

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

REGN. NO.: OA/350/00031/2015

[Kolkata, this 8th Day of October, 2016]C O R A M

HON'BLE MRS. URMITA DATTA (SEN), MEMBER [JUDL.]

1. G.Krishna Rao, son of Late Satya Gopal, retired Railway Gr.-A Driver of Mail/Express.
2. G.Shyam @ Gudaru Shyam, son of Sri G. Krishna Rao, now working as Helper Gr.1 under S.E.Railway.
.....Both are residing at Rly. Qrs. No. 4C/2, Unit-1, Old Settlement, PO-Kharagpur, PS-Kharagpur [Town], Dist. Paschim Medinipur-721 301.

APPLICANTS.By Advocate :- Mr. M.K.Putatunda.

Vs.

1. The Union of India, service through the General Manager, South Eastern Railway, Having its office at Garden Reach, Kolkata-700 043.
2. The Chief Personnel Officer, South Eastern Railway, Office – Garden Reach, Kolkata-700 043.
3. The Divisional Railway Manager [Personnel], South Eastern Railway, PO-Kharagpur, PS-Kharagpur [Town], District-Paschim Medinipur-721 301.
4. The Divisional Personnel officer-1, South Eastern Railway, PO-Kharagpur, PS-Kharagpur [Town], District-Paschim Medinipur – 721 301.

RESPONDENTS.By Advocate :- Mr. A.K.Datta.O R D E RUrmita Datta (Sen), Member [Judl.] :- This OA has been filed by

the applicants praying for following reliefs :-

"8[a] An appropriate order, calling upon the respondents, for asking them to show cause, as to why the order dated 04.11.2013 passed by the then designated Senior Divisional Personnel Officer, South Eastern Railway, Kharagpur, the post now designated by Divisional Personnel Officer-1, the respondent no.4 herein, will not be quashed and/or set aside by this Hon'ble Tribunal thereby also asking them to show cause as to why they will not be restrained permanently from deducting any penal rent from the applicants for the Type-II Railway quarter No. 4C/2, Unit-1, at Old Settlement, Kharagpur, regularized in favour of the applicant no.2 in terms of the Hon'ble Court's orders but deduct normal rates of rents

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for the following stages for those they have claimed the following rates after declaring those as illegal

- [i] 01.06.2003 to 30.09.2003 - Double rents.
- [ii] 01.10.2003 to 03.02.2011 - penal rents.

And if after hearing the parties and perusing the records it is found that they have failed to show any reasonable cause or have shown all the invalid or unreasonable causes, to make the order absolute.

[b] An appropriate order, calling upon the respondents, for asking them to show cause, as to why this Hon'ble Tribunal will not kindly direct them to release the terminal benefits of the applicant no.1 with 10% compound interest and compensation since 31.01.2003 till it is being released and direct them to pay the applicants the litigation cost as this Hon'ble Tribunal kindly deem fit without allowing them to deduct any penal rent on the plea of not vacating the type-II quarter by the applicants and if after hearing the parties and perusing all the records of this case, this Hon'ble Tribunal kindly finds that they have failed to show any valid and/or reasonable cause or have shown all invalid and/or unreasonable causes, to make the order absolute.

[c] An order to allow the applicants to move this application jointly, in the representative capacity of the present applicant no.2 as per Rules 4 & 5 of the CAT [Procedure] Rules, 1987.

[d] An order directing the respondents to produce the entire records of this case before this Hon'ble Tribunal for perusal and administering conscientious justice to the applicants by granting the prayers.

[e] Pass any other order or orders and/or further orders including order as to cost as Your Lordships will deem fit and proper."

2. Brief facts of the case, as stated in the OA, are as follows :-

2.1 The applicants are father and son by relation, wherein applicant no.1 has retired from Railway service on 31.01.2003 as Driver 'A' under Section Engineer, Loco, and applicant no.2, after his initial appointment as Khalasi under Bilaspur Division, has been transferred to Kharagpur in September, 1999. Since then the applicant no.2 started living with his father [applicant no.1] in Railway Quarter No. 4C/2, Unit-I, Type-II, at Old Settlement, Kharagpur till his father retired on 31.01.2003. Even after retirement

of applicant no.1, the applicant no.2 continued to stay in the same quarter with his family as the Railways failed to allot any suitable vacant quarter to the applicant no.2. Before retirement the applicants made all formalities for regularizing the quarter in the name of the son [applicant no.2] as per Railway Board's circulars [Annexure-A/1] but the Railways did not consider the same on the ground that applicant no.2 was not eligible for regularization of his father's Type-II Railway quarter and is only eligible for Type-I quarter.

