

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.424/98

Date of order: 17/8/2001

Smt.Raj Kumari Sharma, W/o late Sh.Shiv Dutt Sharma,  
R/o 244/11, Ganpati Nagar, Road No.7, Jaipur.

O.A No.168/99

Anil Kumar Sharma, S/o late Sh.Shiv Dutt Sharma,  
244/11, Ganpati Nagar Railway Colony, Jaipur

...Applicants.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.
2. Senior Divisional Personnel Officer, W.Rly, DRM Office, Jaipur.
3. Audit Officer, DRM Office, Jaipur.

...Respondents.

Mr.Anupam Agarwal	: Counsel for applicants
Mr.B.K.Sharma	: for respondents No.1 & 2
Mr.Manu Bhargava	: for respondent No.3

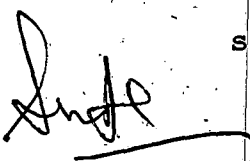
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In both these O.As facts are almost common and relief sought by the applicants is also against recovery of penal rent of railway quarter which was allotted to Sh.Shiv Dutt Sharma, husband/father of the applicants, therefore both these O.As are disposed of by one common order.

2. Facts common to both these O.As are that Sh.Shiv Dutt Sharma, Electric Chargeman in the Railway was allotted quarter at Jaipur. Sh.Shiv Dutt Sharma was medically decategorised and retired w.e.f. 29.6.94. Thereafter, his son, Anil Kumar moved an application for considering him for

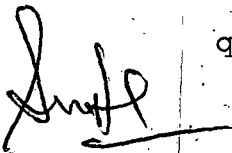


appointment on compassionate ground. Sh.Anil Kumar was given appointment vide order dated 6.8.96 and he is working on the post. It is also an undisputed fact that respondents have given repeated notices to vacate the said railway quarter within 7 days but Sh.Shiv Dutt Sharma alongwith his family including his wife and son Sh.Anil Kumar was in unauthorised occupation of the said quarter and the said quarter was only vacated after death of Sh.Shiv Dutt Sharma, to whom the quarter was allotted. It is also an undisputed fact that penal rent of the said quarter was determined at Rs.117714 as per circular dated 13.1.98 and after adjusting Rs.35640 of gratuity amount payable to the deceased railway employee, a letter dated 8.10.98 was given to Smt.Raj Kumari, wife of Sh.Shiv Dutt Sharma to pay Rs.82074/- to the respondents within 15 days but nothing was done. Thereafter vide letter dated 18.1.99, Sh.Anil Kumar was informed to recover the said amount of penal rent by deducting Rs.1500/- per month from his salary.

3. In O.A No.424/98, Smt.Raj Kumari has challenged the order dated 8.10.98 with the prayer to quash and set aside the said order and direct the respondents not to recover any amount from her in pursuance of the order dated 8.10.98.

4. In O.A No.168/99, the applicant has challenged the order dated 18.1.99 and prayed to quash and set aside the same and direct the respondents not to recover any amount from his salary in pursuance of the order dated 18.1.99 and if any amount has been recovered from him, the same may be refunded with interest.

5. Reply was filed. In the reply to O.A No.424/98, it is stated that repeated notices were given to vacate the quarter within 7 days but the same was not vacated and Shri

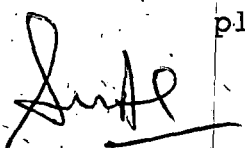


Shiv Dutt Sharma alongwith applicant remained in unauthorised possession of the said quarter, therefore, penal rent was determined at Rs.117714/- as per circular dated 13.1.98 and out of this amount gratuity admissible to the railway employee Sh.Shiv Dutt Sharma Rs.35640/- was adjusted and for the balance amount of Rs.82074/- the applicant was asked to deposit the same within 15 days but with no response. Therefore, another order dated 18.1.99 was issued to Sh.Anil Kumar, S/o Sh.Shiv Dutt Sharma, making him liable for payment of Rs.82074/- on the ground that the applicant was appointed on compassionate ground after submitting his undertaking, therefore, the amount of arrears of penal rent may be recovered from Anil Kumar by deducting the same from his salary till the amount is not fully recovered.

6. In O.A No.168/99, it was stated in the reply that the said quarter was not allotted in the name of the applicant. It is stated that while the applicant was appointed on compassionate ground the applicant himself has given a declaration to the effect that he will lookafter the maintenance of the complete family of his father and in case of any default, he would be liable to disciplinary action and on the basis of the said declaration the screening committee found the applicant liable for arrears of penal rent and issued the impugned order of recovery. Therefore, it is stated that there is no illegality or infirmity in the said order and the applicant has no case.

