

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 11.08.2003

OA No.189/2003

Vinod Kumar Bhardwaj s/o Shri Heera Lal Sharma, Lab Assistant, Diesel Shed, Phulera Junction, North-Western Railway, Phulera r/o Railway Quarter No.L/80-A Type-II, Loco Colony, Phulera.

.. Applicant

Versus

1. Union of India through General Manager, North Western Railway, Opposite Railway Hospital, Jaipur.
2. The Divisional Railway Manager, North-Western Railway, Jaipur.
3. Senior Divisional Personnel Officer, Divisional Office, North Western Railway, Jaipur.

.. Respondents

None present for the applicant.

Mr. N.C.Goyal - counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAHAN, MEMBER (JUDICIAL)

O R D E R (ORAL)

The applicant, who is presently working as Lab Assistant, Diesel Shed, Phulera Division, North-Western Railway, Phulera, has filed the present application thereby praying for the following reliefs:-

- "i) by an appropriate order or direction the impugned order dated 20.6.2002 in regard to regularisation of the rent of the quarter and to deduct the rent of the quarter w.e.f. 20.6.2002 be quashed and set aside and the respondents be directed to

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deduct the rent of the quarter including the electricity and water charges as its consumer from the salary of the applicant with effect from 1.8.1993 as an eligible dependent of the Railway servant and keeping the fact that there was stay regarding dispossession from this government accommodation in favour of the father of the applicant.

- ii) by an appropriate order or direction the respondents be directed to recover the arrears of rent of the quarter alongwith electric and water charges consumed by the applicant during this period in easy instalments from the salary of the applicant.
- (iii) by an appropriate order or direction the respondents be directed to send the dues if any recoverable in regard to the quarter L/80-A with effect from 1.8.93 to the applicant for their payment to enable me to discharge this liability as a legal holder of the quarter.
- iv) any other order prejudicial the rights of the applicant is passed during the pendency of the OA, the same may kindly be taken on record and be quashed and set aside.
- v) Any other order or direction which may be considered just and proper in the facts and circumstances of the case may be passed in favour of the applicant.
- vi) cost of the OA may kindly be awarded in favour of the applicant."

2. The applicant was initially appointed as Artisan

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Khallasi on 18.2.82 and was subsequently promoted as Lab Assistant on 9.3.89. He remained on the post of Lab Assistant till 18.6.91 when he was reverted from the said post. The applicant has challenged the order of reversion by filing OA No.392/92 which was decided in his favour vide order dated 29.4.94 and he was again promoted to the post of Lab Assistant vide order dated 27.3.95 and since then he is continuously working on this post. The father of the applicant was also serving in the Railways who retired on superannuation on 31.7.93. During his tenure, the father of the applicant was allotted the railway quarter No.L/80-A Type-II which was also being shared by the applicant. After retirement of the father of the applicant, as per request of his father, the said quarter was allotted to the applicant vide order dated 4.10.93. It is further averred by the applicant that he is in continuous possession of the said quarter under the valid order. The grievance of the applicant is that since he is in occupation and possession of the said quarter, the impugned order dated 20.6.02 whereby father of the applicant has been held to be in possession of the said quarter upto 19.6.2002 i.e. for about 9 years after his retirement, is illegal and contrary to the decision of the Hon'ble Tribunal as well as the High Court and the said order be quashed and direction be issued to the respondents to recover the arrears of the rent of the quarter alongwith electricity and water charges from the applicant in easy instalments.

3. Notices of this applicant were issued to the respondents. Shri N.C.Goyal put in appearance on behalf of the respondents.