2.2 After retirement of applicant no.1, he was permitted to retain his Railway quarter till permissible period i.e 30.09.2003. Since he did not vacate the quarter even thereafter, the Railways instituted Eviction case against applicant no.1 under 'The Public Premises [Eviction of Unauthorised Occupants] Act, 1971' and stopped his terminal benefits.

2.3 The applicant no.2 filed OA No. 22 of 2004 before the Tribunal for not allotting and/or regularizing his father's Railway quarter at Kharagpur on out of turn basis. On the other hand, applicant no.1 filed OA No. 667 of 2004 before the Tribunal for releasing his DCRG and other benefits with interest w.e.f. 31.01.2003, which was disposed of by the Tribunal on 11.08.2004 with certain observation. Subsequently, OA No. 22 of 2004 was also disposed of on 02.09.2005 with the direction to the respondents that till the applicant is given a vacant Type I quarter on 'Out of turn' basis, he may be allowed to stay in the present Type-II quarter which was regularized for the retired employee till 30.09.2003. It was further directed that

applicant be allotted a Type-I quarter and be given a reasonable time, say about two weeks, to shift to new quarter. Till that time he will be charged normal rent. However, in case he continues occupation beyond period, the respondents would be at liberty to take action for penal rent and vacation as per law and rules in this regard.

2.4 It has been stated that in view of above, the respondent authorities issued allotment orders for the applicant no.2 but not vacant quarters and as such, the applicant no.1 moved a contempt petition, being CPC No. 108 of 2004, for non-compliance of the Tribunal's order, which was heard and disposed of on 18.11.2005 with the assurance of the respondents that now the correct allotment of quarter was made and the applicant would be given the vacant position of that. However, in spite of respondents' averments in the matter of allotting quarter when they did not allot the vacant quarter, the applicant no.2 moved a writ petition, being WPCT No.813 of 2005, before the Hon'ble High Court, which was disposed of on 18.04.2006, inter-alia, passing the following orders :-

".....We are, thus satisfied, on materials placed before us, that the petitioner is not entitled to a Type II quarter. We thus find no reason to interfere with the order of the Tribunal. However, having regard to the special circumstances of this case we are directing the respondents not to claim for penal rent from the petitioner if he vacates the existing quarter provided a suitable Type I quarter is made available to him. He may be given a period of four weeks from the date such quarter is made available for shifting."

"Later :

In the event the petitioner shifts to the new quarter to be allocated to him within the time frame indicated above, the death-cum-retirement benefit of his father, which, it is

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submitted, is being held up for non-release of this present quarter, may be cleared provided there is no other legal impediment barring such release of the death-cum-retirement benefit. This order is being passed on the prayer made on behalf of the petitioners."

2.5 Further, the applicant no.2 moved an application being one CAN 3340 of 2007 in WPCT No. 813 of 2005. However, in the contempt petition, being CPAN No. 958 of 2006, the Hon'ble Court vide their order dated 09.08.2006 directed the applicant to occupy the vacant quarter within a week as per contention made by respondents but during that time one Sima Nandi was in occupation of the alleged vacant quarter. However, the respondents could not order for any vacant quarter till the date of issuance of the order dated 26.03.2007 for allotting quarter to applicant No. 2. Therefore, the respondents miserably failed to allot any vacant quarter.

2.6 In the meantime, as per 6th CPC the applicant became entitled to Type-II quarter in place of Type-I quarter. Ultimately, one type-I quarter was allotted on 19.01.2013 though he became entitled for Type-II quarter as per Railway Board's circular. However, the applicant challenged the order dated 25.09.2012 passed in OA No. 640 of 2011 by the Calcutta Bench before High Court at Calcutta in WPCT No. 346 of 2013, wherein vide interim order dated 13.08.2013 [Annexure-A/13], the Hon'ble High Court observed as under :-

".....Going through the aforesaid circular, we are prima facie satisfied that the petitioner no.2 herein is entitled to occupy Type-II quarter.

