

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. CPC. 61 of 2013
(O.A. 674 of 2011)

1.7.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SHYAMALI DAS

VS.

MR. G.C. AGARWAL & ORS. (Eastern Railway)

For the Applicant : Mr. B.C. Deb, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

ORDER (Oral)

Ms. Jaya Das Gupta, Administrative Member:

The applicant in this case, Smt. Shyamali Das, had earlier approached the Central Administrative Tribunal in O.A. No. 674 of 2011 dated 21.9.2012 and an order was given on 21.9.2012, relevant extract of which is set out below:-

"10. Orders issued by the Railway Board, pursuant to these OMs, if any, have not been brought to the notice of the Tribunal. Railway Board's letter dt. 29.1.1997 for retention of railway quarters, in case of missing employees, reads as under:

" Ministry of Railways have carefully considered the matter and it has been decided that since family pensions admissible after a period of one year from the date of lodging FIR, the family of the missing Railway employees may be permitted to retain Railway quarter for a period of one year, on payment of normal rent, from the date of lodging of missing report (FIR) with the police by the family of the missing Railway employee. On the certification of the police authorities that the missing employee is not traceable and the whereabouts of the person could not be known during the period of one year, the family of the missing Railway employee may further be permitted retention of quarter as in the case of retirement, i.e. treating the case as of retirement for the purpose of retention of quarter from the date of expiry of the period of one year from the lodging of FIR.

This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

11. Section 108 of the Evidence Act, which is the basis source of all these aspect, provides that if a person has not been heard for seven years by those who naturally have heard of him but have not heard by him, the burden of proving that he is alive, shifts to the person who affirms it.

12. On examination of issue as detailed hereinabove, there is apparent

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dichotomy on the date of presumed death inter-alia the Statute and Railway Board's circular. Under the provision of Evidence Act such date of presumed death is after seven years of no hearing by the family members of the missing employee. Railway Board circular on the other hand seems to imply that date of death is "one year" from the date of lodging of FIR, as continued possession of government accommodation becomes un-authorised after the said period. When under the provisions of statute such date of deemed death is seven years, how based on instruction of Railway Board such date would precede the said period. Bare examination of language employed in the Bond prescribed under the instruction quoted below Rule 54 of CCS (Pension) Rules, 1972 suggests that payment made after one year is an interim payment, for which the Govt. would have to be indemnified against future claim, if any, including re-appearance of the missing employee. In this view of the apparent conflict noticed hereinabove, we require the Railway Board to undertake a comprehensive view on this aspect & clarify the position in consultation with Deptt of Pension & Pension Welfare and Ministry of Law, if need be. On issuance of such instructions/clarification from Railway Board, the concerned authorities are required to examine the issue raised in present O.A. afresh, and thereafter regulate the claim.

13. It is expected that afore-noted exercise would be undertaken as expeditiously as possible.

OA is accordingly disposed of. No costs."

2. When the matter came up for hearing today the respondent authorities have filed a compliance report to the effect that they have complied with the CATs order dated 21.9.2012. According to the above order of the Central Administrative Tribunal the Railway Board had to take a comprehensive view on the aspect relating to a missing person and clarified the position in consultation with Department of Pension & Pensioner Welfare and Ministry of Law "if need be". On issuance of such clarification from Railway Board the authorities were required to examine the points raised in the O.A. afresh.

3. The relief sought by the applicant in the O.A. which was pressed during the hearing was to give a direction upon the respondents to grant and release of full DCRG money and CGIS money immediately with interest @ 12% per annum.

4. In the compliance report the respondent authorities have referred to the Railway Board's instructions/communication dated 17.7.2002 and 4/7-2-2014 which are as follows:-

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NO.E(G) 2013 RN 4-1 New Delhi, Date: 04/07-02-2014
 The General Manager (P),
 Eastern Railway,
Kolkata.

(Kind Attention: Mr. Bhattacharya, CPO)

Sub: O.A.No.674 of 2011 before CAT/Kolkata filed by Smt. Shyamali Das w/o Sh. Biswantath Das, Tech-I, Kanchrapara Workshop, Eastern Railway.

Ref: E.Railway's letter No.E.886/0/1/Vol.VII Dated 16-04-2013 and 04-06-2013.

