

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application No 94/2003

Date of decision: 08-10-04

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Padam Chand S/o Shri Gopilal Ji aged about 46 years, resident of Opposite Murga Farm, House No. 472, Dadawara, Kota Junction (Kota) (Rajasthan) at present working as Gangman, under Section Engineer (P.Way) Maheedpur Road, Western Railway Kota.

: Applicant.

rep. by Mr. C.B. Sharma : Counsel for the applicant.

VERSUS

1. Union of India, through the General Manager, Western Railway, Church Gate, Mumbai 20
2. Divisional Railway Manager, Western Railway, Kota Jn.
3. Senior Divisional Personnel Officer, Western Railway Kota Jn.
4. Senior Divisional Engineer (s) Western Railway, Kota.
5. Assistant Mechanical Engineer, Western Railway, Kota.

: Respondents.

Counsel

S.S. Hassan for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman

Initially when the O.A was filed the applicant sought the following reliefs.

- i) that the entire record relating to the case recalled and after perusing the same appellate order dated 15.01.2003 (Annex. A/1) with the punishment order dated 21.02.2001 with proceedings be quashed and set aside with all consequential benefits.

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- ii) that charge memo dated 26.09.2000 (Annex. A/8) be quashed and set aside as the same is not justified.
- iii) that letter dated 21.03.2001(Annex. A/3) and 19.02.2002 (Annex. A/4) may kindly be quashed and set aside and respondents be further directed to treat the applicant as authorised occupant of the quarter and not to recover any amount on account of penal/damaged rent and amount recovered be refunded with interest at market rate.
- iv) Any other relief which is just and reasonable may also be given to the applicant.
- v) Cost of the application may be awarded to the applicant.

Since the reliefs claimed by the applicant amounted to seeking multiple reliefs, an objection has been taken by the respondents in the counter affidavit that the O.A is not maintainable as per Rule 10 of the CAT (Procedure) Rules, 1987. Thereafter, the applicant gave up the reliefs sought as per para 8 (i) and (ii) above and restricted the O.A to relief (iii) only.

2. The relevant facts for the purpose of claiming relief (iii) above are that the applicant who is a railway employee before joining service was residing with his father who also happened to be a railway employee. Father of the applicant retired from service in the year 1979, and the applicant had been appointed as Khalasi before the retirement of his father. In the year 1983, the applicant is stated to have made an application for getting the allotment of the quarter to be changed in his name and the applicant continued to reside in the same quarter. The father of the applicant expired in the year 1984. It is further submitted when the applicant

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made an application for change of allotment in his name in the year 1983, he had not been drawing the admissible house rent allowance also. Hence he presumed that the quarter had been regularised in his name. It is further averred that no one from the office of the applicant had ever objected to the occupation of the quarter by him. Suddenly, disciplinary proceedings were initiated against the applicant for imposing major penalty vide charge sheet dated 11.11.99, which was later on withdrawn and another charge sheet for imposing minor penalty was issued and a punishment of stoppage of one increment without cumulative effect was imposed. Since the relief against disciplinary proceedings have been given up, the applicant is now only assailing the order regarding recovery of penal rent amount to Rs.1,40,072/- and Rs.1871/-.

3. The further facts are that the applicant had been regularised on the post of Gangman only on 06.06.2001 and has been posted at Maheedpur Road, Kota, though the applicant alleged that he was entitled to regularisation on the post of Khalasi from the year 1984, when his juniors were regularised in the post of Khalasi. It is stated that during the pendency of earlier O.A.No.270/2001 filed by the applicant, another order dated 19.02.2002 was passed informing the applicant that in addition to the damage rent of Rs.1,40,072/- another amount of Rs.1,817.10 is also to be recovered as damage rent for the period from July 1979 to March 1986. It is further stated that at the time of retirement of the father of the applicant, the respondents have issued sanction for payment of gratuity to his father, but the same has not been paid during his life time and the same is still

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being withheld by the respondents.

4. It is further stated that the action of the respondents inflicting the punishment on the applicant as well as ordering recovery of penal rent are against the rules. However, it is stated that the applicant is ready to pay normal rent, if any, throughout the period from 1979 till date, as various other employees who were junior to the applicant were also allowed to retain the quarters allotted to their fathers. Thus it is stated that the action of the respondents is against Art. 14 and 16 of the Constitution of India. Hence it is prayed that the orders Annex. A/3 and A/4 be quashed and set aside and the respondents be directed to declare the applicant as authorised occupant of the quarter and no recovery of damage rent/penal rent be effected from the applicant.

5. The respondents have contested the O.A. The respondents in their reply pleaded that the quarter in question was allotted to his father who retired from service in the year 1979. The retention of the quarter by the applicant was neither proper nor permissible under the rules. The applicant had retained the quarter even after the retirement of his father and did not get permission from the headquarters and hence the applicant was informed that since he had retained the quarter without authority and without lawful orders or without permission from the competent authority, he will have to pay penal/damage rent. Therefore, recovery has been ordered. It is further stated that the applicant was asked to make a representation but the applicant did not disclose any reason nor made any representation.

[Signature]

6. As regards withholding of gratuity of his father it is stated that the same is not the subject matter of this O.A. It is simply stated that the applicant was not entitled for allotment of quarters and hence he is liable to pay damage/penal rent.