In the aforesaid circumstances, the respondent authorities should decide whether a new Type-II quarter will be allotted in the name of the petitioner no.2 or the quarter

allotted earlier in the name of the petitioner no.1 should be regularized in favour of the petitioner no.2."

Ultimately, the said writ petition was finally disposed of vide order dated 22.08.2013[Anenxure-A/14], relevant portion of which reads as under :-

"Going through the aforesaid judgment we find that the earlier Division Bench specifically held that the petitioner no.2 herein was not entitled to a Type-II quarter at that time. The relevant extract from the judgment dated 18th April, 2006 passed earlier by the Division Bench in WPCT 813 of 2005 is set out hereunder :

"We are, thus satisfied, on materials placed before us, that petitioner is not entitled to a Type II quarter."

Since it is not in dispute that the petitioner no.2 is now entitled to occupy a 'Type II quarter, there cannot be any difficulty on the part of the respondent authorities to regularize the existing 'Type II' quarter in the name of the said petitioner no.2.

Therefore, we set aside the impugned order passed by the learned Tribunal on 25th September, 2012 and direct the respondent authorities particularly the respondent nos. 4 & 5 herein to take immediate necessary steps for regularizing the quarter allotted earlier in the name of petitioner no.1 in favour of the petitioner no.2 herein.

We have been informed that the terminal benefits of the petitioner no.1 have been withheld for not vacating the aforesaid quarter.

In view of our direction for regularizing the said quarter in the name of the son of the petitioner no. i.e. the petitioner no.2 herein, question of vacating the quarter now by the petitioner no.1 cannot and does not arise.

WE, therefore, direct the respondent authorities to release the terminal benefits of the petitioner no.1 without any further delay but positively within four weeks from the date of communication of this order subject to adjustment of the statutory dues which the railway authorities are otherwise entitled to receive.

With the aforesaid directions, this writ petition stands allowed.

There will be no order as to costs."

2.7 Thereafter, vide order dated 17.10.2013, the quarter allotted to the applicant no.1 was regularized in favour of the applicant no.2

w.e.f 04.02.2011 under 'Father and Son Rule'. However, from the terminal benefit of applicant no.1, a sum of Rs.3,50,000/- which was payable towards his DCRG, they have directed to recover Rs.5,70,083/- towards recovery of the house rent and after adjusting the said DCRG dues towards penal house rent, the respondents have claimed Rs.2,20,083/- [Rs.5,70,083 – Rs.3,50,000] as dues to be recovered even after adjustment of Rs.3,50,000, from DCRG.

Being aggrieved with, the applicant has filed the OA.

3. The respondents have filed their written statement, wherein they have stated that the applicant no.1 is the Ex-Driver [A], who retired from Rly. Service w.e.f 31.01.2003 on superannuation. He was allotted with a Rly. Quarter being No. 4C/II, Unit No.1, Type-II at Old Settlement, Kharagpur. Applicant no.2 is the son of applicant no.1, who was working as Khalasi at that material point of time. Before retirement, applicant no.1 & 2 jointly applied for regularization of the aforementioned quarter on temporary basis till suitable Rly. Quarter is allotted to applicant no.2. Since applicant no.2 was working as Khalasi, their representation was not considered since the applicant was only eligible for Type-I quarter. However, after retirement applicant no.1 was permitted to retain his quarter for a period of four months from 01.02.2003 to 31.05.2003 on payment of normal rent and from 01.06.2003 to 30.09.2003 on payment of special License Fees. However, applicant no.1 did not vacate the above Rly. quarter even after the permissible period. Therefore, an eviction proceeding was initiated against him. In the meantime, applicant

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no.2 filed one OA 22 of 2004 challenging non regularization/allotment of his father's Rly. quarter on out of turn basis. However, Sr. DSTE/Kharagpur allotted him one Type-I quarter being No. LT/14, Unit 1 at NMP.

