

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 2286 of 2013**

1. Union Of India, Ministry Of Railway,
Through its Secretary, Rail Bhawan, New
Delhi 110001
2. General Manager, South East Central
Railway, Bilaspur C.G. 495004
3. Financial Advisor & Chief Accounts
Officer/Con, South East Central Railway,
Bilaspur C.G. 495004
4. Chief Personal Officer, O/O General
Manager, South East Central Railway,
Bilaspur C.G.

---- Petitioners

Versus

1. Praful Bhatnagar S/o Late V.N. Bhatnagar,
Aged About 55 Years, Senior Divisional
Personnel Officer, S.E.C. Railway, Kingsway,
Nagpur (M.S.). Now Working As Dy. Chief
Personnel Officer (Constn.) South East Central
Railway.
2. Central Administrative Tribunal Jabalpur
Bench, Jabalpur Mp

---- Respondents

For Petitioners.	-	Mr. R.K. Gupta, Advocate.
For Respondent No.1.	-	Mr. Amrito Das, Advocate.

Hon'ble The Chief Justice**Hon'ble Shri Justice Pritinker Diwaker****Order On Board****Per Navin Sinha, Chief Justice****26/06/2015**

The present application arises from order dated 01.05.2013 passed by the Central Administrative Tribunal, Jabalpur Bench allowing O.A. No. 223/2010. The Petitioner Railways by order dated 18.8.2009 stopped 10% house rent allowance as also regular pay of the Respondent along with directions to recover in installments the house rent allowance paid. By order

dated 15.1.2010 his representation filed pursuant to an earlier order of the Tribunal in O.A. No. 718/2009 with regard to the same was rejected.

2. Learned Counsel for the petitioner strenuously urged before us that the respondent was occupying a room in the Railway Rest House. Occupation of a room in the Railway Rest House comes within the definition of the term 'Accommodation'. Reliance was placed on a communication dated 24.11.04 by the Deputy Director Establishment (P&A), Railway Board to the General Manager, East Coast Railway, Bhubaneswar in support of the same. Reliance was further placed on Chapter 17 of the House Rent Compensation (City) Allowances to submit that house rent allowance was permissible only if the railway servant did not occupy government accommodation. Learned Counsel further submitted that the Respondent would have been entitled to house rent allowance if he continued to stay in the guest house only if he had applied for a Railway accommodation and was given a certificate of non availability. The Respondent never applied for allotment of accommodation and continued to voluntarily reside at the Railway rest house. Reliance was placed on circular dated bearing RBE No. 48/04. The Respondent was therefore not entitled to house rent allowance. Lastly, Learned Counsel referred to the letter dated 9.8.1978 and submitted that if a railway servant was permitted to use accommodation in a Railway Rest House at the place of posting on payment of rent he was not entitled to house rent allowance.

3. The Tribunal had completely erred in not appreciating these factors and holding that the Respondent was allotted a single bed in the Officers Rest House for non-residential purpose which could not be equated with allotment of government accommodation. The order dated 18.8.2009 called for no interference and the order of the Tribunal is fit to be set aside.

4. Counsel for the Respondent submitted that he was transferred and

posted at Bilaspur after creation of a new zone of South East Central Railway. The Respondent was drawing house rent allowance at his earlier place of posting since he was not occupying railway allotted accommodation. On 11.6.2007 upon arrival at Bilaspur he was allotted one room on non-residential basis in the railway rest house with a single bed to be shared with one Shri R.K.Mishra. On 5.10.2007 he represented that because of allotment on sharing basis he was facing difficulties and he may be allotted another room which had been vacated by one Shri Sudhir Ranjan so that his family could visit him. On 18.6.2007 the Respondent had also applied for transit accommodation which was never made available to him. He therefore requested for issuance of necessary certificate which never came to be granted. In the circumstances, the Respondent in accordance with rules continued to avail house rent allowance at his earlier place of posting where his family resided as he had no railway accommodation allotted to him even at that place. The controversy relates to house rent allowance from September 2007 to 31.8.2009 only. The Respondent has superannuated in June 2014.

