

**(2007) 12 CAL CK 0052**  
**In the Calcutta High Court**  
**Case No : WPCT No. 469 of 2005**

Anima Biswas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 20-12-2007

**Acts Referred:**

**Citation :** (2008) 3 CHN 938 : (2008) 117 FLR 117

**Hon'ble Judges :** Rudrendra Nath Banerjee, J; Kalyan Jyoti Sengupta, J

**Bench :** Division Bench

**Advocate :** Mihir Chakraborty and Goutam Kumar Das, Rajdeep Roy, for the Appellant;

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## Judgement

1. In both the applications, the respective applicants have challenged common judgment and order passed by the learned Tribunal. The applicants are mother and son, and filed applications, OA No. 64 of 2001 (Anima Biswas) and OA No. 65 of 2003 (Partha). The learned Tribunal did not grant relief as asked for by the respective applicants. The short fact of these cases is as follows:

2. Anima is the wife and Partha is the son of late M.R. Biswas, (hereinafter referred to as the said deceased) who at the time of death was Senior Personnel Officer, (R.P.) at Garden Reach, Calcutta, in South Eastern Railway. The said deceased died-in-harness on 27th December, 2000. Prior to his posting at Garden Reach, he was in Kharagpur under the same Railway and was occupying Railway Quarter No. 765 VHF Colony South Side Kharagpur befitting to his official position. Despite his transfer to Garden Reach the said deceased along with his son and wife continued to occupy the same quarter. After his death Anima made a representation to respondent No. 3, the Chief Personnel Officer, Garden Reach, Calcutta and prayed for post facto sanction for allotment of the same quarter even after transfer, in the name of deceased husband so that release of payment of Death-cum-Retirement Gratuity (hereinafter in short DCRG) is not affected. In her representation she requested for retention of quarter for a period of two years from the date of death of her husband in accordance with Rail

Board's Circular dated 17th August, 1999. On considering the representation the Divisional Manager South Eastern Railway Kharagpur granted post-facto sanction of the competent authority for retention of quarter from 10th January 1995 to 26th December, 2000 on payment of normal rent. However, permission to remain in the said quarter after death was given for a period of two months only, beyond 26th December, 2000 at normal rent.

3. Partha on death of his father was appointed on compassionate ground as a Switch Board Attendant, Grade III at Kharagpur and he applied as per Railway Board Circular dated 11th August, 1992 which enables the deceased employee's son to occupy the same Railway accommodation allotted to his father on out of turn basis, provided he fulfils conditions mentioned in the said circular. He and his mother continued to occupy, purportedly on the strength of the said circular, the same quarter of Type IV, as such he did not draw any house-rent allowance. Subsequently the said quarter was bifurcated into two parts that is 765/1 and 765/2 and therefore the quarter occupied by the said deceased became Type II Quarter which according to Board's Circular could and can be occupied by Partha as a Grade III employee as contended by them. Undivided quarter of 765 was of Grade IV type which was meant for Class I officer and as such under stipulation of the Board's Circular he was not entitled to occupy the said quarter. Partha justifies his occupation of the said quarter citing instance that another employee Sri Harmit Singh Sohanpal who occupied his father's same quarter in the similar circumstances. Therefore, Anima wanted to occupy the quarter for a period of two years after the death of her husband and wanted immediate release of all DCRG, while Partha claimed for regularisation of his occupation of the quarter which had hitherto been occupied by his father. Both the applications are opposed by the respondent Railway.

4. The learned Tribunal after considering all aspects of the matter passed an order directing the Railway authorities to allow the family to occupy the said quarter for two years after death of the said deceased on realisation of normal charges and beyond this period Railway authority was given liberty to charge special and/or damage rent as per rules, till it is finally vacated by the family. The learned Tribunal thereafter directed release of DCRG within a period of three months from the date of receipt of this order or three months after the actual eviction of the said quarter by the said family after adjustment of any pending dues on account of house rent from the said amount. Therefore it is clear that reliefs claimed by both the applicants have got the same origin and/or source of the facts and circumstances.