4. The applicant no.1 had also filed one OA No. 667 of 2004 before CAT, praying for release of his DCRG and other retiral benefits along with interest, which was disposed of by this Tribunal on 11.08.2004. Since one quarter was already allotted to applicant no.2, the applicant no.1 was directed to vacate the Rly. quarter within 7 days. However, the applicant no.1 filed one contempt petition No. 108 of 2004 for non providing Rly. quarter being No.LT/14 Unit No.1 in NMP in vacant position and also made an appeal to the Sr. DME/KGP that his son visited the said quarter and found that the said quarter was not vacant and one Jogeshwar Prasad, Sr. Trackman at that point of time was the occupant of that quarter, who also produced the evidence in his favour. Immediately, thereafter the DRM [S&T], KGP allotted another Rly. Quarter being No. L/R-1 Unit 1 [Type-1] at NMP vide cancellation of earlier allotment order dated 05.03.2004. However, the applicant no.2 did not occupy the said quarter also. In the meantime, the Tribunal vide their order dated 22.09.2005 in OA No. 22 of 2004 directed the Rly. Authority to allot one Type-I quarter to applicant no.2 and also to grant two weeks time to applicant no.2 to shift in the said allotted quarter. In addition, the Tribunal also directed the Rly. to deduct normal rent for the said Type-II quarter from the applicant no.1. In compliance to the said,

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the ADRM directly allotted one Type-1 quarter being No. L/2, Unit -2 vide allotment order dated 27.09.2005, which was also not occupied by the applicant. In the meantime, one date of eviction was fixed on 09.05.2005 but could not be conducted due to show cause notice received from the District Judge, Midnapur. In the meantime, CPC No. 108 of 2004 was disposed of against which the applicant no.2 filed WPCT No. 813 of 2005 before High Court at Calcutta, wherein he prayed for direction upon the Rly. Authorities to allot and/or to regularize Rly. quarter of his father on out of turn basis under 'Father & Son Rule' till the possession of the newly allotted quarter as well as release of DCRG of his father. The High Court vide their order dated 18.04.2006 [Annexure-A/5] disposed of the WPCT No. 813 of 2005.

Accordingly, Sr. DSTE/KGP was requested vide letter dated 24.04.2006 to take necessary steps by which the applicant no.2 should take over the Rly. quarter No. L/2 Unit-2 Type-1 at KGP. However, the applicant no.2 submitted one appeal dated 17.05.2006 to provide him a suitable quarter with certain amenities. In the meantime, one contempt petition No. 958 of 2006 was filed which was disposed of vide order dated 08.09.2006. However, thereafter the respondents have received one pleader's notice on 17.02.2007 stating that the said quarter is under the occupation of one Sima Nandi. Thereafter, Smt. Nandi was advised to hand over the quarter which got vacated since 16.02.2002. In the meantime, one application being NO. 3347 of 2007 was filed to modify the order dated 08.09.2006 passed in CPAN No. 958 of 2006, which was

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pending at the time of filing of the written statement. According to the respondents, the quarter No. SM 1/31 Unit-4 Type-1 was kept vacant but the applicant no.2 did not take possession of the same.

5. It has been further submitted by the respondents that one Suit being No. 101 of 2005 was also dismissed by the Learned Court, Medinapur. In the meantime, one MA No. 95 of 2010 was filed before the Id. District Judge Court, Medinapur, again eviction order dated 27.08.2010 passed by the Estate Officer/KGP, which is still pending. In the meantime, again the applicant no.1 & 2 jointly filed OA 640 before this Tribunal to regularize the Quarter No. 4C/2 Unit-1 Type-2 and to release the terminal benefits which was dismissed by this Tribunal vide order dated 25.09.2012. Being aggrieved, the applicants filed one Writ petition bearing WPCT No. 346 of 2013 which was disposed on 22.08.2013[Annexure-A/14] with a direction to the respondents to take immediate necessary steps for regularizing the quarter. In obedience to the said order, the respondents have regularized the said quarter No. 4C/2 in favour of applicant no.2, who is now working as Helper-1/KGP with GP of Rs.1900/-with effect from 04.02.2011 under 'Father & Son Rule' vide DRM [S&T] /KGP letter dated 17.10.2013. However, with regard to the terminal benefits, it has been stated by the respondents that an amount of Rs.3,50,000/- is due to be payable towards DCRG whereas the statutory dues for house rent to be recovered was Rs.5,70,083/- after assessment i.e. at the rate of normal rent for first four months after retirement from 01.02.2003 to 31.05.2003 and at the rate of

