



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

*Reserved on: 20.12.2025*

*Pronounced on: 06.02.2026*

+ **W.P.(C) 7344/2009**

AMIT SHARMA AND ANR. ....Petitioners

Through: Mr. M. K. Bhardwaj, Ms. Priyanka M. Bhardwaj and Mr. Praveen Kumar Kaushik, Advs.

versus

UOI AND ORS. ....Respondents

Through: Mr. Piyush Beriwal, Ms. Ruchita Srivastava and Ms. Neha, Advs.

+ **W.P.(C) 481/2019**

U.K. SHARMA ....Petitioner

Through: Mr. M. K. Bhardwaj, Ms. Priyanka M. Bhardwaj and Mr. Praveen Kumar Kaushik, Advs.

Versus

UNION OF INDIA AND ORS. ....Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Ashutosh Pathak, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

**JUDGMENT**

**MADHU JAIN, J.**

1. W.P.(C) 7344/2009 has been filed challenging the Order dated 17.10.2008 passed by the learned Central Administrative Tribunal,



Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 1815/2007, titled ***Amit Sharma & Anr. v. Union of India & Ors.***, whereby the learned Tribunal dismissed the said O.A. filed by the petitioners herein, with the following observations:

*"17. Perusal of the records shows that applicant no.2 was even issued warning on 05.12.2005 for unauthorizedly exchanging the quarter with Shri S.P. Singh and after examining the case at length it was decided it is not permissible to regularize the quarter in these circumstances.*

*18. From above it is clear that the case was not only rejected on one ground but on two grounds, therefore, reliance placed by applicant on letter dated 24.10.2005 alone cannot advance applicant's case in these circumstances.*

*19. Counsel for the applicant relied on few letters to show that telephone was installed at C-5/D, Basant Lane and permission to retain the quarter was granted but all these letters have been written by the Medical Divisional Central Hospital relying on letter written by Sr.Sectional Engineer, who is not the Competent Authority.*

*20. In view of above discussion, OA is dismissed being devoid of merit. No costs."*

2. W.P.(C) 481/2019 has been filed, challenging the order dated 02.08.2018 passed by the learned Tribunal in O.A. No. 3099/2015, titled ***U.K. Sharma v. General Manager, Northern Railway & Ors.***, dismissing the said O.A. filed by the petitioner herein with the following directions:

*"8. From the above, it is clear that the respondents have already informed about the amounts due to the applicant which have been deducted from his gratuity and no amount is found to be payable to the applicant.*



*Accordingly, the OA is bereft of merit and is dismissed. No costs.”*

3. At the outset, we may note that the present batch of petitions involve a common bundle of facts, therefore, it is deemed appropriate to adjudicate the said facts *vide* this common Judgment.

4. The principal dispute in these petitions concerns the entitlement of the petitioners to regularisation/continued occupation of the railway accommodation, and the consequential question as to whether the respondents were justified in treating such occupation as unauthorised and effecting recovery of alleged dues including damages, rent and electricity charges from the retiral benefits of the petitioner-Mrs. U.K. Sharma, particularly the Death-cum-Retirement Gratuity.

5. For the sake of convenience, we deem it fit to refer to the petitioners herein as per the memo of parties provided in W.P. (C) No. 7344 of 2009. Accordingly, Mr. Amit Sharma shall be referred to as 'Petitioner No. 1' and Mrs. U.K. Sharma shall be referred to as 'Petitioner No. 2'.

### **FACTS OF THE CASE**

6. In a nutshell, the background of the case is that the petitioner no. 2 was an employee of the Northern Railway, and served as an Assistant Nursing Officer/Matron at the Central/Divisional Hospital of the Northern Railway. During the subsistence of her service and in accordance with her entitlement, she was allotted Quarter No. 159/6, Basant Lane, Northern Railway, New Delhi on 16.10.1993.

7. The said railway quarter, on 10.07.2005, was exchanged by the



petitioner no. 2 with Shri S.P. Singh, who was an occupant of Quarter No. C-5/D, Basant Lane, Northern Railway, New Delhi, which constitutes the subject matter of the present proceedings. As per the case of the petitioners, the said exchange was facilitated with the approval of the Senior Section Engineer, Northern Railway, while the respondents claim that the said exchange had not been approved by the competent authority and was impermissible due to the two quarters being situated in two different pools, namely, Northern Railway and NC Railway.