3.1 At this stage, it may be relevant to mention that earlier the father of the applicant, Shri Heera Lal Sharma, has also filed OA No.269/03 praying for quashing the same order dated 20.6.02 to the extent it relates to deduction of the rent of quarter No.L/80-A Type-II from 1.8.93 to 19.6.02 made from the withheld gratuity of the applicant with further prayer that the said amount may be recovered from his son, which was in the sole occupation of the said quarter under the valid court order. When this OA was listed for admission on 3.7.03 it came to the notice of this Tribunal that the order of allotment made in favour of son of the applicant i.e. the present applicant, was cancelled by the authorities vide order dated 3.10.94 when the present applicant was reverted to the post of Artisan Khallasi and this order was challenged by the father of the applicant by filing MA No.549/94 in OA No.538/93 which was filed by the father of the applicant when his gratuity was withheld on account of retention of the aforesaid quarter. Thereafter the father of the applicant was permitted to occupy the premises by virtue of the interim order dated 27.10.94 granted by this Tribunal in MA No.549/94 whereby this Tribunal directed that till such time the quarter of appropriate category is not allotted and physically made available to the son of the applicant (i.e. the present applicant), the father of the present applicant shall not be evicted from the quarter which is in the occupation of the father of the applicant and in which his son is also staying with him. Ultimately, the OA No.538/93 filed by the father of the applicant was finally disposed of on 12.4.2000 thereby holding that the department shall work out arrears of the rent payable by the father of the

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applicant on the basis of the normal rent which was due either before retirement or after the retirement and the said amount may be recovered from the gratuity and the balance shall be paid to the father of the applicant. It is further observed by this Tribunal that no such direction can be issued to the authorities to allot the same quarter to the present applicant. The matter was carried out by the father of the applicant to the High Court by filing writ petition which was registered as DECWP No.2980 of 2000. The Hon'ble High Court also dismissed the writ petition with further clarification that the petitioner will be liable to pay normal rent for the disputed period instead of market rent or penal rent for occupation of the house. It was further held that the gratuity amount be released to the father of the applicant within 2 weeks after deduction of the normal rent payable for the quarter in question. This Tribunal after noticing the decision in OA No. 533/93 and the decision of the High Court passed in DECWP NO. 2980 of 2000 dismissed the OA filed by the father of the applicant i.e. OA No. 269/03 in limine holding that the impugned order dated 20.6.02 (Ann.A1) and further order dated 12.11.02 (Ann.A2) are not contrary to the decision of the Hon'ble Tribunal as well as the decision of the High Court and as per these decisions it is the father of the applicant who was liable to pay normal rent for the aforesaid quarter and the said amount has to be deducted from his gratuity amount till a regular allotment in favour of the son of the applicant is not made.

3.2 Since in OA No.269/03 this Tribunal has already held that it is the father of the applicant who is liable to pay the rent for the said quarter and validity of the

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impugned order dated 20.6.02 was up held, no relief can be granted to the applicant in this OA. Accordingly, the OA is liable to be dismissed.

3.3 Before parting with the matter, it may be observed that the present applicant has suppressed the material fact from this Tribunal while filing this OA. In this OA, the applicant has averred that after retirement of his father he was allotted the said quarter vide order dated 4.10.93. The applicant has nowhere stated that the said allotment was subsequently cancelled vide order dated 3.10.94 when he was reverted to the lower post. The applicant has also not mentioned that against the order of cancellation, the father of the applicant has moved MA No.549/94 in OA No.538/93 whereby this Tribunal vide order dated 27.10.94 directed that till such time a quarter of appropriate category is not actually allotted and physically made available to the present applicant, the father of the applicant shall not be evicted from the quarter. The applicant has also suppressed the fact that it is the father of the applicant who has been held liable for payment of rent by this Tribunal as well by the Hon'ble High Court and the said amount was to be deducted from the gratuity of the father of the applicant. Rather, the case put up by the applicant is that after retirement of his father vide order dated 4.10.93, the allotment was made in his favour and thereafter he is occupying the same, not only under the aforesaid allotment order but even according to the order passed by this Tribunal, is factually incorrect. The applicant is thus guilty of suppressing the material fact from this Tribunal which misled this Tribunal for issuing the notice to the respondents at the admission stage. Such conduct on behalf

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of the applicant cannot be appreciated. This Tribunal would have imposed heavy costs on the applicant for suppressing the material fact and filing a <sup>flimsy</sup> ~~filthy~~ OA which amount to abuse of the process of this Court but since neither the applicant nor his counsel is present today, this Tribunal has not imposed any costs. However, action of the applicant in filing this collusive OA cannot be appreciated.

4. With these observations, the OA is dismissed with no order as to costs.

  
(M.L. CHAUDHARY)

Member (Judicial)