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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1451 OF 2003

New Delhi, this the 23rd day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

S.N. Prasad Johri,
S/o Shri Ganesh Rai Johri,
Retired Guard 'A' Spl.,
Northern Railway,
Moradabad.

Residential Address:-
S.N. Prasad Johri,
Railway Quarter No.T-40/C,
Near Railway Statidum,
Moradabad.

.....Applicant

(By Advocate : Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

.....Respondents

(By Advocate : Shri R.L. Dhawan)

ORDER (oral)

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed claiming the following reliefs :-

- "i) set-aside and quash the impugned orders dated 13.08.2002, Annexure-A-1, and orders dated 003.01.2003, Annexure-A-4, whereby the total amount of Gratuity amount has been adjusted towards the alleged damage/penal rent of the Railway quarter and amount of Rs.49,912.54 has been further directed to be deposited in the Railway Booking Office, being badly vitiated as humbly submitted in the foregoing paras.
- ii) direct/command the Respondents to recover the normal assessed rent for the period 01.04.1994 to 31.07.1997 of Railway

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Qtr.No.T-400/C, in view of the compassionate appointment and resultant regularisation of the said Railway quarter in the name of Shri Umesh Johri, Ticket Collector/ Moradabad, son of the applicant.

- iii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice."

2. It is stated by the applicant that he was appointed as Guard on 24.2.1955. He was lastly working as Guard 'A' Special Grade and was posted at Moradabad. While so posted, he was allotted Railway Quarter No.T-40/C, Moradabad. The applicant claims that he was sent for medical examination in May, 1992 in terms of the relevant provisions. He was declared 'unfit' to discharge the duties of a Guard. He was required to be assigned another post for which he was fit. Accordingly, the applicant was offered the post of Booking Supervisor in the same scale.

3. The applicant further states that the post of Guard belongs to Transportation/Operating Department while the post of Booking Supervisor belongs to Commercial Department. Therefore, he submitted representation indicating that such posting will result into financial loss to the applicant. He, therefore, requested that he may be retired on his superannuation on 31.7.1993. Accordingly, the applicant retired on superannuation on 31.7.1993. The applicant further states that he had applied for compassionate appointment of his son (Umesh Johri) and

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his son was actually offered such an appointment on 30.7.1997 as Ticket Collector. This quarter has finally been regularised in favour of Shri Umesh Johri w.e.f. 30.7.1997 vide order dated 3.9.1997 (Annexure A-3). The aforesaid order dated 3.9.1997 further states that the applicant was granted permission for retention of the Railway quarter from 1.8.1993 to 30.11.1993 on normal rent, from 1.12.1993 to 31.3.1994 on double rent and from 1.4.1994 to 29.7.1997 as being under unauthorised occupation of the applicant. By impugned order dated 13.8.2002 (Annexure A-1) the applicant has been asked to deposit Rs.49,912.54 within 30 days failing which the same could be deducted from the dearness relief payable to the applicant. According to the learned counsel of the applicant, the medical de-categorisation of the applicant casts the duty on the respondents to offer some suitable post. In this case, the applicant was not offered suitable post nor the decision of compassionate appointment of his son was taken promptly. The learned counsel invited attention to Headquarter's circular dated 17.2.1993 wherein it has been provided that if the employee does not vacate the Rly. accommodation after retirement/expiry of the authorised retention period, then it would be the responsibility of the Branch Officer and pool holder to immediately initiate eviction proceedings through the IOW of the area against the unauthorised occupant. According to him, no such action was taken. Therefore, the recovery of so called damage rent was

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not justified. In this connection, he placed reliance on the decision of the Hon'ble Supreme Court in the case of Gorakhpur University V. Shitla Prasad Nagendra, AIR 2001 SUPREME COURT 2433.

4. The respondents, on the other hand, have contested the claims of the applicant. Learned counsel of the respondents fairly stated that the applicant has retired on superannuation. Therefore, his claim that he was medically ^{or} de-categorised and retired is against the facts. He also stated that though the applicant's son has been offered appointment in the Railways but the same cannot be stated to be a compassionate appointment on medical de-categorisation of the Railway employee. Therefore, rules relating to regularisation of allotment of said quarter do not strictly apply in this case. The learned counsel further stated that the applicant was allowed time to retain the quarter upto 31.3.1994 after his retirement on 31.7.1993. Since no permission was given, the same becomes unauthorised occupation after 31.3.1994 till it was so allotted to his son on 30.7.1997. In this connection, he invited attention to Full Bench decision in the case of Ram Poojan Vs. Union of India and Ors. (1994-1996) A.T.F.B.J 244 wherein it has been stated that it is not necessary to issue any specific order cancelling the allotment of accommodation. Therefore, retention of the accommodation by the Railway servant beyond the allowed period of retention would be unauthorised and

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penal/damage rent can be levied. It has further been held in this Full Bench decision that recovery of penal/damage rent can be made from the salary of the applicant and it was not necessary to resort to the provisions of Public Premises (Eviction of unauthorised Occupants) Act, 1971. He also placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Sisir Kumar Deb 1999 Supreme Court Cases (L&S) 781. The Hon'ble Supreme Court have held that the recovery could be made from the Railway servant in cases of over stay without permission.

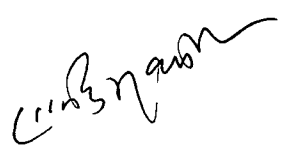
5. After hearing the learned counsel of both the parties and after perusal of the materials available on record, it is noticed that the applicant who retired on 31.7.1993 was allowed to retain the quarter upto 31.3.1994. Therefore, the retention of the quarter beyond this period becomes unauthorised. The fact that the applicant was seeking employment of his son, which was ultimately allowed by the Railway Board, will not make the unauthorised retention of the Railway quarter as authorised one. The fact that the applicant's son has been allotted the same quarter afterwards from 30.7.1997 will also not make earlier unauthorised retention of the Railway quarter as legal one. However, the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Madan Mohan Prasad 2003 (1) ATJ 2465 have held that only admitted and undisputed dues could be deducted from the gratuity

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payable to the applicant. Even though it may appear that the applicant was pursuing appointment of his son but that will not become automatically sanction order in favour of the applicant for retention of Railway quarter. The reliance of the learned counsel of the applicant on the Hon'ble Supreme Court decision in Gorakhpur University (supra) also does not help him. There were several peculiar facts in that case. The University had not taken any decision in respect of the accommodation allotted to the employee in that case. The Hon'ble Supreme Court noted that it was almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the employee itself was again seriously disputed and to some extent justifiable too, the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employee. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Court, however, clarifies that order shall not have the effect of foreclosing the rights of the University, if any, if the University chose to workout the same, as is permissible in law.

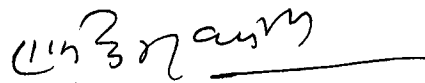
6. In my opinion, same principle has been re-affirmed by the Hon'ble Supreme Court in the case of Madan Mohan Prasad (supra). The respondents are



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directed to find out the undisputed claim for being adjusted towards gratuity and other dues payable to the applicant. The remaining amount can be recovered by adjustment from the dearness portion of the pension.

7. In view of the above, this OA stands disposed of accordingly without any order as to cost.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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