8. The petitioner no. 1 was, at the relevant time, also employed with the Northern Railway at the post of TTE. It is not in dispute that he was a serving railway employee and that he ceased to draw House Rent Allowance ('HRA') with effect from December 2004.

9. On 24.10.2005, petitioner no. 2 addressed a communication to the Medical Director, Northern Railway, informing the competent authority that her son had been residing with her in the said quarter and was not drawing HRA. She further sought appropriate action in accordance with the applicable rules.

10. The petitioner no. 2 was due to retire on attaining the age of superannuation, on 30.04.2006. In anticipation of her retirement, she submitted a representation in February 2006, seeking regularisation/transfer of Railway Quarter No. C-5/D in favour of her son, asserting that he was also a railway employee and was otherwise eligible for allotment. During this period, petitioner no. 1 was not drawing his HRA.

11. Thereafter, on 16.02.2006, petitioner no. 2 submitted an another



application seeking permission to share the said quarter accommodation with her son, citing personal and family circumstances, and reiterating that her son had not been drawing HRA since December 2004.

12. The request was processed administratively, and *vide* communication dated 26.04.2006, the matter was forwarded to the Estate authorities for examination and appropriate action in accordance with the applicable rules.

13. It is the case of the respondents that the petitioner no. 2 had executed a declaration dated 06.03.2006, wherein it was stated that her gratuity would be withheld if she continued to retain her railway accommodation unauthorisedly beyond the permissible period and that the said gratuity would only be released on vacation of the accommodation after the penal rent and other supplementary charges have been recovered from the petitioner no. 2. The declaration is produced as under:

*"I, U.K. Sharma, retiring/retired on 30.04.2006, hereby declare that I am fully conversant with the orders contained in GM. (P)N Rly's letter No 720E/XXXI (Pension), dated 4-6-82 and 720E/XXXV (Pension), dated 5-6-91 (P.S. Nos. 8045 & 10430) that my entire D.C.R.G/S.C. to P.F. will be withheld in the event of my retaining Rly accommodation un-authorisedly beyond permissible period and will be released on vacation of accommodation after recovering arrears of rent, electricity and other charges and also that one set of post retirement passes for each month of unauthorised retention will be disallowed."*



14. The petitioner no. 2 retired from service on 30.04.2006 upon attaining the age of superannuation. Upon her retirement, she was granted retention of the accommodation for the permissible period under the relevant railway rules.

15. As the period of retention of the railway quarter allotted was nearing expiry, she submitted another representation dated 02.06.2006, reiterating her request for sharing permission and consequential regularisation of the quarter in favour of her son.

16. During scrutiny of the request, the Estate Department, through a letter dated 02.06.2006, sought clarification from the petitioner no. 2 regarding the allotment of Railway Quarter No. C-5/D, and called upon her to furnish the allotment letter and particulars of possession of the railway quarter in question, stating that as per official records, she was not reflected as the allottee of the said quarter.

17. Thereafter, by order dated 11.09.2007, respondent no.3 rejected the request for sharing the quarter in question with petitioner no. 1 and regularisation of the said quarter, *inter alia*, on the grounds that there was no valid allotment in favour of the petitioner; that the alleged mutual exchange had not been approved by the competent authority; that the quarter belonged to a different railway pool; and that no permission for sharing had been obtained prior to her retirement.

18. Aggrieved thereby, the petitioners approached the learned Tribunal by filing OA No. 1815/2007, which came to be dismissed by order dated 06.05.2008, observing as under:

*“8. Counsel for applicants has not been able to demonstrate that applicant no.1 was sharing the accommodation with her mother*



*applicant no.2 from six months before the date of her retirement. On the contrary, letter dated 16.2.2006 written by applicant no.2 herself clearly states that earlier her elder son was living with her but now she wanted permission for sharing of said accommodation with her second son, namely, Amit Sharma, applicant no.1. From this letter, it is clear that the basic requirement of the Instructions was not fulfilled. In this view of the matter, I find no justification to interfere in this case.*

*9. Counsel for the applicants strenuously argued that simply because respondents had not given any reply to her request for permission to share, it cannot be used against the applicants by the respondents but the fact remains that the permission to share itself was sought only two months before the date of retirement of the mother, therefore, even if that permission had been granted, applicants would not have fulfilled the requirements of the Instructions as mentioned above.*

*10. In view of above, this OA is dismissed being devoid of merit. No order as to costs.”*

19. The aforesaid order was challenged before this Court. This Court, by its judgment dated 20.05.2008 {2008:DHC:6130-DB}, set aside the learned Tribunal's decision and remanded the matter back to the learned Tribunal for fresh consideration, directing examination of the communication dated 24.10.2005.