double rent for another four months from 01.06.2003 to 30.09.2003 and for the rest period from 01.10.2003 to 03.02.2011 as per para 10.27 of Railway Board's instructions contained in SER Estb. Sl.No. 132 of 2007. Thus, the total rent including damage rent except electric charges has been arrived at Rs.5,70,083/- As such, a sum of Rs.2,20,083/- [Rs.5,70,083 – 3,50,000] still remains due to be recovered even after adjustment from the applicant no.1. Therefore, he was advised to deposit the said amount in Divisional Cash & Pay Office within one months from the date of receipt of speaking order dated 04.11.2013 failing which the same will be recovered from the salary of the present employee i.e. applicant no.2 on monthly installment basis. In the meantime, the applicants have filed one CAN No. 140 of 2014 [arising out from WPCT No. 346 of 2013] before the Hon'ble High Court which is still pending. In view of the above, the respondents have prayed for dismissal of the OA.

6. The applicant has filed rejoinder, wherein he has reiterated more or less the same submissions by denying the respondents contentions. In his rejoinder the applicant has basically submitted that as per 'Father & Son Rule', he should be allowed to continue in the quarter allotted to his father till a habitable and vacant quarter as per his entitlement is allotted to him. However, the respondents till 2013, could not provide him vacant and habitable quarter and in the meantime, he became entitled for Type-II quarter, but he was only allowed to retain the allotted quarter of his father from 2013 onwards after the judgment dated 22.08.2013 passed by the Hon'ble

High Court in WPCT No. 346 of 2013, which was regularized in his name with effect from 04.02.2011. Moreover, from 20.04.2009, Type-I quarter was abolished as per the Railway Board's order. Therefore, the respondents cannot ask for penal rent

7. I have heard learned counsel for both the sides and perused the records. It is noted that as per the applicant, he was entitled to retain the quarter allotted to his father under 'Father & Son Rule' as enumerated under Estb. Sl.No. 233/87 dated 21.08.1987 [Annexure-A/1] on out of turn basis, which stipulates as under :-

"As per Board's extant orders when a Railway servant, who is in occupation of railway Quarters retires from service or dies in harness, his/her son, daughter, wife, husband or father may be allotted Railway Quarters on out of turn basis provided that the said relation is a regular Railway employee eligible for Railway accommodation and had been sharing accommodation with the retired or deceased railway servant for at least 6 months before the date of retirement or death.

.....
[1] Once the conditions are satisfied under the 'Father and Son' rule, the quarters should be allotted straightway irrespective of the pool, differences. The pool adjustment is a matter between the two departments to get them sorted out by subsequent adjustment which should in no way hold up the allotment/regularization of Rly. accommodation to the eligible dependent.

[2]✓ The regularization of such Rly. accommodation to the eligible dependent under 'Father and Son' rule should be given effect to from the date of retirement/death of the ex-employee irrespective of the date of issue of order or approval. However, in case of compassionate ground appointment it should be from the date of appointment, though the competent authority approved for allotment/regularization of the quarters sometime after such appointment. Since the DCRG amount can be released only on the issue of such order of regularization, any delay beyond the prescribed period attracts the payment of interest on gratuity. It, therefore, emphasizes the necessity of prevent such delay on administrative account and consequent fixation of responsibility.

[3] If the employee who retired/died, was in occupation of a higher type of quarter and the eligible dependent under 'Father and Son' Rule is entitled only for a lower type quarters, the

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higher type quarters may be temporarily allotted on his/her specific request giving effect as indicated in para [2] above. For this an undertaking in writing will be taken to the effect that the higher type quarters will be vacated on allotment of the eligible type of quarters and failing which he/she will be liable to for payment of penal rent and making him/her liable for disciplinary action. The order for regularization of the higher type quarters should be issued with the specific approval of the Divl. Railway Manager and the order should indicate that the allotment is purely temporary until and eligible type Qrs. is made available in terms of the specific written request and undertaking given by the serving employee. Any subsequent failure to vacate the quarters, with the allotment of the eligible type of quarters, should be dealt with severely invoking disciplinary powers of the authority concerned. Simultaneously, the machinery handling the allotment of quarters should ensure that on the first opportunity the eligible type of quarters be allotted to prevent avoidable continuance of occupation of higher type of quarters.