7. Heard the learned counsel for the parties and also perused the whole record.

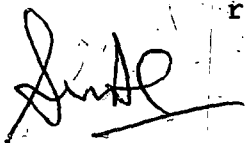
8. The undisputed fact which emerges out of the pleadings of the parties is that after retirement of Sh.Shiv



Dutt Sharma on medical ground on 29.6.94, the applicants remained in unauthorised possession of the said quarter and the same was vacated only after death of Sh. Shiv Dutt Sharma in whose name the said quarter was allotted. It is also an undisputed fact that repeated notices were given to vacate the quarter within 7 days but the quarter was not vacated in the life time of Sh. Shiv Dutt Sharma.

9. The main contention of the learned counsel for the applicant in O.A No.424/98 has been that the said quarter was allotted to Sh. Shiv Dutt Sharma, husband of the applicant, therefore, recovery of penal rent is not legal and permissible from family pension of the applicant.

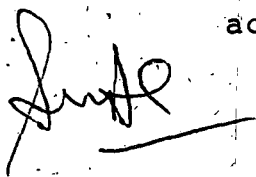
10. The question arises, when a government servant dies or retires whether his family or he should be completely absolved of the arrears of rent for occupying the government premises unauthorisedly. The answer is that there cannot be any such right conferred on the employee or their legal representatives for retaining the quarter unauthorisedly without paying the rent. It is the duty of the employee to make payment of rent for occupation of quarter. There can be no right to keep the accommodation without payment of rent. The CCS(Pension) Rules, 1972 not only deal with pension but all other aspects in relation to recovery and adjustment of government dues, dues pertaining to government accommodation and dues other than pertaining to government accommodation. Rule 72(6) of the CCS(Pension) Rules, makes it very clear that penal rent can be recovered from the dearness relief without consent of the pensioner. This provision has come in force after amendment on 22.1.91 in Rule 72(6) of CCS (Pension) Rules, 1972 as after retirement/superannuation, there is no other method by which



recovery can be made and there is a corresponding obligation on the employee/persons who are in occupation to make payment of rent of such government accommodation. In view of the provisions made for recovery from the dearness relief cannot be faulted and Rule 72(6) of the CCS(Pension) Rules, 1972 cannot be said to be arbitrary and does not suffer from any illegality.

11. In view of the above, I am of the considered opinion that recovery of arrears of penal rent can be made from the applicant from dearness relief on family pension and I do not find any infirmity/illegality in the impugned order dated 8.10.98.

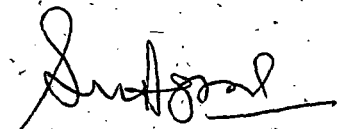
12. In O.A No.168/99, the applicant has challenged the impugned order dated 18.1.99 mainly on the ground that no house was allotted in the name of the applicant and merely the applicant was appointed on compassionate ground does not make him liable for arrears of rent for the accommodation which was allotted to his father. It is an undisputed fact that after medical decategorisation of Sh.Shiv Dutt Sharma, the applicant was considered for appointment on compassionate ground and he was appointed vide order dated 6.8.96. It is also an undisputed fact that the applicant furnished an undertaking on oath that he will look after the family of the deceased Sh.Shiv Dutt Sharma in all respect and in case of default he is liable to disciplinary action. The applicant was appointed on compassionate ground after the father of the applicant was medically decategorised and indigent circumstances did exist in the family of the deceased railway employee. Therefore, it was the duty of the applicant to bear the liability with regard to rent of the accommodation, etc. It is also an undisputed fact that till



the railway accommodation was vacated, the applicant and his mother remained in that accommodation, therefore, on the ground of equity also the applicant is entitled to pay rent/penal rent of the said government accommodation, till it was not vacated. Merely that the said accommodation was not allotted in the name of the applicant, the applicant cannot escape from his liability for payment of rent/penal rent as determined by the competent authority. During the course of argument, the learned counsel for the applicant did not press that penal rent determined as per circular dated 13.1.98 was in any way incorrect/contrary to rules or there was any mistake in calculating the said amount. Therefore, I am of the considered opinion that there is no infirmity/illegality in issuing the impugned order dated 18.1.99 to the applicant by which it has been provided that the amount of arrears of penal rent Rs.82074/- shall be deducted from his salary @ Rs.1500/- per month till the amount is not fully realised.

13. It is upto the respondents' department to decide as to recover the outstanding amount of Rs.82074/- either of the applicants or both.

14. With the above observations, both these O.As. are hereby dismissed with no order as to costs.

  
(S.K. Agarwal)

Member (J).