20. Upon remand, the learned Tribunal reconsidered the matter and, *vide* the impugned order dated 17.10.2008, again dismissed the O.A. No. 1815/2007, holding that there was no valid allotment in favour of the petitioner and that the alleged mutual exchange and sharing were not approved by the competent authority.



21. The said order was challenged before this Court. This Court, *vide* order dated 14.11.2008 {2008:DHC:5460-DB}, dismissed the writ petition with liberty to file a Review Application before the learned Tribunal.

22. The Review Application filed by the petitioners was dismissed in circulation by the Tribunal *vide* order dated 17.02.2009.

23. This Court, *vide* its Interim Order dated 01.09.2010 passed in W.P.(C) 7344/2009, held that the petitioner no. 1 was entitled to continue in occupation of Railway Quarter No. C-5/D till the pendency of this petition on payment of normal licence fee to be deducted from the salary of petitioner no. 1.

24. In the meantime, upon the petitioner no. 2's retirement in April 2006, her Death-cum-Retirement Gratuity and other retiral benefits were not released. Despite repeated representations, the gratuity remained unpaid. Consequently, the petitioner approached the learned Tribunal by filing OA No. 685/2012, which was allowed *vide* order dated 24.09.2012, observing as under:

*“4. On a consensual basis, this Application is disposed of with the directions to the respondents to release the amount of gratuity along with interest as may be due and admissible to the applicant in terms of the applicable rules in terms of their submissions as aforesaid.”*

25. The respondents did not adhere to the directions contained in the aforesaid order, and filed a Review Application No. 63/2013, which was dismissed *vide* order dated 17.04.2013.

26. The respondents thereafter approached this Court by filing Writ



Petition No. 6138/2013, titled ***Union of India and Ors. v. Smt. U.K. Sharma***, which was dismissed *vide* order dated 26.09.2013, observing as under:

*"7. Since it was the defence of the Railway Authorities that for the period respondent overstayed the flat allotted to her and further that she mutually exchanged possession of the flat without the consent of the Railway Authorities they would be entitled to recover not only license fee but even damages, and for the reason the Tribunal did not negate the said defence, and rather chose to leave the matter open it is apparent that the Railway Authorities would be obliged to pass a speaking order with reference to the Rules, and if they permit gratuity to be adjusted towards outstanding dues; to record so. Gratuity amount needs to be calculated and similarly the amount payable towards license fee/damages. Debit and credit entries to be made and account adjusted for.*

*8. After said exercise is complete, if it is found that some amount is due to the respondent, same has to be paid. If it is found that nothing is payable, the Railway Authorities need not pay any money.*

*9. We note that in the order dated September 24, 2012, the Tribunal has recorded that after the Railway Authorities deal with the matter as per applicable Rules, should the grievance remain, the respondent can re-agitate the issue.*

*10. The writ petition is dismissed in limine."*

27. The respondents, *vide* order dated 15.01.2014, adjusted amounts towards damages, rent and electricity charges from the petitioner's gratuity, treating the petitioner no.2 as an unauthorised occupant of the quarter.

28. Aggrieved thereby, the petitioner no. 2 filed a Contempt



Petition No. 92/2014 before the learned Tribunal. The contempt proceedings were closed *vide* order dated 23.05.2014, granting liberty to the petitioner to avail appropriate remedies.

29. Pursuant thereto, OA No. 3099/2015 was filed by petitioner no. 2 before the learned Tribunal, challenging the recovery and adjustment made *vide* order dated 15.01.2014 and seeking release of gratuity.

30. The learned Tribunal, *vide* order dated 02.08.2018, dismissed O.A. No. 3099/2015, holding that after adjustment of the alleged dues towards licence fee, damage, rent and electricity charges, no amount remained payable to the petitioner.

31. Aggrieved by the Impugned Order dated 17.10.2008 in O.A. No. 1815/2007; and order dated 02.08.2018 in O.A. No. 3099/2015, the petitioners have filed the present writ petition.