In all such cases the regularization can be made only if it is satisfied that Father/Mother, Son/Daughter, Husband/wife is not in possession of accommodation at the station. Therefore, no such regularisation should be made unless the serving employee gives in writing categorically that no such accommodation is in possession by his/her family members, including father/mother."

8. Therefore, the respondents should allot the applicant to said Type-II quarter already allotted to his father till the allotment of an entitled Type-I quarter [which he was entitled at that point of time]. However, the respondents without following their own rules had started eviction proceedings, against which the applicant filed an OA No. 22 of 2004, which was disposed of on 02.09.2005 with the following directions :-

"6. It is apparent from the above that till the applicant is given a vacant Type-I quarter on out of turn basis by the respondents, temporarily the applicant can be allowed to stay in the present Type-II quarter. The present quarter was regularized in the name of the retired Railway employee till 30.09.2003. The applicant be allotted Type-I quarter and be given a reasonable time say about 2 weeks to shift to the new quarter. Till that time the applicant will be charged normal rent

for the said Type-II quarter as per Estt. Srl. No. 233/87 as quoted above. However, in case the applicant continues in occupation of the said Type-II quarter beyond what has been mentioned above, the respondents are at liberty to take action for penal rent and vacation as per law and rules in this regard."

9. However, the respondents, though repeatedly made false averments before the Hon'ble Court that they have allotted quarter, but, in fact, no vacant position of the quarter was made available as would be evident from subsequent orders dated 18.11.2005 [Annexure-A/4] passed in CPC No. 108 of 2004 [arising out of OA No. 667 of 2004], relevant portion of which reads as under :-

"3. Ld. Counsel of the respondents admitted that twice over the respondents had made wrong allotments of quarters in favour of the applicant. However, now respondents have allotted Quarter L/2 Unit-2 vide order dated 29.07.2005 of ADRM/KGP, receipt of which has been acknowledged by the applicant. Respondents have submitted unqualified apology for the wrong allotments of quarters to the applicant. Ld. Counsel of the respondents on instructions stated that new correct allotment of quarter has been made and applicant shall be given vacant possession of the same and as such directions of the Tribunal shall have been complied with.

4. On the other hand, Ld. Counsel of the applicant stated that he has no instructions from the applicant as to the receipt of the fresh allotment order dated 27.09.2005 and also the vacant possession of the related quarter.

5. We observe from the copy of the order dated 27.09.2005 regarding allotment of quarter L-2, Unit-2 to the applicant that applicant has acknowledged the receipt of these orders. In view of the fresh allotment of quarter made by the respondents favouring the applicant as above and also tendering of the unconditional apology, these proceedings are dropped and notices to the respondents discharged. However, if the applicant still remains aggrieved about non-availability of vacant possession, he shall have liberty to revive these proceedings.

6. Ld. Counsel of the applicant also mentioned that applicant's son had also filed a separate OA in which certain directions were made regarding the allotment of quarters to him. He alleged that respondents have not complied with those directions. If it is so, it forms a separate cause which cannot be considered in the present proceedings."

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10. As nothing has been done, the applicant filed WPCT 813 of 2005 [CAN 1105 of 2006] before the High Court at Calcutta, which was disposed of vide order dated 18.04.2006 [Annexure-A/5], wherein the Court held as under :-

“.....We are, thus satisfied, on materials placed before us, that the petitioner is not entitled to a Type 'II' quarter. We thus find no reason to interfere with the order of the Tribunal. However, having regard to the special circumstances of this case we are directing the respondents not to claim for penal rent from the petitioner if he vacates the existing quarter provided a suitable Type-I quarter is made available to him. He may be given a period of four weeks from the date such quarter is made available for shifting.

With these directions the instant writ petition is disposed of.

Later :

In the event the petitioner shifts to the new quarter to be allocated to him within the time-frame indicated above, the death-cum-retirement benefit of his father, which, it is submitted, is being held up for non-release of this present quarter, may be cleared provided there is no other legal impediment barring such release of the death-cum-retirement benefit. This order is being passed on the prayer made on behalf of the petitioner.”

11. Since the earlier allotment was also wrong, the respondents again allotted another quarter No. SM/1/21 U-4, South Side which also was not physically vacated. Therefore, the applicant made representation dated 10.02.2007 to the Sr. SE [Elect.]/South, SER, Kharagpur [Annexure-A/6], and the Jr. Engineer Gr. I [Works], South, SER/KGP has endorsed on the representation itself as under –

“On dated 10.02.2007 as per office record presently the above mentioned Qrts SM/1/21 U-4 South Side till under possession of Smt. Sima Nandi Hel-I under Sr. DSTE/KGP. Hence the said quarter is not physically vacant.”