5. When these two matters came up for hearing before this Court at earlier stage, on 2nd August, 2005 the Division Bench passed an order giving liberty to Railways to offer any other vacant quarter suitable for allotment considering the post held by Partha. When these two matters were finally being heard on 11th July, 2007, on the basis of the submission of the learned Counsel for the Railway this Court directed the applicants to vacate the earlier quarter allotted to the said

deceased and to occupy the quarter allotted to Partha as per his eligibility. Now the question remains whether without any deduction Railway authority is obliged to release entire DCRG. In other words whether judgment and order of the learned Tribunal is justified or not. The learned Tribunal held that for two years from the date of death of M.R. Biswas on the strength of the Railway Board's above Circular Partha and Anima are entitled to occupy the quarter allotted to the said deceased at a normal rent and beyond that Railways is entitled to charge higher rate of rent and/or damages as per Rules. It was held that even after bifurcation of the Quarter No. 765 having regard to the reduced area being occupied by Anima and Partha the same cannot and could not be occupied by Partha as he is not entitled nor eligible to occupy because of his holding of the present post. Naturally occupation beyond the period of two years from date of death in undivided thereafter divided portion of the said old quarter is held to be unauthorised and unlawful.

6. Mr. Mihir Chakaraborty learned Counsel appearing for both the applicants submits that the learned Tribunal has not correctly read the relevant Railway Board's Circular while refusing to grant relief to the applicants. He contends further that after bifurcation of the quarter being No. 765 which took place during occupation of two permissible years, the said quarter can no longer be termed to be IV type quarter and it became so smaller that it became virtually type II quarter. Therefore, Partha was entitled to occupy the same as per aforesaid Railway Board's Circular. Under those circumstances it cannot be said the occupation beyond aforesaid period is unauthorised or illegal. Moreover, he contends by citing an instance that there has been gross discrimination meted out to Partha as one Harmit Sohanpal Singh was allowed to occupy similar quarter on the death of his father on the same facts and circumstances, whereas his client is deprived.

7. The learned Counsel Mr. Rajdeep Ray, Advocate, appearing for the Railway authority submits that his client has not only given appointment to Partha on death of his father, but granted post facto sanction for allotment and occupation of the quarter after death of the said deceased, though he was transferred from Garden Reach to Kharagpur. Even after the death of said Biswas his family was allowed to occupy for a period of two years at normal rent. Under the Rules until and unless the quarter is vacated DCRG can not be released so it was not released. Having regard to the post being held by Partha he is not entitled nor eligible to the quarter allotted to his father even after bifurcation. He has been allotted a quarter out of turn, of the type II to which he is entitled, long time back. In spite of allotment this family did not move vacating the quarter and continued to occupy it illegally and unauthorisedly. According to him there is no infirmity and illegality in the judgment and order of the learned Tribunal.

8. After hearing the learned Counsels for both the parties and going through the records including the impugned judgment of the learned Tribunal now question is what is the amount to be deducted before release of DCRG in view of vacating

the occupied quarter No. 765, now 765/1. In order to compute the same it has to be examined how long both the applicants occupied the said quarter No. 765/1 lawfully. We find that the learned Tribunal has correctly found that Partha was and still is not entitled to be allotted quarter No. 765 as he has not fulfilled the conditions for allotment on death of his father, for his father being Class 1 officer was entitled to quarter of the type IV being No. 765, whereas Partha is Class III employee and is entitled to type II quarter. As such the normal rule for retention of the quarter in case of death of the employee will be applied. The learned Tribunal is also right in its conclusion that as per Rule both the applicants were not entitled to occupy the said quarter beyond 26th December, 2002. It is to be noted that father of Partha on transfer to Garden Reach should have vacated the quarter, however, he applied for sanction of the said quarter for regular allotment on transfer. After death, on representation of Anima the post facto sanction was granted and they are allowed to remain there till 26th December, 2002 at a normal rent. Even they were allowed to remain beyond two months at the same rate.

