

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 03.07.2003

OA No.269/2003

Heera Lal Sharma s/o Shri Ram Kishan Sharma r/o Plot No.19/20, Near Loco Shed, Dhani Kangaran, Loco Road, Phulera, District Jaipur, retired Passenger Train Driver, North Western Railway, Phulera.

.. Applicant

Versus

1. Union of India through the General Manager, North Western Railway, Opposite Railway Hospital, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur.

.. Respondents

Mr. M.P.Rathi, counsel for the applicant

CORAM:

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

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The applicant is aggrieved of the order dated 20.6.02 (Ann.A1) and consequential order dated 12.11.02 (Ann.A2) whereby sum of Rs. 21,363/- has been deducted from his gratuity amount as outstanding due on account of arrear of rent of the quarter from 1.8.93 to 19.6.2002 and 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 (Annexure A/1) may kindly be quashed to this extent that the deduction of

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the rent of the quarter L/80-A Type-II for the period 1.8.93 to 19.6.2002, made from the withhold gratuity of the applicant, is against the directions given to the respondents for recovery of dues of house rent from his gratuity amount.

- ii) by an appropriate order or direction the impugned order dated 12.11.2002 (Annexure A/2) may kindly quashed and set aside and the respondents be directed to release the payment of amount of Rs. 46,035/- of gratuity of the applicant with interest @ 18% per annum with effect from 1.8.93 to till date of realisation of this amount.
- iii) by an appropriate order or direction the gratuity amount be released to the applicant after making deduction of the rent of the quarter for the period pertains to reversion of the son of the applicant i.e. from 1.8.93 to 27.3.95 with interest @ 18% per annum as the allotment of the quarter was made in favour of the son of the applicant vide order dated 4.10.93 and he was in possession of the quarter under the valid court order.
- iv) by an appropriate writ, order or direction the respondents be directed to issue a fresh order to realise the arrears rent of the quarter L/80-A with effect from 1.8.93 from Shri Vinod Kumar Bhardwaj son of the applicant who was in the sole occupation as an authorised possessor as per report of the Assistant Engineer Phulerā vide his letter dated 21.3.2000 (Annexure A/6) alongwith the arrears of electric charges of the quarter if any for the said period because in fact he had enjoyed this facility.
- 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 retired from railway service on

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superannuation as Passenger Train Driver on 31.7.93. When his gratuity and travelling passes were withheld, he filed OA No. 538/93 in this Tribunal thereby challenging the order dated 3.8.93. This Tribunal disposed of the said OA with a direction of the respondents to pay gratuity and issue travelling passes to the applicant. He further sought directions that the railway quarter which the applicant was occupying may be allotted in the name of his son, Shri Vinod Kumar Bhardwaj. The said OA was finally disposed of by this Bench vide order dated 12.4.2000 thereby holding that no mandamus can be issued to the respondents straightaway to allot the same quarter to his son on the ground that his son is also employed in the railway department. This Tribunal further directed the respondents 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. It may further be stated here that son of the applicant was allotted the same quarter which was being occupied by the applicant vide order dated 4.10.93 on out of turn basis. However, the said allotment was subsequently cancelled vide order dated 3.10.94.

2.1 The applicant subsequently filed MA No.549/94 in the aforesaid OA seeking direction that operation of the order dated 3.10.94 vide which the allotment of the quarter earlier granted to his son on 4.10.93 (Ann.A5) was cancelled as the son of the applicant was demoted to a lower post and the applicant has been asked to vacate the said quarter which was allotted to him during his service period. This Tribunal vide its order dated 27.10.94 passed in MA No.549/94 directed that till such time the quarter

