

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 731 of 2001

Jabalpur, this the 16th day of December, 2003.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Nand Kishore Sharma (deceased) through LRs-

1. Smt. Asha Rani Sharma
w/o Late Shri N.K. Sharma,
aged about 57 years.
2. Rohini Sharma,
D/o Late Shri N.K. Sharma,
aged about 22 years,
3. Mona Sharma,
D/o Late Shri NK. Sharma,
aged about 20 years,
Applicant No.1 to 3 all
R/o 325 'A' RB II
New Yard Railway Colony,
Itarsi (M.P.)

APPLICANTS

(Applicant no.1 in person)

VERSUS

1. Union of India
Through-General Manager (G.M.)
Central Railway - Mumbai (V.T.)
Chhatrapati - Shivaji - Terminus
Mumbai - Maharashtra

2. The Divisional Railway Manager (D.R.M.) (P)
Central Railway -
Bhopal (M.P.)

3. The senior Divisional Mechanical
Engineer (Sr.D.M.E.)
Diesel Shed Central Railway,
Itarsi

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the
applicant had claimed a number of reliefs. However, the
applicant no.1 has restricted her relief only to the
order dated 6.8.2003 issued by the Railways to the
Manager, Bank of India, Itarsi for recovery of the
amount of Rs. 2,02,044/- from dearness relief on pension.

2. The brief facts of the case are that the husband of applicant no.1, who was working as Machineman Grade-II in the Railways was proceeded against departmentally for absconding from duty. A charge-sheet was issued to him on 29.7.1988 and after enquiry he was removed from service vide order dated 21.7.1989. The said order was challenged before the Tribunal in O.A.854/1989 and the Tribunal vide order dated 6.3.1992 allowed the said OA. Accordingly, the husband of applicant N.K.Sharma was reinstated and paid full pay and allowances upto 27.1.1993 except for the suspension period from 19.7.1988 to 21.7.1989. Thereafter, the applicant was compulsorily retired vide order dated 28.1.1993, which was upheld by the Tribunal in another OA 221/1993 filed by the said N.K.Sharma, vide order dated 31.1.1994. Thereafter the said N.K.Sharma again filed OA 817/2000 which was dismissed as being misconceived vide order dated 23.10.2000.

3. As the said N.K.Sharma did not vacate the Government accommodation allotted to him while he was in service, his gratuity was withheld, however, all other retiral benefits were granted to him. Since he had not vacated the Government accommodation, the respondents have taken the action against him under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the PP Act'). Thereafter, the respondents issued a notice to the applicants to charge penal rent from 28.3.1993. The railway quarter was vacated on 28.2.2003. The respondents have worked out the total damage rent to Rs.2,01,073/- + electric charges as per meter reading vide Annexure-R-V; and have issued the impugned order dated 6.8.2003 (Annexure-I).

4. During the pendency of this OA, Shri N.K.Sharma has expired and his LRs have come on record.

5. We have heard the applicant no.1 in person and also the learned counsel for the respondents. We have also very carefully perused the pleadings available on record.

6. The applicant no.1 has submitted that the respondents have now started deducting the damage rent from her pension which is payable to her every month. She submits that this is illegal and is not permissible in the rules. She has also stated that she has not received any notice from the concerned authorities. She has, however, filed a writ petition in the Hon'ble High Court and has got certain reliefs from the High Court.

7. On the other hand the learned counsel for the respondents submits that the Hon'ble High Court has not granted any relief to her. They have further submitted that the applicant no.1 has not challenged the order of the Director of Estate or the action of the Director of Estate which was taken under the PP Act. She has also not gone to the proper forum to get the relief. The Hon'ble High Court has not granted any relief and on the other hand stated that damage rent should be charged from the applicant as per rules. The learned counsel for the respondents has further contended that the applicants were duly informed about deducting the damage rent for unauthorised occupation for such a long period of about 10 years, and all communications including the notices for taking actions under the PP Act were served on the applicants.

8. We have carefully considered the arguments advanced by both the sides. We find that the husband of applicant no.1 was compulsorily retired in 1993 and has kept the Government accommodation under his occupation till his death and thereafter his family members retained the Govt. accommodation till 28.2.2003. As the Govt. accommodation was not vacated, action had been initiated by the respondents under the PP Act, for eviction of the applicants from the Govt. accommodation and charging the damage rent. In view of the decision of the Hon'ble Supreme Court in the case of Union of India vs. Rasila Ram, (2001)10 SCC 623, this Tribunal has no jurisdiction



to go into the legality of the order passed by the competent authority under the PP Act.

9. The only question which can be considered is whether the respondents can effect the recovery of damage rent from the DA component of the pension payable to the applicant no.1. The Full Bench of the Tribunal in the case of Srinivas B. Kulkarni & another Vs. Union of India & others, (1997-2001) A.T.F.B.J.232, has held that "dearness relief does not form part of pension and hence recovery of Government dues can be made from it". In view of the clear findings of the aforesaid Full Bench, we cannot interfere with the order passed by the respondent on 6.8.2003.

10. As regards the remaining reliefs 8.5 & 8.6 claimed through MA 1567/2003, we find that the applicant has earlier moved OA 854/1989 challenging his removal and the said OA was allowed vide order dated 6.3.1992. At that stage, he should have also secured the orders for amount of subsistence allowance for the/suspension period. He did not set and, therefore, the relief claimed in para 8.5 operates as res judicata in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, 1996(6)SCALE 403, wherein their Lordships have held as under-

"4. The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not set and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2 CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable".

As regards relief 8.6 is concerned, we find that the husband of the applicant had also filed earlier an OA No.817/2000 which was dismissed by the Tribunal on 23.10.2000 wherein it was specifically held that "He cannot agitate now for cause of action relating to seniority and promotion which arose long back".

:: 5 ::

therefore, the relief claimed in para 8.6 is also hit by the principle of res judicata.

11. For the reasons stated above, this O.A. is dismissed, however, without any order as to costs.



(G. Shanthappa)
Judicial Member

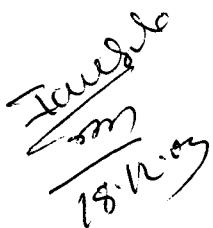

(M.P. Singh)
Vice Chairman

rkv.

पूर्वांका सं. नो/नं. जल्लापुर, दि.
मात्रांकिति दिनांक: 18.11.2009

- (1) नाम: डॉ. अ. विजय कुमार अग्रवाल
- (2) विवर: अग्रवाल अपाल रेपोर्टर
- (3) विवर: अग्रवाल अपाल अप्प्लिकेंट
- (4) विवर: अग्रवाल अपाल अप्प्लिकेंट

अग्रवाल अपाल अप्प्लिकेंट 5P Sinha, Adm.


अग्रवाल अपाल अप्प्लिकेंट
T. M.
18.11.09