9. Therefore, we do not find any reason to interfere with the findings and order of the learned Tribunal. The question of discrimination raised by the two applicants is not appreciated by this Court as it was also not done by the learned Tribunal correctly. Wrong and illegal act or action cannot be taken to be a ground for discrimination. It is alleged that one Sohan Pal Singh was allowed to occupy; to this we find such occupation was illegal. So this illegal occupation cannot be an instance to make out a case of discrimination. The learned Tribunal has applied correct position of law while taking note of the Supreme Court decision rendered in case of State of Bihar v. K.P. Singh reported in 2000 SCC 845, thus, we dispose of this application slightly modifying the judgment and order of the learned Tribunal in the manner as follows:

10. The respondent authority shall compute normal rental of the quarter No. 765 upto the date of bifurcation and thereafter the rate applicable to the accommodation after bifurcation comprising of plinth area 177 square meters and the normal rent of this portion should be charged till two months from 26th December, 2002 separately if bifurcation took place within this period. The learned Tribunal has, however, overlooked one thing, non-allotment of quarter to Partha after he was appointed in the post of Switch Board Attendant. Under the rules he should have been allotted a quarter. It appears from the records that till 2nd August, 2005 he was not allotted any quarter and it is reflected in order dated 2nd August, 2005 of this Court. In the order it is recorded that in the meantime it was open to the Railways to offer any other vacant quarter suitable for allotment considering the post held by Partha. Therefore, it is presumed conclusively that there has been no allotment of quarter to Partha. Therefore, it is clear that in view of non-allotment of quarter befitting to his status he could not vacate the quarter allotted to his father, at the same time he did not draw any house rent allowance and this was allowed to be deducted by the Railways from his salary.

11. Therefore, during the period, after expiry of two months from 27th December, 2002 under the rules special and/or damage rate has to be charged and the same is payable by Partha and/or his mother. We direct the Railways to calculate the same but we feel that there must be equitable adjustment against the aforesaid amount. Since Partha could not occupy the quarter befitting to his status until this Court passes an order the amount of the rent of the quarter allotted to him calculated at special and/or damage rate for period commencing from the date of his appointment till the date of making the quarter ready for occupation, should be adjusted against the amount of rent payable on account of occupation of the quarter of his father beyond the period of two months after 27th December, 2002. At the time of computation Partha should be given hearing and then the amount should be finally calculated and the same be recovered either from the salary of Partha or from the amount of DCRG whichever would be convenient for the applicants, and they will indicate this also in writing.

There will be no order as to costs.

Later:

12. On 11th July, 2007, when the matter was heard, we were informed that Type-9. quarter, which was allotted to Partha Pratim Biswas has been made ready for occupation and habitation. Today, at the time of delivering the judgment, we have been informed, showing some prints of photographs of the particular quarter that the same is not fit for human habitation and it needs extensive repair and renovation. However, learned Counsel for the Railway authorities denies and disputes such submission.

13. In view of the aforesaid disputed factual submissions, we appoint a Special Officer for the purpose of visiting the quarter in question. The Special Officer will take the exterior and interior view of the quarter in question and shall submit a report, if necessary, with the help of an Engineer and this Engineer may be deputed by the Railway authorities. After considering everything the Special Officer shall submit his report to this Court on or before the next date of hearing stating whether the quarter in question is fit for human habitation and occupation or not.

14. However, final order is passed in the main matter by delivering a judgment today. Since it is a subsequent event, it is taken note of and after receipt of the report of the Special Officer; the judgment passed today will be modified, if warranted.

15. Accordingly, we appoint Mr. Chitta Ranjan Panda (Advocate of Bar Association) Room No. 2 as Special Officer for the aforesaid purpose at a consolidated remuneration of Rs. 3,400/-. (Three thousand four hundred) to be borne by the petitioner at the first instance and subject to further order of this Court. All costs and expenses for taking the Special Officer to the site may be borne by the petitioner. However, other consequential, arrangements e.g. for stay and lodging of the Special Officer if necessary shall be borne by the Railway

authorities at their best Guest House.

16. The matter will come up for further consideration two weeks after Christ Mas Vacation.

17. Xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court) be given to the learned Lawyers for the parties upon making application for obtaining xerox certified copy of this order.