5. We have considered the submissions on behalf of the parties.

6. Bilaspur was created as a new zone of the South East Central Railway. The Respondent was posted there as Deputy Chief Personnel Officer (Construction Organization). On 3.10.2007 the Chief Personnel Officer, Sri N. K. Prasad, South East Central Railway wrote to the Railway Board, New Delhi, regarding non availability of quarters at the new zone as infrastructure development was under progress and that they be permitted to draw house rent allowance at their earlier place of posting if they did not occupy government accommodation there also. On 12.12.2007 the Railway Board granted permission for the same till 31.8.2007.

7. On 11.6.2007 the Respondent was allotted one bed in the Officers Rest

House at Bilaspur on a sharing basis with Shri R.K.Mishra for non-residential purpose. It is not in dispute that he was not allotted government accommodation at his earlier place of posting where his family continued to reside and was therefore entitled to house rent allowance on that basis. On 5.10.2007 he wrote to the authorities that he may be allotted a single room vacated by Shri Sudhir Ranjan so that his family could visit him. No transit accommodation was even made available to him. He therefore on 18.6.2007 requested for issuance of necessary certificate regarding non availability of accommodation to facilitate drawing of house rent allowance at the earlier place of posting where his family continued to reside as per Railway policy. On 29.10.2009 the Chief Personnel Officer, South East Central Railway, Sri K. Seshasay, again wrote to the Railway Board regarding non availability of quarters at the new zone and that creation of infrastructure was still under progress and therefore the facility for house rent allowance at the earlier place of posting to such officers be extended. By order dated 2.5.2008 and 5.9.2008 the Railway Board extended the facility till 31.8.2009 in pursuance of which the South East Central Railway issued orders on 23.6.2009.

8. On 31.8.2009 the Deputy Chief Personnel Officer, South East Central Railway wrote to the Deputy FA & CAO/Con. Bilaspur that the Respondent was wrongly being denied house rent allowance till 31.8.2009 and that several others have been extended the facility in similar circumstances. The rejoinder to the counter affidavit is silent with regard to Railway Board letters dated 12.12.2007, 2.5.2008 and 5.9.2008.

9. The contention on behalf of the Petitioner that the Respondent voluntarily continued to reside at the Railway rest house which constituted government accommodation and never applied for allotment of Railway quarter is both legally and factually unsound. The letters dated 3.10.2007 and 29.10.2009 of the Chief Personnel Officer, South East Central Railway,

makes itself manifest that quarters were still under construction. It is for that reason that the Respondents request for transit accommodation made on 18.6.2007 was also not acceded to. It is also not in dispute that necessary certificate for non availability of accommodation was also not issued to him.

10. During the course of hearing we repeatedly asked the Counsel for the Railways to demonstrate before us from the records, devoid of all other questions, that if the Respondent had applied for government accommodation was the Railways in a position to provide the same to him. The answer we got was that the Railways was not obliged to consider the question so long the Respondent did not first apply for it after which the question for availability of accommodation would arise. We are unable to fathom the stand of the Railways, a government body in taking such a preposterous stand. We fail to understand the attitude of the Petitioner in confronting the Court with its conclusions rather than answering the queries of the Court.

11. The circular dated 9.8.1978 on which reliance was sought to be placed has no application to the facts of the case and in any event visualizes physical occupation of a Railway Rest house at par with government accommodation as it talks of similar rent being charged as the latter. Obviously it has nothing to do with occupation of a single room in a rest house.

12. The other contention of the Petitioner that Government accommodation would include one room in a railway rest house is contrary to common sense and logic putting at par two fundamentally different categories. The term 'Accommodation' will require a contextual interpretation in view of entitlement for house rent allowance. We are unable to accept the submission that allotment of single room in the rest house would amount to allotment of residential quarter accommodation by the railways.

13. The entitlement of the Respondent to house rent allowance is

admissible only till 31.8.2009. Payment in excess thereof, if any, can be recovered in easy installments as he may request or from other payments due to him considering his superannuation in June 2014. All payments withheld and due to the Respondent pursuant to the impugned order must be paid to him within eight weeks from the date of receipt and/or presentation of a copy of this order in accordance with law, failing which it shall carry interest @8% from 18.8.2009 till the date of actual payment. The order of the Tribunal calls for no interference.

14. The application is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(Pritinker Diwaker)
Judge