Ans.

12. In the meantime, the respondents did not regularize the said type-II quarter under 'Father & Son Rule', rather vide letter dated 26.11.2010 [Annexure-A/10] the Sr. DSTE, KGP had communicated the following :-

"The referred application has been considered. As the above regularization case is under sub-judice and Gr.'D' staff are not eligible for regularization of type-II Rly. Qrs. under 'Father & Son Rule, in case of retirement, this application can not be agreed with.

In this connection, it is once again mentioned that according to High Court order dated 18.04.2006 incase No. WPCT No. 813 of 2005 one type-I [eligible type] Rly. Qrs. No. SM/1/21/ Unit-4 at South Development/KGP has been allotted to you vide this office allotment order No. ST/E/Qrs./All/101 dated 19.07.2006, and the Rly. Qrs. has been kept in vacant possession under custody of SE/Works/South/KGP for your occupation."

13. In the meantime, 6th CPC has come into effect and the Railway Board vide Estb. Sl.No. 14 of 2011 dated 04.02.2011 has upgraded the entitlement of the quarter from Type-I to Type-II for those staff with Grade Pay of Rs.1800 and upto Rs.2600 and since the applicant was in the Grade Pay of Rs.1900/-, he became entitled for Type-II quarter from 02.04.2011. In the meantime, the applicant again approached this Tribunal in OA No. 640 of 2011 as respondent authorities did not allot Type-II quarter and subsequently filed WPCT No. 346 of 2013, wherein in an interlocutory order dated 13.08.2013[Annexure-A/13] the Court ordered as under :-

*"Going through the aforesaid circular, we are *prima facie* satisfied that the petitioner no.2 herein is entitled to occupy Type-II quarter.*

In the aforesaid circumstances, the respondent authorities should decide whether a new Type-II quarter will be allotted in the name of the petitioner no.2 or the quarter

allotted earlier in the name of the petitioner no.1 should be regularized in favour of the petitioner no.2.

Learned advocate of the Railway authorities wants to take instructions in the matter."

14. Aforesaid case was finally decided on 22.08.2013, wherein the Hon'ble High Court at Calcutta has observed as under :-

"Going through the aforesaid judgment, we find that the earlier Division Bench specifically held that the petitioner no.2 herein was not entitled to a 'Type-II' quarter at that time. The relevant extract from the judgment dated 18th April, 2006 passed earlier by the Division Bench in WPCT 813 of 2005 is set out hereunder :-

"We are, thus satisfied, on materials placed before us, that petitioner is not entitled to a Type'II' quarter."

Since it is not in dispute that the petitioner no.2 is now entitled to occupy a 'Type-II' quarter, there cannot be any difficulty on the part of the respondent authorities to regularize the existing 'Type II' quarter in the name of the said petitioner no.2.

Therefore, we set aside the impugned order passed by the learned Tribunal on 25th September, 2012 and direct the respondent authorities particularly the respondent nos. 4 & 5 herein to take immediate necessary steps for regularizing the quarter allotted earlier in the name of petitioner no.1 in favour of the petitioner no.2 herein.

We have been informed that the terminal benefits of the petitioner no.1 have been withheld for not vacating the aforesaid quarter.

In view of our direction for regularizing the said quarter in the name of the son of the petitioner no. i.e. the petitioner no.2 herein, question of vacating the quarter now by the petitioner no.1 cannot and does not arise.

We, therefore, direct the respondent authorities to release the terminal benefits of the petitioner no.1 without any further delay but positively within four weeks from the date of communication of this order subject to adjustment of the statutory dues which the railway authorities are otherwise entitled to receive.

With the aforesaid directions, this writ petition stands allowed."

