

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: May 20, 2013*

+ **W.P.(C) 5426/2011**

CHATAR SAIN Petitioner
Represented by: Mr.Parveen Kumar Nagpal, Advocate
for Mr.G.D.Bhandari, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. It is settled law that in a territory occupied by a legislation or an executive instruction, equity cannot be used to nullify the territory occupied.
2. Petitioner Chatar Sain was holding substantive post of a Mail Man in the Railway Mail Service (RMS) and was posted at Haridwar. Being entitled to a Government accommodation, a quarter was allotted to him under a license at Haridwar. Being promoted on June 04, 2007, there being no vacancy available at Haridwar to the post to which Chatar Sain was promoted, he was transferred to Saharanpur and was required to vacate the quarter allotted at Haridwar within two months and for which period his liability was to pay the normal license fee. On account of the education requirement of his children, he could continue to occupy the quarter for another 6 months but upon paying twice the normal license fee. In other words, Chatar Sain was entitled as per the applicable rules framed by the

Department of Posts to occupy the quarter for 8 months, further retention was to be treated as a case of unauthorized occupant; inviting damages to be paid.

3. Retaining the quarter where his family resided, Chatar Sain started discharging duties at Saharanpur and simultaneously made a request to be posted back at Haridwar as and when a vacancy arose. None arising and 8 months period elapsing, an order was issued by the Competent Authority on September 16, 2008 directing Chatar Sain to pay damages in sum of ₹4,906/- per month; but wrongly made the same applicable from the month of June 2007, ignoring that till the month of January 2008, Chatar Sain would be entitled to retain the quarter by paying normal license fee for the first two months and double the amount for the next 6 months.

4. The order in question was not preceded by any show cause notice thereby depriving Chatar Sain a right to be heard.

5. A vacancy arising at Haridwar in the promotional post on January 14, 2009, Chatar Sain was transferred to Haridwar and from said date continued to retain the quarter allotted to him, and sought regularization of the quarter from a back date, a request which was declined because people senior to him, with respect to the date they joined duties at Haridwar, were awaiting allotment of a quarter to them.

6. Thus, while disbursing salary to Chatar Sain, penal rent in sum of ₹4,906/- per month continued to be deducted compelling Chatar Sain to file OA No.1697/2011 praying that the order directing penal rent to be deducted be quashed and to regularize the quarter allotted in his name with further direction that the respondents should forthwith stop deducting penal rent while disbursing salary paid to him.

7. Vide impugned order dated May 27, 2011 the Tribunal has dismissed OA No.1697/2011.

8. Pleadings of Chatar Sain before the Tribunal would evidence that he was relying upon a policy decision taken by the Postal Department to the effect that if an employee who has been allotted a quarter is transferred out and then transferred back to the original place within one year of being transferred out, he would be entitled to retain the quarter allotted.

9. As noted above, on promotion, Chatar Sain was transferred out of Haridwar to Saharanpur on June 04, 2007 and was transferred back to Haridwar on January 14, 2009 i.e. after 1 year and 6 months of being transferred out from Haridwar.

10. Therefore, two issues arise for consideration. Firstly whether Chatar Sain is liable to pay damages for the period beyond 8 months of his being transferred to Saharanpur; and secondly, whether Chatar Sain is entitled to the regularization of the quarter which was allotted to him at Haridwar when he was posted there as a Mail Man.

11. Since allotment of the quarter is governed by Rules framed by the Postal Department in exercise of the executive power, and the vires of the Rules not being questioned, the issue has to be decided as per the Rules.

12. As noted above, the Rules permit a transferred employee to retain the accommodation allotted for a period of two months upon paying the normal license fee, and the same is ex-facie fair and reasonable. It is also just. Two months' time is sufficient period for a transferred employee to vacate his abode and find another abode. Further, recognizing that children may be studying in a school or a college and a sudden transfer as a result of a promotion may cause an obstruction in the education of the children who would be expected to complete the academic year in the

institute where they were admitted, the policy permits the employee to retain the accommodation allotted for another 6 months but upon paying double the license fee each month. The policy is just and equitable. It takes into account the educational interest of the children.

13. Further, upon being re-transferred back to the place of original posting, but within one year, the policy entitles the Government servant to retain the accommodation in preference to the claims of other eligible and senior employees. The reason for the policy is that interest of the transferred and re-transferred employee needs to be balanced vis-a-vis the interest of the others; and the equitable balance struck is by limiting the interest of the transferred employee to a period of one year of being re-transferred back. The balancing act by the department is fair and equitable.

14. It has to be kept in mind that for the period in question which is post January 01, 2006, as a result of the recommendations of the 6th Central Pay Commission being accepted, the House Rent Allowance payable has been liberalized to 30% of the basic pay in Group 'A' cities and probably in the others as well, but assuming not to be the same i.e. 30% of the basic pay, at least 10% of the basic pay. In other words, a fair recompense for housing if required to be taken on rent by a Government servant has been provided for.

15. Since claim by Chatar Sain if allowed would result in the applicable Rules being violated, it would not be permissible for us, taking a sympathetic approach, to grant relief to Chatar Sain.

16. On the subject to equity, we need to highlight that sympathy and equity are not to be confused. A claim in equity would arise on a judicially recognized principle of equity; not to be confused with judicial sympathy.

17. But, while calculating the damages, right of Chatar Sain to be heard cannot be denied.

18. It is trite that a post decisional hearing may also suffice in an appropriate case, although the strive must be towards a pre decisional hearing. But in the instant case, much waters having flown since the year 2009, we are of the opinion that while rejecting the claim of Chatar Sain to be permitted to retain the quarter as a matter of right, the writ petition needs to be disposed of with a direction to the petitioner that with respect to the period post 8 months of Chatar Sain being promoted and transferred from Haridwar to Saharanpur his liability to pay damages, with respect to the quantum thereof be adjudicated after granting a hearing to Chatar Sain. As regards the first 8 months' period, demand of damages is quashed by us observing that for said period, for 2 months Chatar Sain would be liable to pay the normal license fee and for further 6 months his liability would be to pay twice the license fee.

19. No costs.

CM Nos.11059-60/2011

Since the writ petition stands disposed of, instant applications stand disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY20, 2013
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