#### **SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS**

32. The learned counsel for the petitioners submits that petitioner no. 1 commenced residing with petitioner no. 2 in the railway quarter with effect from December 2004, consequent whereupon, the HRA of petitioner no. 1 was stopped. He submits that this position was expressly conveyed to the respondents *vide* representation dated 24.10.2005, which forms part of the record. He further submits that the respondents did not specifically controvert the aforesaid representation or the factual assertions therein regarding joint residence and cessation of HRA. He contends that the respondents proceeded to reject the petitioners' request on the ground that prior



written sharing permission had not been obtained, notwithstanding the pleaded facts of residence and stoppage of HRA.

33. He submits that after December 2004, the petitioners continued to occupy the quarter and that essential services such as electricity and telephone remained connected and operational, evidencing continued occupation within the knowledge of the respondents.

34. He further submits that petitioner no. 2 came into occupation of Quarter No. C-5/D, Railway Colony, Basant Lane pursuant to a mutual exchange and that such occupation was never discontinued. He submits that the petitioner retired from service in April 2006, yet was permitted to retain the quarter even thereafter. He contends that this fact is expressly pleaded and supported by the record.

35. He submits that respondent no.1, *vide* order dated 26.04.2006, issued directions to respondent no.3 in relation to the request made by the petitioners. The said order is specifically referred to in the pleadings and forms part of the record. He contends that notwithstanding the aforesaid order dated 26.04.2006, respondent no. 3 passed an order dated 11.09.2007, rejecting the request of the petitioners. The legality and validity of the said order is under challenge.

36. He further submits that prior to passing of the order dated 11.09.2007, no show-cause notice was issued and no opportunity of hearing was afforded to them.

37. He also submits that a review application was filed by the petitioners pursuant to liberty granted by this Court, seeking reconsideration of the issues raised. He contends that the review



application was disposed of without effective consideration of the grounds raised therein as set out in the pleadings. He submits that the petitioner no. 1 was serving in the eligible scale and category and fulfilled the conditions relevant for consideration of the request made by the petitioners.

38. He further submits that the petitioner retired from service in April 2006 and that upon such retirement, her gratuity became due and payable in accordance with the applicable rules. He contends that despite repeated representations made by the petitioner seeking release of gratuity, the respondents did not release the said amount.

39. He also submits that the respondents, *vide* order dated 15.01.2014, proceeded to adjust the alleged damage rent and electricity charges against the gratuity payable to the petitioner. The learned counsel for the petitioners places his reliance on the Judgment of the Supreme Court in *R. Kapur v. Director of Inspection (Painting and Publication), Income Tax & Another* (1994) 6 SCC 589, wherein it was held that the Death-cum-Retirement Gratuity (DCRG) is not dependent upon the retiree vacating the official accommodation and that in future, DCRG of retired or deceased employees shall not be withheld for want of a No Objection Certificate from the Land and Estate Department.

40. He further submits that the learned Tribunal, by order dated 24.09.2012 in O.A. No. 685/2012, directed the respondents to release the gratuity along with interest. He contends that the challenge raised by the respondents to the order dated 24.09.2012 was dismissed on 26.09.2013 in W.P.(C) No. 6138/2013, titled *Union of India and Ors.*



v. **Smt. U.K. Sharma** and the said order, thereby attained finality. He further submits that notwithstanding the dismissal of the challenge, the respondents thereafter issued the order dated 15.01.2014, adjusting gratuity. He contends that the gratuity which became payable in 2006 has been withheld for several years resulting in continued hardship.

#### **SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS**

41. The learned counsel for the respondents submits that the petitioner had mutually exchanged the railway quarter in question with another employee without obtaining prior permission from the competent authority and that this act is impermissible under the applicable rules governing railway accommodation.

42. He further submits that a warning letter dated 05.12.2005 was issued to the petitioner for unauthorised exchange of the quarter and upon examination of the matter, wherein it was found that such exchange could not be regularised as per the concerned rules.

43. He submits that the petitioner no. 2 applied for permission to share the railway quarters in question only on 16.02.2006, and that no such permission was ever granted by the competent authority. He contends that in the absence of such permission, the occupation of the said quarter by the petitioners could not be treated as authorised.

44. He further submits that mere stoppage of House Rent Allowance or continuation of occupation, does not amount to grant of permission to share the quarter or regularisation of the said quarter, as the said permission can be granted only through a specific order



passed by the competent authority.

45. He submits that the petitioner did not have any valid allotment order in respect of Quarter No. C-5/D, Basant Lane and in the absence of proper allotment, the quarter could not be regularised in her favour or in favour of her son, that is, petitioner no. 1.