of appropriate category is not actually allotted and physically made available to the son of the applicant, the applicant shall not be evicted from the quarter which is now in his occupation and in which his son is also staying with him. Thus, the applicant continued to occupy the quarter in question by virtue of the interim stay granted by this Tribunal till 12.4.2000 when the OA was finally disposed of by this Tribunal. The applicant still being aggrieved by the order of the Tribunal passed in OA No. 538/93 filed writ petition before the Hon'ble High Court of Rajasthan at Jaipur Bench which was registered as DBCWP No.2980/2000. The said writ petition was disposed of by the Hon'ble High Court vide its judgement dated 12.2.02 with the clarification that the petitioner will be liable to pay normal rent for the disputed period instead of market rent or penal rent for the occupation of the house. It was further observed that the gratuity amount shall be released to the applicant within 2 months after deducting the normal rent payable for the quarter in question. Consequent upon the decision of this Tribunal as well as the judgment passed by the Hon'ble High Court, the respondents have issued the impugned orders Ann.A1 and A2 thereby holding the applicant liable for payment of rent amount to Rs. 31,363 for the period w.e.f. 1.8.93 to 19.6.02 and the said sum was deducted from the gratuity amount of the applicant. The applicant have challenged these orders on the ground that he is not liable to pay the rent from 1.8.94 to 19.6.02 and the deduction of rent for this whole period from the amount of gratuity is ex-facie illegal, arbitrary and in violation of the order of the Hon'ble High Court dated 12.2.02 (Ann.A8) and also the order of the CAT, Jaipur Bench, Jaipur dated 12.4.2002. It

may also be added here that the applicant has also filed Writ Petition No. 2197/03 against the recovery of the amount but the same was disposed of by the Hon'ble High Court with a direction that the applicant has alternative remedy available against the the order of the respondents by filing appeal before the Central Administrative Tribunal, Jaipur Bench and the petition was dismissed. It is how the applicant has filed the present OA thereby praying for the aforesaid reliefs.

3. I have heard the learned counsel for the applicant at admission stage and is of the view that the present application is totally misconceived and the applicant is not entitled to the reliefs as prayed for for the reasons recorded hereinafter.

3.1 It is not disputed that the applicant retired as Passenger Train Driver, Western Railway, Phulera on 31.7.93. At the relevant time, the applicant was in occupation of railway quarter No. L-80/A Type-II and the son of the applicant Shri Vinod Kumar Bhardwaj who was also serving in the Railway Department was sharing the accommodation alongwith the applicant. Since the gratuity of the applicant was withheld vide order dated 3.8.93, he filed OA No. 538/93 before this Tribunal thereby praying for release of the gratuity amount and also sought directions that the railway quarter which the applicant was occupying may be allotted in the name of his son, Shri Vinod Kumar Bhardwaj. The said OA was finally disposed of vide order dated 12.4.2000 thereby observing that no mandamus can be issued to the respondents to allow the same quarter to his son on the ground that his son is also employed in the railway department. However, it was

further held that the respondents shall pay the balance amount of gratuity after adjusting the arrears of rent payable towards the quarter from the date such arrear fell due. In order to appreciate the matter in controversy, it will be useful to quote the relevant portion of the judgment, which reads as under:-

"...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 No.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 after allotment of a quarter of appropriate category the applicant 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 direction 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 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 rules. In case the government servant does not vacate the quarter within the prescribed time after the retirement, he would be liable to pay and penal rent. But in the circumstances that the son of the applicant is also a railway servant and was occupying the same quarter earlier on allotment (which was later

cancelled) and in view of the interim order, 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 of 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"

3.2 At this stage it will also be useful to quote the operative part of the order dated 27.10.94 passed in MA No.549/94 in OA No.538/93 which was moved by the applicant against the order dated 3.10.94 vide which the applicant was asked to vacate the quarter allotted to him during his service period and which he continued to occupy after his retirement. Para 3 of this order reads as under:-

"3. In the circumstances of the present case, we direct that till such time as a quarter of the appropriate category is not actually allotted and physically made available to Shri Vinod Kumar Bhardwaj, the son of the applicant, the applicant shall not be evicted from the quarter which is now in his occupation and in which his son is also staying with him. After allotment of a

Vinod Kumar Bhardwaj. Thus, the contention of the learned counsel for the applicant that by virtue of the order passed by this Tribunal in OA No. 538/93, he is not liable to pay the normal rent is totally misconceived and deserves outright rejection.

