

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

07.03.2008.

OA No. 316/2006 & OA No. 238/2004

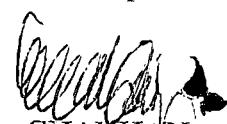
Mr. C.B. Sharma, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents (OA No. 316/2006)

Mr. T.P. Sharma, Counsel for respondents (OA No. 238/2004)

Heard learned counsel for the parties.

For the reasons dictated separately, both these OA are disposed of.


M.L. CHAUHAN
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 07th day of March, 2008

CORAM:

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

1. ORIGINATION APPLICATION NO. 238/2004

Padam Chand son of Shri Gopi Lal ji aged about 47 years, resident of Opposite Murga Farm, House No. 472, Dadawara, Kota Jn. Kota (Raj.) at present working as Gangman, under Section Engineer (P.way) Maheedpur Road, Western Railway, Kota.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.
3. Senior Divisional Mechanical Engineer(s), West Central Railway, Kota Division, Kota.
4. Assistant Mechanical Engineer, West Central Railway, Kota Division, Kota.

.....RESPONDENTS

(By Advocate: Mr. T.P. Sharma)

2. ORIGINATION APPLICATION NO. 316/2006

Padam Chand son of Shri Gopi Lal ji aged about 49 years, resident of Opposite Murga Farm, House No. 472, Dadawara, Kota Jn. Kota (Raj.) at present working as Gangman, under Section Engineer (P.way) Maheedpur Road, Western Railway, Kota.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.
4. Railway Board through its Chairman, Rail Bhavan, New Delhi.

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

By this common order, I propose to dispose of both these OAs filed by the same applicant.

2. In OA No. 316/2006, the applicant has challenged the order dated 06.07.2006 (Annexure A/1) passed by the Railway Board in compliance of the judgement dated 03.10.2004 rendered by this Tribunal in OA No. 94/2003 regarding waiver of rent at damage rate for the unauthorized occupation of the Railway accommodation.

W.C.

3. OA No. 238/2004 pertains to the action of the respondents whereby the applicant was inflicted minor penalty of stoppage of one increment from due date without cumulative effect vide order dated 21.02.2001 (Annexure A/2), for unauthorized occupation of railway quarter which was allotted to his father. The said order was confirmed by the Appellate Authority.

4. Briefly stated, facts of the case so far as the same are relevant for the decision of these cases are that the father of the applicant, who was a Railway Servant, retired on superannuation in the year 1979. During his service period, he was allotted Railway quarter. The applicant who was appointed as a Casual Khallasi was also residing with his father. It is the case of the respondents that the applicant remained under illegal occupation of the said quarter w.e.f. 1979 to 2001 as his services were regularized on 06.06.2001 (Annexure A/13 in OA No. 238/2004) and he became entitled for the Railway quarter after his regularization in service in 2001. From the material placed on record and as per averments made by the applicant, he has made an application in the year 1983 for getting allotment of quarter in his name. The applicant continued to reside in the same quarter. It is further stated that the father of the applicant expired in the year 1984 and that the applicant was not drawing H.R.A. when he made an application for change of allotment of quarter in the year 1983. Thus according to the applicant, the quarter has been regularized in his name. It is further averred that no one has ever objected on the occupation of the quarter by the applicant. Suddenly, disciplinary proceedings were initiated against the applicant for imposing major penalty vide charge sheet dated 11.11.99, which was later withdrawn and another charge sheet for minor penalty was

issued which resulted in imposing penalty of stoppage of one increment vide order dated 21.02.2001. Vide another order, the applicant was also informed that applicant is also liable to pay penal rent amounting to Rs.1,40,072/- and Rs.1817/- . The action of the respondents was challenged by the applicant by filing OA No. 94/2003. The said OA was disposed vide order dated 08.10.2004. In Para No. 7 of the said judgement, this Tribunal has made the following observations:-

“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 regularized 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 regularized in his name. There is no question of the applicant retaining the possession of the premises in an unauthorized manner since he had not been allotted the quarter till date by the department.”

5. This Tribunal after considering the matter directed the applicant to make a comprehensive representation against the recovery and the Railway authorities were directed to refer the representation to the Railway Board for waiver of penal rent and pass appropriate order. In case the applicant is still aggrieved, liberty was given to approach this Tribunal again. The Railway Board vide impugned order dated 06.07.2006 (Annexure A/1 in OA 316/2006) has rejected the representation of the applicant. At this stage it will be useful to reproduce the relevant portion of the decision arrived by the Railway Board, which thus reads as under:-

" After due consideration of the aforesaid representation of Shri Padam Chand, the Railway Board have not agreed to his request for waiver of damage rent for the unauthorized occupation of the Railway accommodation by him at Kota from 1979 to 2001 for the following reasons:-

- (i) On the date of retirement of his father late Shri Gopi Lal, Shri Padam Chand was working as a Casual Khalasi. As Casual employees are not eligible for allotment of Railway accommodation, on the date of retirement of his father Shri Padam Chand was not eligible for allotment of Railway accommodation. His services were regularized only in the year 2001 when he became eligible for allotment of Railway accommodation. Therefore, retention/occupation of the Railway accommodation from 1979 to 2001 was unauthorized for which rent at damage rent has to be levied in terms of the extant instructions.
- (ii) The Hon'ble High Court of Delhi in their judgement dated 5.12.2001, in a Writ Petition No. 5057 of 1999 have directed the Ministry of Railways to strictly follow the rules, guidelines etc. in regard to allotment/retention of Railway accommodation. It has been further directed that no relaxation should be allowed in individual cases. The request of Shri Padam Chand for waiver of damage rent requires relaxation of the rules regarding recovery of damage rent for unauthorized occupation of Railway accommodation which is not possible in terms of the directions of the Hon'ble High Court of Delhi mentioned above.