46. He further submits that as per the applicable railway rules and instructions, a quarter, which has been unauthorisedly exchanged or occupied without permission, cannot be regularised and therefore the request of the petitioner was rightly rejected. He submits that the order dated 11.09.2007, rejecting the request for permission to share the quarter and regularisation was passed after due consideration of the facts and applicable rules and does not suffer from any illegality.

47. He submits that the petitioner no. 2 overstayed in the quarter even after the permissible period and such overstay rendered her liable to pay licence fee and damage rent as per rules. He contends that in cases of unauthorised occupation or overstay, the railway administration is entitled to recover the licence fee as well as damage rent from the petitioner no. 2 and such recovery is permissible under the rules.

48. He further submits that in compliance with earlier judicial directions, the respondents conducted an exercise to calculate the gratuity payable and the outstanding dues towards licence fee, damage rent and electricity charges and thereafter adjusted the gratuity against such dues. He relies upon the speaking order dated 15.01.2014, wherein the amounts recoverable towards licence fee, damage rent, and electricity charges were calculated and after adjustment of



gratuity, it was found that no amount was payable to the petitioner.

49. He submits that where government dues are outstanding, the administration is entitled to adjust such dues against gratuity and the same was done after due calculation. He submits that the petitioner was duly informed about the calculation of dues and adjustment made from her gratuity and therefore no prejudice has been caused.

50. The learned counsel for the respondents relies upon the Judgment of the Supreme Court in *Devendra Kumar vs. State of Uttarakhand* (2013) 9SCC 363, wherein it was held as under:

*“25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav,<sup>18</sup> and Lily Thomas v. Union of India<sup>19</sup>.) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur).”*

51. He further submits that the petitioner's reliance on the Judgment of the Supreme Court in *R. Kapur* (supra), which states that “gratuity shall not be withheld for want of NOC,” is misplaced. That principle applies to cases where gratuity is arbitrarily withheld solely due to delay in issuance of a no-objection certificate or minor procedural lapses. The present case, however, involves a substantive



recovery of penal rent and electricity dues arising out of unauthorized occupation of Government accommodation. He contends that, the rule that gratuity cannot be withheld for want of an NOC does not grant immunity from recovery of genuine and quantifiable dues. The petitioner had continued to occupy the railway quarters for years after retirement, thereby incurring liability for penal rent, which is legally recoverable from her retirement benefits.

52. He further submits that the earlier orders relied upon by the petitioner did not direct regularisation of the quarter but only required the administration to pass a speaking order and calculate dues as per rules. He submits that the respondents have acted strictly in accordance with the directions issued by the courts from time to time and have not acted in defiance of any judicial order.

53. He further submits that after adjustment of outstanding dues, no gratuity amount remains payable to the petitioner and therefore, the writ petition seeking release of gratuity is misconceived. He contends that the petition involves disputed questions relating to unauthorised occupation, exchange of quarter and calculation of dues, which do not warrant interference in writ jurisdiction.

### **ANALYSIS AND FINDINGS**

54. We have considered the submissions advanced by the learned counsels for the parties and have perused the material on record.

55. The issues that arise for consideration in the present batch of petitions are: (i) whether the petitioners were entitled to regularisation of exchange of Railway Quarter No. C-5/D; (ii) whether the impugned



orders rejecting such request seeking regularisation warrant interference by this Court; and (iii) whether the respondents were justified in treating the occupation as unauthorised and in adjusting the alleged dues towards licence fee, damage rent and electricity charges from the Death-cum-Retirement Gratuity of the petitioner.

56. The claim for regularisation and sharing of the railway accommodation arises from the assertion that the petitioner no. 1 had been residing with the petitioner no. 2 since December 2004 and that his House Rent Allowance had been discontinued thereafter. It is, however, not in dispute that a formal application seeking permission to share the said railway accommodation between both the petitioners was submitted only on 16.02.2006, i.e., shortly prior to when petitioner no. 2 got superannuated, that is, on 30.04.2006.

57. The applicable Railway instructions which govern allotment, sharing and regularisation of railway accommodation and which were duly noticed and analysed by the learned Tribunal, lays down specific and mandatory conditions that must be satisfied before such permission for sharing can be granted and regularisation can follow. The Railway Board instructions contained in the Master Circular (Revised) No. 49 clearly provides for conditions under which 'out of turn allotment from father to son/daughter/dependent' can take place.

