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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**

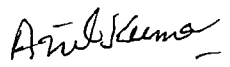
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10.01.2012

OA No. 183/2011 <sup>2009</sup>

Mr. C.B. Sharma, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

Heard. The OA is disposed of by a separate order.

  
(Anil Kumar)  
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR.

Jaipur, the 10<sup>th</sup> day of January, 2012

**ORIGINAL APPLICATION No. 183/2009**

**CORAM :**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Padam Chand son of Shri Gopi Lal ji, aged about 52 years, resident of Opposite Murga Farm, House No. 472, Dadawara Kota Jn. Kota (Rajasthan) 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. Railway Board through its Chairman, Rail Bhawan, New Delhi.
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the respondents may be direct not to recover enal/damaged rent from the applicant and amount recovered Rs.2547/- be refunded alongwith interest by quashing letter dated 22.01.2009 (Annexure A/1) with the orders of recovery passed by the respondents at Annexure A/10 and Annexure A/16.
- (ii) That amount of gratuity Rs.8382/- be released alongwith interest as per rules since 1979 to till payment.
- (iii) Any other relief which is just and reasonable may also be given to the applicant.
- (iv) Cost of the application may be awarded to the applicant."

*Anil Kumar*

2. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the father of the applicant retired from the Railway Service and he was in possession of a rent free government accommodation. The applicant before retirement of his father was appointed as casual worker with the respondents and in the year 1983 vide application dated 11.08.1983 (Annexure A/3) requested the respondents to allot quarter in his name, which was in possession of his father. The applicant continued in possession of the quarter and the respondents never informed the applicant that his application has not been duly considered. The father of the applicant expired in the year 1984. He further argued that the applicant was not allowed admissible House Rent Allowance to the applicant since 1983 which shows that the application of the applicant has been duly considered. Therefore, the applicant continued in possession of the quarter No. 62-LA. The respondents never objected regarding possession of the quarter. The applicant had been in possession of that quarter alongwith his mother upto 2001. Therefore, the allegation of unauthorized occupation of the quarter is not correct. That the respondents have issued a notice dated 21.03.2001 (Annexure A/10) for recovery of Rs.1,40,072/- on account of penal rent and have directed to be deducted from the pay of the applicant. In pursuance of this notice, the applicant submitted his representation dated 25.03.2001 (Annexure A/11). He further argued that the respondents without passing any order on the representation of

*Anil Kumar*

the applicant started recovery from the pay of the applicant from the month of May, 2001. He further argued that respondent no. 3 passed another order dated 19.07.2002 (Annexure A/16) informing the applicant that in addition to damaged rent of Rs.1,40,072/- an amount of Rs.1,817.10 is also to be recovered as damaged rent of the period from July, 1979 to March, 1986. He further argued that respondents have treated the applicant as unauthorized occupant since 1979 from the date of retirement of his father. Learned counsel for the applicant also submitted that the gratuity amount due for payment has not been paid to his father during life time and thereafter to his mother till date. That all of a sudden, the respondents after a gap of almost 20 years issued a notice treating the applicant unauthorized occupant and calculated the penal/ damaged rent since 1979. He further submitted that Railway Board has passed an order dated 22.01.2009 (Annexure A/1) without going into observations made by this Tribunal in OA No. 238/2004 and OA No. 316/2006. Therefore, order dated 22.01.2009 (Annexure A/1) be quashed and order of recovery of penal rent vide Annexure A/10 and A/16 may also be quashed.

3. To support his averments, learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **Radha Ballabh vs. Union of India & Another**, 2007 (1) SCC (L&S) 678, in which Hon'ble Supreme Court has held that damage rent indicated in the statement

*Anil Kumar*

may not be recovered from the applicant. The respondent Union of India shall make payment of the outstanding amount due to him as retirement benefits, after adjusting the amount which he owes to the Railways as indicated in the order.

4. On the contrary, learned counsel for the respondents argued that the said house was allotted to the father of the applicant while he was in service. The father of the applicant retired in 1979 and expired in 1984. He stated that the applicant has not substantiated that he was not paid House Rent Allowance from 1983 to 1991 and in absence of any proof thereof, there cannot be any assessment contrary to law. He argued that it is not disputed that the applicant and his mother continued to live in the said house even after the death of father of the applicant till the notice for recovery was issued in 1999. He argued that in the year 1999, a drive was undertaken to know the unauthorized occupation of the quarters at Kota, which resulted into a confidential note on 01.09.1999 (Annexure R/1). On the basis of this note, a notice for recovery from the applicant was issued but despite the receipt of the notice, the applicant failed to lodge any protest against the same or explain his unauthorized possession. He even failed to vacate the quarter. Thereafter vide letter No. E/C&W/58/35 dated 21.09.2000, the applicant was again asked to vacate the quarter immediately and give intimation to this effect in writing. When no such act was done by the applicant, he was served with an order dated 21.03.2001 asking penal rent and

Anil Kumar

effecting recovery thereof. Thereafter, the applicant submitted his representation vide Annexure A/11 for the first time on dated 25.03.2001. The applicant was having temporary status with the respondents till 2001. Therefore, he was not entitled for allotment of the house. He further argued that applicant was regularized with effect from 06.06.2001 and from that date, he became entitled for allotment of the quarter. The applicant was in unauthorized possession of the quarter since 1979 and, therefore, he has been correctly charged the penal rent from 1979 to 2000. He further argued that this OA has no merit and it may be dismissed with costs.

5. It is not disputed between the parties that the said quarter was allotted to the father of the applicant. The father of the applicant retired in 1979 and died in 1984 but no action was taken by the respondent department, asking the father of the applicant to surrender the possession of the said quarter on his retirement or even after expiry of permissible retention period. Thus the respondent did not take any steps to evacuate the quarter from the father of the applicant during his life time and get the possession of the said premises. Even no notice was served upon him or eviction proceedings started against him. Even after the death of father of the applicant, the mother of the applicant and the applicant continued to live in the said house but the respondent department did not issue any notice for vacation of that house till 1999 when a drive was undertaken to know the unauthorized occupation of the quarter


*Anil Kumar*

at Kota. It was as a result of this drive that a notice was issued to the applicant for the first time in the year 1999. Thus for long 20 years, neither any action was taken by the respondent department either to issue a notice to the applicant to vacate the said house on the ground that he is not authorised to stay in that house nor eviction proceedings as per law were started against him. On the contrary, the learned counsel for the applicant has stated that the applicant applied for allotment of this house in 1983 and he was not paid any House Rent Allowance. Therefore, he was under the impression that the quarter has been regularized in his name. Therefore, there is no question of retaining the quarter in an unauthorized manner. It was the duty of the respondents department to issue notice to the father of the applicant during his life time after his retirement in 1979 and before he died in 1984 and to the applicant to vacate the house or to pay penal rent if he was unauthorized occupant of that premises. Suddenly after 20 years to raise a demand of penal rent would be too harsh to the applicant who is a low paid employee. Hon'ble Supreme Court in the case of **Radha Ballabh vs. Union of India & Another** (supra) has held that penal/damage rent may not be recovered from the petitioner. In my opinion, the ratio laid down by the Hon'ble Supreme Court in the said case is squarely applicable in the present case especially when respondent department did not initiate any action for long 20 years for vacation of the said premises. Therefore, the respondent department is directed not to recover penal rent

Anil Kumar

from the applicant. However, the applicant is liable to pay normal rent of the premises from 1979 till vacation of the said premises, if he has not been paid House Rent Allowance for that period.

6. With these observations, the OA is disposed of with no order as to costs.

  
(Anil Kumar)  
Member (A)

AHQ