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15. In pursuance of the aforesaid, the respondents have issued the impugned order dated 04.11.2013 [Annexure-A/15], wherein it has been ordered as under :-

"In obedience to the order dated 22.08.2013 of the Hon'ble High Court, the above Type-II Rly. Qrs. No. 4C/2 Unit-1 at KGP has been regularized in favour of your son, Sri G.Shyam, now working as Helper-1/KGP with GP Rs.1900 under SSE[T]/Wireless/KGP w.e.f. 04.02.2011 i.e. the date when he entitled to Type-II Qrs. as per SER's Estt. Srl. No.14/2011 under father & son rule vide DRM[S&T]/KGP's No. ST/E/Qrs/A11/23 dated 17.10.13.

Regarding the direction of the Hon'ble High Court for release of your terminal benefits, it is stated that an amount of Rs.3,50,000/- is due to be payable towards your DCRG dues, whereas the statutory dues to be recovered is Rs.5,70,083/- towards the recovery of House Rent after assessment i.e. at the rate of normal rent for first four months after your retirement from 01.02.03 to 31.05.2003 and at the rate of double of the normal rent for another four months from 01.06.2003 to 30.09.2003 and at the rate of Damage rent for the rest period from 01.10.2003 to 03.02.2011 as per Para 10.27 of Rly. Bd's instructions contained in SER's Estt. Srl. No.132/07. Further, the Electric Current charges for the said period remains due to be recoverable from your after receipt of the Electric Current charges bill from the Electric department.

Thus, the total rent including damage rent except the Electric Current charges has been arrived at Rs.5,70,083/-. As such a sum of Rs.2,20,083/- [Rs.5,70,083 – Rs.3,50,000] from your DCRG dues.

You are therefore advised to deposit the rest amount of Rs.2,20,083/- in Divl. Cash and pay office under the Head of allocation No. 93210-00 and submit the Money Receipt to this office within one month from the date of receipt of this letter, failing which the same will be recovered from the salary of the present employee i.e. your son in an easy monthly installment. The amount of Electric current charges will be intimated on receipt of the same from the concerned Deptt."

16. From the above facts and circumstances, it is clear that as per the 'Father & Son Rule' for out of turn quarter allotment, the applicant was entitled for such benefits from the very beginning. However, the respondents repeatedly tried to mislead the applicant

as well as this Tribunal/High Court by way of allotting such quarters which were either not habitable or not in vacant position. In the meantime, the applicant became entitled for Type-II quarter from 04.02.2011. Even in the latest order the High Court at Calcutta vide their order dated 22.11.2013 has clearly observed that there would not be any difficulty on the part of the respondents to regularise the existing Type-II quarter in the name of the applicant no.2 since the applicant no.2 in the meantime had become entitled to occupy Type-II quarter. The Hon'ble High Court also directed the respondent authorities to release the terminal benefits of applicant no.1 immediately. Even then, the respondents regularized the Type-II quarter with effect from 04.02.2011 only and has claimed for penal rent. However, the applicant was all along entitled for regularization of Type-II quarter possessed by his father under 'Father & Son' Rules on out of turn basis and the respondents repeatedly failed to provide him alternative quarter as per entitlement of the applicant at that point of time. The Hon'ble Tribunal and High Court also had specifically directed the respondents not to charge for penal rent since they could not provide the vacant habitable quarter of his entitlement till 2013.

17. In view of the above, I am of the considered opinion that the respondents cannot impose any penal rent since admittedly they could not provide the applicant no.2 any habitable and vacant possession of any Type-I quarter and from 2011 onwards the applicant himself became entitled for Type-II quarter. Moreover, the

essence of the High Court order dated 22.08.2013 also directed/indicated to regularize the erstwhile Type-II quarter and not to allot any Type-I quarter and since the respondents have regularized the earlier quarter which the applicant no.2 was already entitled for out of turn basis since beginning, therefore, I am of view that such regularization should be treated from 31.01.2003 as per 'Father & Son' Rules as stipulated in Estt. Sl.No. 233/87, wherein it is specifically stated that the regularization of such Rly. accommodation to the eligible dependent under 'Father and Son' Rule should be given effect to from the date of retirement/death of the ex-employee irrespective of the date of issue of order or approval.

18. In view of the above, I quash and set aside the impugned order dated 04.11.2013 and direct the respondents to pay the terminal benefits of applicant no.1 with 8% interest per annum from the date of his entitlement to the date of payment within a period of two months from the date of receipt of this order.

19. With the aforesaid directions, the OA stands disposed of with no order as to costs.

[Urmita Datta (Sen)]
Member [Judl.]

skj