58. A careful scrutiny of the record clearly establishes that no prior written permission for sharing was ever granted by the competent authority herein. Upon examination of the petitioners' request, the Estate authorities found that the railway quarter in question had not been validly allotted to the petitioner in accordance with the



applicable rules and that the alleged mutual exchange had not received the requisite approval from the competent authority, rendering the said occupation unauthorised.

59. The record further reveals that the alleged mutual exchange of Railway Quarter No. C-5/D was not approved by the competent authority. The petitioners were unable to produce any approval granted by the Estate authorities of the pool-owning Railway, namely, the Senior Divisional Engineer (Estate) or the General Manager concerned. At best, the exchange appears to have been facilitated merely based on a communication issued by a subordinate officer, who lacked jurisdiction to approve such exchange. The learned Tribunal has rightly held that such an unauthorised exchange, undertaken without approval of the competent authority, could not confer any legal right or form the foundation for regularisation.

60. Once the foundational act of the said exchange is contrary to the Railway instructions as contained in the Master Circular, the subsequent request seeking regularisation of the quarter in question is to be considered invalid as the original act of exchanging the quarter with Shri S.P. Singh was not based on an approval given by the Competent Authority.

61. As petitioner no. 2 was originally allotted another quarter in 1993 and was not the original occupant of the quarter in question, the claim for regularisation cannot be given effect to. The petitioner no. 2 had also failed to produce the letter through which she was allegedly granted approval to exchange her residential quarter with another employee belonging to a different pool in the respondents. The



allotment, accordingly, owing to non-verification of the alleged mutual exchange of these railway quarters, cannot be taken to be permitted lawfully on the face of it.

62. Pursuant to the remand by this Court, the learned Tribunal reconsidered the matter in accordance with the directions issued, including an examination of the representation dated 24.10.2005. Upon such reconsideration, the learned Tribunal recorded a categorical finding that the request for regularisation was rejected not on a solitary or technical ground, but on multiple independent and substantive grounds, namely, the absence of a valid allotment in favour of the petitioner, the existence of an unauthorised mutual exchange and the lack of prior sharing permission as mandated by the governing instructions. These findings are firmly rooted in the material placed on record and do not disclose any element of perversity, arbitrariness, or non-application of mind warranting interference in exercise of writ jurisdiction.

63. It must be emphasised here that the two quarters belonged to two different zones of the Railways and therefore, interse transfer was not permissible.

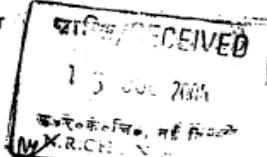
64. The reliance of the petitioners on the communication dated 10/11.07.2005 as an approval of the Competent Authority on the transfer of quarter on exchange, cannot be accepted. The said communication is addressed by the Senior Section Engineer. The petitioner has not shown the Senior Section Engineer is the competent Authority to approve such inter-zonal transfers of accommodations. Even otherwise, the said letter merely records the fact of mutual



understanding and nothing more. The same reads as under:

49  
49  
N.C. Rly  
(C&W)  
No. CW/NLDS/1/Quarter  
Date : 10.07.2005

D.R.M.  
Jhansi



Office of S.S.E.

N.C. Rly.  
New Delhi

**Sub: Mutual Exchange of Rly. Accommodation.**

Shri S.P. Singh SE (C & W) N.C. Rly. Occupant of Rly. Quarter C-5-D RB II  
Basant Lane New Delhi and Smt. U.K. Sharma Chief Matron Central Hospital  
Northern Railway, New Delhi occupant of Rly. Quarter No. 159/6, Basant Lane  
New Delhi have mutually exchanged the Quarter with each other.

Now Quarter No. C-5-D Basant Lane is with Smt. U.K. Sharma and Quarter  
No. 159/6 is with Sh. S.P. Singh SE / CW / N.C.R. / NZM.

The copy of mutual exchange is enclosed here for your further disposal  
please.

Sr. Section Engineer  
N.C. Rly.  
New Delhi  
Sr. Sec. Engineer (C&W)  
N.C. Rly., New Delhi

Copy to:

1. SDGM/Northern Railway, Baroda House, New Delhi.
2. C.M.D. Central Hospital, New Delhi.
3. DRM/ JHS/ SRDME JHS/ SRDPOJHS.
4. Sr. IOW/Basant Lane, New Delhi/SSE (Elect.) Basant Lane.
5. Secy/GM/NC Rly. Ald.
6. Group Clerk N.C. Rly., New Delhi.

