the applicant is that he requested to the department to allot the same quarter to his son, who is also working in the railway department. The contention of the respondents is that his son being a Khalasi, is not entitled, to the type of the quarter, which his father was occupying. Moreover, he must wait for his turn according to the seniority on the basis of the application filed. The respondents also submitted that if the applicant would be entitled to priority on the basis that his father was a railway servant but he would be entitled to the quarter according to the office he held in the department. In other words, priority may be given to him on a quarter meant for Khalasis, the post which the applicant's son was holding. From this contention also it is further clear that no father can claim that a particular quarter shall be allotted to his son, as of right.



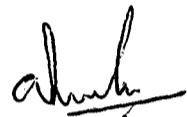
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One has to act according to the rules applicable. If that is so, the applicant cannot seek writ of mandamus directing the respondents straightway to allot the same quarter to his son, on the ground that his son is also employed in the railway department. In this view of the matter, no positive direction can be issued to the respondents to allot the same quarter to the applicant's son. At this stage, the learned counsel for the applicant brought to our notice that there is an interim direction in his favour, passed in MA 549/94 on 27.10.94. On going through the said order, we find that this Tribunal issued an interim direction, directing the respondents not to evict the applicant from the quarter till such time as a quarter of the appropriate category is actually allotted to his son Shri Vinod Kumar Bhardwaj and ~~the applicant~~, after allotment of a quarter of appropriate category, shall vacate the quarter within one week and if the applicant does not do so, the respondents are free to take appropriate action against him in this regard. This interim order comes to an end by the final order now being passed. From the interim order, one thing is certain that the applicant was allowed to continue in the quarter till his son is allotted some other quarter according to his entitlement and nothing more. From this, it ~~is~~ further follows that on the basis of the earlier interim order, the applicant, being a retired railway servant, cannot continue to occupy the railway quarter either for his own benefit or for the benefit of his son unless the son is allotted that quarter according to the rules. In case the government servant does not vacate the quarter within the prescribed time after the retirement, he would be liable to pay the penal rent. But in the circumstances that the son of the applicant is also a railway servant and was occupying the same quarter earlier, (which was later and in view of interim order cancelled), we think it appropriate that the penal rent may not be levied. However, we hasten to add that the regular rent to the quarter should be paid either by the applicant or his son for the period they were occupying the quarter after the retirement of the applicant. From Annexure A-1 we find that the gratuity is withheld only towards the non-payment of the arrears of rent. Now we make it clear that the department shall work out



the arrears of the rent payable by the applicant on the basis the normal rent, which was due either before the retirement or after the retirement, and the said amount may be recovered from the gratuity and the balance amount shall be paid to him. Accordingly, we pass the order as under :-

The application is dismissed. The respondents are directed to release the withheld gratuity amount after adjusting the arrears of rent payable towards the quarter from the date such arrears fell due, and the balance amount shall be paid to the applicant. This order shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.



(N.P.NAWANI)

MEMBER (A)



(B.S.RAIKOTE)

VICE CHAIRMAN