The matter has been examined in this office and it is observed that the Railways should have obtained the non-traceability report from the police within the one year period of authorized retention (22-09-97-21-09-1998) granted from the date of lodging of FIR by the family. The Railway has in fact obtained the same after a period of more than 07 years resulting in wrong implementation of policy thus leading to the litigation by the aggrieved.

2. However, the orders of the Hon'ble CAT has been given due consideration in Board's office and it is seen that there is no need to consult DOP&PW as the two issued i.e release of terminal benefits and house retention are not interlinked. The nodal authority in the matter house retention being Ministry of Urban Development (Directorate of Estates) there is no need to consult the DOP&PW in this case as observed by the Hon'ble CAT/Kolkata.

3. In view of the above the following courses of action should be taken:

- I. To file an appropriate application before the Court indicating the above.
- II. In view of the judgement of Hon'ble CAT/Kolkata the applicant may be granted retention up to one year from the date of receipt of police report without making any precedent. The policy contained in Board's letter dated 17-07-2002 is very clear and in alignment with the Ministry of Urban Development.
- III. To fix responsibility and take action on officers/staff concerned for wrong implementation of policy.

4. It is requested that Railway may take immediate action in compliance with the above under intimation to this office.

(P.P. SHARMA)

Executive Director, Estt.(Gen.)"

RBE No. 109/2002

No. E(G)2001 QR1-17

Dated: 17-7-2002

The General Managers/OSDs,

All Indian Railways & Production Units.

Sub: Permission for retention of Railway accommodation in favour of the families of the missing Railway employees.

Ref: Railway Board's letter No. E(G)96 QR1-36 dated 29-1-97.

The matter regarding grant of permission for retention of Railway accommodation in favour of the families of the missing Railway employees has been under consideration as per Agenda Item No. 25/2001 in PNM (JCM-DC). The Matter has been considered and in supersession of Board's letter No. E(G)96 QR1-36 dated 29-1-97 it has now been decided that the family of missing Railway employee may be permitted retention of Railway quarters for a period of one year on payment of normal rent from the date of

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lodging of FIR (the period from the date from which the employee is missing till the date of filing FIR would automatically get regularized) with the police by the family of missing Railway employee. **On the certification of the police authorities that the missing employee is not traceable and the whereabouts of the person could not be known, the family of the missing Railway employee may be permitted further retention of Railway quarter for a period of one year on payment of normal rent.**

These instructions will come into force from the date of issue.

These issues with the concurrence of the Finance Directorate of the Ministry of Railways.

(D. JOSEPH)
DESK OFFICER ESTT. (GENL.)"

5. On going through RBE No. 109/2002 it is clear that only on the certification of the police authorities (and not on the date of filing FIR) that the missing employee is not traceable and the whereabouts of the person could not be known during the period of one year which a family of the missing Railway employee would be permitted the retention of Railway quarter for a period of one year on payment of normal rent.

6. The missing employee Shri Biswanath Das was missing from 19.9.97 and an FIR was lodged by his wife Smt. Shyamali Das, the present applicant on 22.9.97 and a final report was received from the police i.e. SSP/CID, West Bengal only on 19.7.2005. Initially as per RBE No. 109/2002, the family of Railway employee was permitted to retain quarters for a period of one year on payment of normal rent from date of lodging FIR and police certification to that effect was to be obtained. But in this case the police certification was obtained on 19.7.2005. Therefore, she is entitled to retained quarters on payment of normal rent upto 19.7.2006.

7. Going by RBE No. 109/2002 the applicant became entitled to retain quarters on normal rent from 22.9.97 to 19.7.2006 i.e. about 9 years. As she vacated her quarters on 23.6.2007 she is liable to pay rent for occupying the quarter as per rules from 20.7.2006 to 23.6.2007.

8. But it is seen from office order dated 15.3.2014 that damaged rent has been imposed on her from 22.9.2008 to 18.7.2005 and again from

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19.7.2006 to 22.6.2007 which appears to be wrong. Thus, we see that the willful disobedience is established.

9. Hence issue notice to Respondent No. 1 Mr. G.C. Agarwal, General Manager, Eastern for ^{Railway} willful disobedience of Courts order and to frame the charges. He shall be present in person on 9.8.2016 so that charges may be framed against him. Office is directed to ensure service of the copy of this order along with notice of personal appearance.

10. Call this matter on 9.8.2016.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

SP