65. The subsequent letter from the Sr. DMO, Central Hospital, in fact, misreads the above letter as an allotment of C-5-D to the petitioner no. 2. It reads as under:



66



NO.

The C.S.T.E  
 Northern Railway  
 Hd. Qrs. Office,  
 Baroda House,  
 New Delhi

This is to inform you that Qr. NO. C-5-D, Basant Road New Delhi has been allotted in the name of Ms. U.K. Sharma, Chief Matron/NRCH, New Delhi vide Section Engineer/NCR/C&W, New Delhi letter no. CW/NDLs/1/Quarter dated 10.7.2005.

In this connection it is pointed out that the same quarter was coming as office-com- residence purposes and a Railway Telephone N. 23423 was already provided was the quarter has been allotted in the name of Mrs. U.K. Sharma, Chief matron/NRCH, New Delhi only for residence purpose.

Therefore it is requested that the same Railway Telephone may be transferred in the name of allotted.

Medical Director  
 Central Hospital  
 N. Rly New Delhi

66. The above letters, however, pale into insignificance, once the competent authority, while considering the request of the petitioners for the transfer of allotment in favour of the petitioner no. 1, specifically call upon the petitioners to forward the letter of allotment of the said flat to the petitioner no. 2 and thereafter maintain that the



said flat has not been allotted to the petitioner no. 2. The petitioner no. 2, therefore, should have either immediately shifted back to her earlier allotted flat or vacated the flat she was unauthorisedly occupying.

67. The subsequent order passed by this Court on 01.09.2010, permitting the petitioner no.1 to continue in occupation of the quarter on payment of normal licence fee, was clearly protective and interim in nature, with the intention to avoid immediate hardship. Such permission neither conferred any vested or enforceable right of regularisation nor operated to retrospectively legitimise or validate the earlier unauthorised occupation of the quarter.

68. The respondents have rightly placed reliance on the decision of the Supreme Court in *Devendra Kumar* (supra), wherein it has been authoritatively held that no legal right can accrue from an act which is not in consonance with law and that a person cannot be permitted to derive benefit from his own wrongdoing. The said principle squarely applies to the present claim for regularisation, which is founded on an unauthorised exchange and occupation undertaken without adherence to the prescribed rules and procedures.

69. Therefore, petitioner No. 2 cannot be treated as a lawful allottee of the quarter in question, and the mere discontinuance of HRA to petitioner No. 1, by itself, does not constitute sufficient proof of co-residency for the mandatory period of six months as required under the applicable Railway instructions.

70. As far as the release of gratuity is concerned, the declaration dated 06.03.2006 was executed by the petitioner no. 2 wherein it was provided that the Death-cum-Retiral Gratuity shall be withheld until



she vacates the railway quarter wherein, she is residing. It is the case of the respondents that the said declaration had formed the basis for deduction made from the amount of gratuity. Petitioner no. 2, in addition to unauthorisedly occupying the quarter in question, had objected to deduction of penal rent owed by her to the respondents for residing in the railway quarter, however, the declaration was not challenged by the petitioner no. 2 before the learned Tribunal.

71. The Supreme Court in *ONGC v. V.U. Warrier*, (2005) 5 SCC 245 has held that while gratuity is a statutory and earned retiral benefit for long and meritorious service, it is nevertheless permissible in law for the employer to adjust lawful dues, including penal rent for unauthorized occupation of official accommodation, against the gratuity payable. The relevant extract of the judgment is produced as under:

*“20. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide Garment Cleaning Works v. Workmen [(1962) 1 SCR 711 : AIR 1962 SC 673] ). In Calcutta Insurance Co. Ltd. v. Workmen [(1967) 2 SCR 596 : AIR 1967 SC 1286] , after considering earlier decisions, this Court observed that “long and meritorious service” must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action*



against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid the harmonious employment of labourers or workmen. The Court proceeded to state that the misconduct may be such as to undermine the discipline in the workers — a case in which it would be extremely difficult to assess the financial loss to the employer.