7. I have heard the learned counsel for the parties and perused the records. The learned counsel for the applicant submitted that the quarter in question was allotted to father of the applicant. But no action had been taken by the department asking the father of the applicant to surrender the possession of the premises on his retirement or even after the expiry of the permissible retention period. The department thus did not take any step to evict the applicant and his father and get possession of the vacant premises. On the contrary, the applicant, who was in employment in the Railway informed the authorities in the year 1983 itself for changing the allotment in his name so that the quarter may be regularised in his name. But no order to that effect had been passed and also the applicant was not being paid house rent allowance and hence the applicant was under the impression that the quarter had been regularised in his name. There is no question of the applicant retaining the possession of the premises in an unauthorised manner since he had not been allotted the quarter till date by the department.

8. On the contrary, the learned counsel for the respondents submitted that in Railways the retention of quarters in an unauthorised manner by employees is liable to attract penal rent and hence recovery has been ordered vide Annex. A/3 and A/4 for unauthorised

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occupation. The respondents department is justified in levying the recovery of penal rent.

9. I have considered the rival contentions raised by the parties and given my anxious thought to the controversy involved in the instant case. The first and foremost objection taken by the applicant's counsel is that the applicant had never been allotted any quarter and therefore the question of unauthorised occupation, if any was on the part of his father as the respondents have failed to take possession of the quarters from his father after his retirement, nor the respondents had issued any notice to the applicant's father for recovery of penal rent, when he was alive. The father of the applicant had expired in the year 1984 and before that the applicant had submitted an application for seeking the allotment to be made in his name, but still no action had been taken by the respondents. Hence the railway officials were at fault for not initiating any action first against his father. It is for the first time that the applicant vide letter Annex. A/3 had been informed since the applicant is retaining the quarter in an unauthorised manner and that too from 1979, deduction have to be made from the applicant's salary towards penal rent. Similarly, another letter had been issued on 19.02.2002(Annex. A/4) vide which certain additional amounts has been claimed in addition to the amounts claimed vide Annex. A/3. The learned counsel for the applicant in support of his contentions relied on an order of the Calcutta Bench of the Tribunal in the case of Narayan Chandra Roy and ors vs. Union of India through the General Manager and ors. (1998 (2) SLJ (CAT) 324). Though the facts in that case are little

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different, because in that case the employees were transferred from one station to another and they retained the quarters at the old station and the respondents did not take any action for getting the premises vacated on transfer and after 17 years, the respondents started recovery of penal rent. The Court had held as under:

"..... (A)lthough the petitioner was transferred in the year 1975, the penal rent was first deducted from him only in 1992 for his unauthorised occupation. We feel that if the respondents had been active in time in the past to charge whatsoever penal rent or damage rate to be levied on this petitioner, the overall liability of the petitioner Narah Ch. Roy would not have been so big, the respondents should, therefore, consider simultaneously to take action against the erring officials for the failure to deduct penal rent/damage rent from him in the past. However, in view of the big amount involved, by way humanitarin gesture, the respondents should, in our view, consider waiving the penal rent/damage rent in part or in full in terms of provisions of para 1719 of IREM Vol. II (1990 Edn) and since the General Manager does not have the competent to remit an amount for more than 3 months under specific categories, respondents No. 1 i.e. the General Manager, Eastern Railway shall obtain appropriate orders about such remission/waiver from the Railway Board by making a self contained reference along with a copy of this order under advice to the petitioner of O.A. No. 1224/95. Further to the extent the Railway Board decides to waive the penal rent/damages concerning that petitioner of O.A. No. 1224/95, the same amount shall be refunded to the petitioner, if already recovered Otherwise, a formal communication about the final action taken shall be made by the respondents to the petitioner within a month of final order of the Railway Board. "

(emphasis supplied).

Relying upon the above order, the learned counsel for the applicant submitted that since the applicant is willing to pay normal rent, the matter should be referred to the Railway Board to take a final decision as has been done in the case cited supra. Further, it would not be out of place to

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mention here that the applicant had been transferred to another station and he vacated the quarter in question. It has also not been denied by the respondents that they have not withheld the gratuity of the applicant's father.

10. When the learned counsel for the respondents was confronted with a question when the quarter had not been initially allotted to the applicant, under what authority, the respondents are empowered to charge/levy penal/damage rent when the applicant is a non-allottee. In my considered view, the railways had a cause of action to recover the damage/penal rent only from the father of the applicant and since that had not been done and when no action had been taken by the authorities of the Railways for taking possession of the premises after the retirement of the applicant's father, apparently the authorities concerned are also responsible for their inaction on their part in not evicting the applicant's father after his retirement or for not taking any action against him. Further, merely because the applicant happened to be in railway service and occupying the quarter in question, the Railways cannot take shelter under any rules and levy damage/penal rent on him. Further it is seen from Annex A/3 and A/4 the respondents have mentioned that these letters were being issued as a notice and if the applicant wants to make any representation against those letters he may make within a period of one week and otherwise the amount would be deducted from his salary. The applicant being Class IV employee may be an illiterate he could not make any representation.

11. Hence following the order of the Calcutta Bench of this Tribunal cited above, I feel that the interest

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justice would be met by directing the applicant to make a comprehensive representation against the recovery, the Railway authorities are directed to refer the representation to the Railway Board, for waiver of penal rent and whatever decision is taken on the representation that may be informed to the applicant and if still any adverse order is passed against the applicant he will be at liberty to approach the Tribunal again.

22. Accordingly the O.A is disposed of with the following directions:

- i) The applicant is directed to make a comprehensive representation within one month from today.
- ii) The Railway authorities are directed to refer the representation to the Railway Board for waiver of penal rent and after a decision is taken by the Railway Board the same be communicated to the applicant.
- iii) The respondents are directed not to effect any recovery from the applicant till a decision is taken on the representation to be preferred by the applicant as per direction (i) above.
- iv) NO costs.


(Kuldip Singh)
Vice Chairman.

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