W.F. Railway are advised to communicate the above decision of the Railway Board to Shri Padam Chand on his representation dated 24.10.2004 in pursuance of the directions dated 08.10.2004 of the Hon'ble CAT/Jaipur Bench in OA No. 94/2003 and also take further necessary action in this case."

6. I have heard the learned counsel for the parties and has gone through the material placed on record. As can be seen from the material placed on record and more particularly the decision arrived by the Railway Board, it is clear ^{that} the applicant was working as Casual Khalasi and his services were regularized on 06.06.2001. As per the decision taken by the Railway Board, the applicant was not eligible for allotment of the Railway Quarter from 1979 to 2001 as his services were regularized in the year 2001. As

such, he became eligible for allotment of Railway quarter when his services were regularized. On the contrary, the applicant has been treated as a Railway Servant for the purpose for initiation of disciplinary proceedings against him whereby he was imposed the punishment of stoppage of one increment from due date without cumulative effect vide order dated 21.12.2001 (Annexure A/2 in OA No. 238/2004) when admittedly the applicant was working as a Casual Khallasi and was not a Railway Servant. At this stage, it may be relevant to notice some of the provision of the Railway Servant (Discipline & Appeal) Rules, 1968. As can be seen from Rule 1, these rules came into force on 01.10.1968. Rule 2(e) defines 'Railway servant' means a railway servant as defined in clause (13) of Rule 102 of Volume I of the Indian Railway Establishment Code [Rule 103(43) of 1983 ed] and includes any such railway servant on foreign services or whose services are temporarily placed at the disposal of any other department of the Central Government or a State Government or a local or other authority. Rule 103 (43) of IREC specifically excludes Casual Labours from the definition of Railway servants. Further Rule 3(1)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968 also specifically provides that these rules shall not apply to the persons in casual employment. Further as per Rule 6 of Railway Servants (Discipline & Appeal) Rules, penalty mentioned therein can be imposed only on the Railway Servants. Schedule I, II and III which have been issued under the aforesaid rules also speaks about the authority who can impose penalty or place a Railway Servant under suspension in respect of class of employees belonging to Group 'A', 'B', 'C' and 'D' staff. Rule 29 deals with the repeal and saving clause which specifically provides that any orders issued which are inconsistent with these are hereby repealed. Thus from the provisions as contained above, it is evident that the

provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 has been made applicable to the persons who are Railway servant and not to the casual labourer. Further, any order issued by the Railway authorities either before coming into force the Railway Servants Disciplinary Rules or after that date which are inconsistent with these rules shall stand repealed. In other words, making the provision of Disciplinary Rules applicable to Casual Labour~~er~~ or Casual Labour~~er~~ with temporary status are bad being inconsistent with the provisions of the Rules as the Rules are applicable only to Railway Servants. Admittedly, when the punishment order was imposed on the applicant, his services were not regularized and as such, he was not a Railway Servant. If so, the entire proceedings initiated by the respondents under Railway Servants (Disciplinary and Appeal) Rules, 1968 was without jurisdiction and void ab initio. It may be stated that the question whether the casual labour~~er~~ who was granted temporary status can be said to be railway servant so that the widow of such Railway Servants may be entitled for pensionary benefits was also considered by the Apex Court. The Apex Court in the case of GM, North West Railways vs. Chanda Devi, 2007 (1) SCC (L&S) 394 after noticing the provisions of Rule 1501 (i) of Indian Railway Establishment Manual and also noticing the provisions of Pension Scheme has held that even a person with temporary status cannot be entitled the widow for pensionary benefits. So long as the casual labour is not regularized and absorbed in Railway service, they cannot be said to be temporary railway servant.

7. Thus in view of what has been stated above, it is clear that the respondents are taking contradictory plea whereby treating the applicant as Railway Servant for the

purpose of initiating disciplinary proceedings and awarding punishment of stoppage of one increment whereas when it comes to the awarding of penal rent and recovery on account of unauthorized occupation w.e.f. 1979 to 2001, the plea which has been taken by the respondents is that the applicant was Casual Khallasi as his services were regularized in the year 2001, as such he became entitled for allotment of Railway quarter only thereafter. Further it may be noticed that in case the applicant was not a Railway Servant, whether the proceedings for initiation & imposition of penal rent without resorting to proceedings under the Public Premises (Eviction of unauthorized occupants) Act, 1971 could have been resorted to, more particularly, in view of the observations made by this Tribunal in Para 7 of its judgement dated 08.10.2004 in OA No. 94/2003, the relevant portion has been reproduced above, is a question which is required to be considered in the facts and circumstances of this case.

8. Accordingly, without going into merit of the case, I am of the view that it will be appropriate if the entire issue is decided by the Railway Board at the first instance and re-consider the matter again in view of the observations made above. Accordingly, the Railway Board is directed to re-consider the matter again and decide the issue afresh within a period of three months from the date of receipt of a copy of this order. Till the issue is not decided and communicated to the applicant, the respondents are restrained from making any recovery of penal rent from the applicant for a further period of one month thereafter so that he can challenge the same before the appropriate forum. It is made clear that in case the applicant is still aggrieved, it will be open for him to file substantive OA thereby challenging the action of the respondents.

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9. With these observations, both these OA are disposed of with no order as to costs.

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(M.L. CHAUHAN)
MEMBER (J)

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