3.4 Similarly, the applicant also cannot draw any assistance from the order passed by the Hon'ble High Court in DBCWP No.2980/2000 which was filed by the applicant against the decision of this Tribunal dated 12.4.2000 passed in OA No. 538/93. By this order, the Hon'ble High Court has affirmed the decision of this Tribunal with further clarifications that the petitioner will be liable to pay normal rent for the disputed period instead of market rent or penal rent for the occupation of the house. A copy of the order of the Hon'ble High Court dated 12.2.2002 has been placed on record as Ann.A8. The Hon'ble High Court has noticed the contention made by the learned counsel for the applicant to the effect that recommendation has already been made in favour of the son of the petitioner for allotment of same/similar accommodation and the said recommendation is to be considered by the Allotment Committee keeping in view the background of the case. From this it is clear that even on 12.2.2002 there was no allotment in favour of the son of the applicant. Regarding payment of gratuity, the Hon'ble High Court has passed the following order. The relevant part of which is reproduced hereinbelow:-

".....Coming to the question of payment of gratuity, the Central Administrative Tribunal has already given a direction for release of the amount after deducting the rent payable by the petitioner for the specific period when the petitioner/his son had lost entitlement to the government accommodation."

The Hon'ble High Court further observed that :-

"There was a stay regarding dispossession from the government accommodation in favour of the petitioner during this period. Keeping all these facts in view, we clarify that the petitioner will liable to pay normal rent for the disputed period instead of market rent or penal rent for the occupation of the house. The gratuity amount be released to the petitioner within two weeks after deduction of the normal rent payable for the quarter in question."

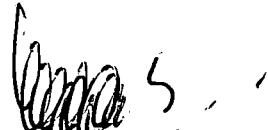
Therefore, from the portion of the order of the Hon'ble High Court as quoted above, it is clear that it is the applicant who is liable to pay the normal rent for the period when the applicant/his son has lost entitlement to the government accommodation and the Tribunal had already given direction for deducting such amount from the gratuity of the applicant. Admittedly, there is a clear cut finding of this Bench in OA No.538/93, portion of which is quoted above, that the allotment of quarter was in favour of the applicant, no mandamus can be issued to the respondents to allow the same quarter to the son of the applicant. Allotment made vide order dated 4.10.93 in favour of Shri Vinod Kumar Bhardwaj, son of the applicant, was cancelled vide order dated 3.10.94. The said order was challenged by the applicant by filing MA No.549/94 and the applicant was allowed to continue to stay in the quarter by virtue of the interim stay granted by this Tribunal on 27.10.94 in MA No.549/94 and there was restrained order from this Tribunal that till such time quarter of appropriate category is not actually allotted and physically made available to the son of the applicant, the applicant shall not be evicted justifying that there was no legal allotment in favour of the son of the

quarter of appropriate category is made and the quarter is physically made available to Shri Vinod Kumar Bhardwaj for occupation the applicant shall vacate the quarter within one week of the new quarter being made available to his son and if he does not do so, the respondents are free to take appropriate action against him in this regard."

3.3 Thus from the extracted portion of the judgement passed in OA No.538/93 and MA No.549/94 moved in this OA it is quite evident that the applicant was allowed to retain the quarter till such time a quarter of appropriate category is not allotted and made physically available to Shri Vinod Kumar Bhardwaj, the son of the applicant, and the applicant shall not be evicted from the quarter which was in his occupation and in which his son was staying with him. It was further made clear that arrears of the rent payable before or after retirement shall be recovered from the gratuity of the applicant. Therefore, the contention of the applicant that he is not liable to pay rent after his retirement on 31.7.93 in pursuance of the order passed by this Bench in OA No. 538/93, is devoid of any merit especially when he was allowed to occupy the quarter in question by virtue of the order passed by this Tribunal and it was further made clear that the applicant shall be liable for rent after retirement which shall be recovered from his gratuity. The person who has obtained a favourable order from the court to allow him to continue to occupy the quarter in question cannot be permitted to subsequently take U-turn and contend that he is not liable to pay normal rent for the disputed period and it is his son who is liable to pay the rent in question especially when it has come on record that no allotment of quarter of appropriate category was made in favour of his son Shri

applicant and the applicant continued to occupy the said quarter even after retirement beyond a period which was not permissible under the rules. Further, there was positive direction given by the Tribunal as well as by the Hon'ble High Court that rent is payable by the applicant for the period when the applicant lost entitlement to the government accommodation and after the retirement which will be recovered from gratuity. In the light of the aforesaid observations, it cannot be said that the order passed by the authorities vide Ann.A1 and A2 are contrary to the decision of the Hon'ble Tribunal as well as the decision of the Hon'ble High Court in DBCWP No. 2980/2000.

4. Accordingly, the OA is dismissed at the admission stage with no order as to costs.


(M.L.CHAUHAN)

Member (Judicial)