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22. *The ratio in R. Kapur [(1994) 6 SCC 589 : 1995 SCC (L&S) 13 : (1994) 28 ATC 516]* , in our opinion, does not help the respondent as in that case, the claim for damages for unauthorised occupation against the appellant retired employee was “pending” and the proceedings were not finally disposed of. In the present case, the facts clearly reveal that the last day of lawful occupation of quarters by the respondent was 30-6-1990 and before that date, the appellant Commission had informed the respondent that his prayer for extension or retention of quarters had not been accepted and he should vacate by 30-6-1990. If he would not vacate the quarters, penal rent would be recovered from him. He did not challenge the action of not extending the period nor the recovery of penal rent. He, therefore, cannot make grievance against the action of the Commission.

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24. *In Wazir Chand v. Union of India [(2001) 6 SCC 596 : 2001 SCC (L&S) 1038]* , a retired employee continuously kept the quarters occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was the bounden duty of the Government not to withhold the gratuity amount. The Court, however, dismissed the appeal observing that it was “unable to accept” the prayer of the appellant. The Court observed that the appellant having unauthorisedly kept the



government quarters was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.

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26. *The matter can be considered from another angle also. It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that article can be exercised by the High Court “to reach injustice wherever it is found”. More than fifty years before, in Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583 : AIR 1952 SC 192] , the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J., observed (at SCR p. 594) that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them ‘in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice’.*

xxx

28. *As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court was a responsible officer holding the post of Additional Director (Finance and Accounts). He was, thus, “gold collar” employee of the Commission. In the capacity of employee of the Commission, he was allotted residential quarters. He reached the age of superannuation and retired after office hours of 28-2-1990. He was, therefore, required to vacate the quarters allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate.*



*He, however, failed to do so. His prayer for continuing to occupy the quarters was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to the Commission, but the possession of that quarters was restored to him taking into account the fact that he had retired and now he will have to vacate the quarters allotted to him by the Commission. In spite of that, he continued to occupy the quarters ignoring the warning by the Commission that if he would not vacate latest by 30-6-1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner — respondent herein — and on that ground also, the order passed by the High Court deserves to be set aside.”*

72. Furthermore, the Supreme Court in ***Steel Authority of India Ltd. v. Raghabendra Singh***, 2020 SCC OnLine SC 1063 has reaffirmed the principle held hereinabove and had held that if an employee continues to occupy the residential quarter beyond the permissible time, then the employer can deduct the penal rent for the time that such quarter was unauthorisedly occupied from the amount of gratuity.

73. In the present case, continued occupation of the quarter even after superannuation attracted liability towards penal/damage rent as well as applicable water and electricity charges for the period during which the premises remained under the occupation of Petitioner No. 2. The respondents were, therefore, justified in deducting the said



amounts from the gratuity payable. This position also stands fortified by the declaration executed by petitioner no. 2, which was given knowingly and voluntarily, and wherein vacation of the quarter was stipulated as a condition precedent for release of gratuity.

74. The declaration as executed by the petitioner no. 2 was regarding the quarter in question in the present batch of petitions. Therefore, as the declaration was executed knowingly and since the petitioner failed to vacate the railway quarter post her superannuation, it would be just and equitable for her to clear her dues, that is, the penal rent and other charges that have occurred while residing in the railway quarter in question for the impermissible period.

### **CONCLUSION**

75. For the reasons recorded hereinabove, this Court finds no infirmity in the impugned order dated 17.10.2008 passed by the learned Tribunal in O.A. No. 1815/2007 being challenged in W.P. (C) No. 7344/2009, insofar as it relates to the rejection of the petitioners' claim for regularisation or sharing of Railway Quarter No. C-5/D, Railway Colony, Basant Lane, New Delhi. The findings returned by the learned Tribunal on the issue of unauthorised occupation, absence of valid allotment and lack of prior sharing permission, are borne out from the record and do not warrant interference in exercise of writ jurisdiction.

76. Accordingly, the challenge to the impugned order dated 17.10.2008 on the issue of regularisation and sharing of the railway accommodation is rejected, and the said order is upheld to the



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aforesaid extent.

77. Additionally, this Court finds no infirmity in the impugned order dated 02.08.2018 passed by the Central Administrative Tribunal in O.A. No. 3099/2015 being challenged in W.P. (C) No. 481/2019. The speaking order dated 15.01.2014 and the impugned order dated 02.08.2018, are accordingly, upheld.

78. The writ petitions are, accordingly, dismissed.

79. There shall be no order as to costs.

**MADHU JAIN, J.**

**NAVIN CHAWLA, J.**

**FEBRUARY 6, 2026/k/as**