

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(12)

OA No.1873/2002

New Delhi this the 20th day of December, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri Anand Singh,
S/o Shri Khushal Singh,
S&T Khalasi,
Under Chief Signal Inspector,
(West), Northern Railway,
Motia Bagh, Delhi.

-Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Supdtg. Engineer (Estate),
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.

3. Divisional Personnel Officer,
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.

-Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant through this OA impugns respondents' order dated 4.2.2002, whereby his request for out of turn allotment of Type-I quarter has been rejected.

2. At the outset applicant does not press relief contained in para 8 (iii) as to charging of normal rent for the quarter in his possession after his appointment from 27.2.95.

3. Applicant's father expired on 2.8.92 while working in the Railways. He was in occupation of Type-II Railway Quarter No.3/1, Railway Colony, Dayabasti where applicant was sharing the accommodation. Applicant made

representation for appointment on compassionate grounds, which has not been finalised due to administrative reasons and after inquiry and completion of the entire process he was appointed as S&T Khalasi on 27.2.95. As such there was a delay of about 2 years and 7 months. On the information asked on representation of applicant for out of turn accommodation no decision was taken. Moreover, by a letter dated 3.7.2001 approval of DRM was sought. By an order dated 4.2.2002 his request for out of turn allotment was rejected.

4. Learned counsel for applicant states that applicant has been adjudged as an unauthorised occupant and the allotment was cancelled w.e.f. 3.8.92 by the Estate Officer, who passed an order under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 on 21.1.2002. Applicant continued to draw HRA as he was not authorized occupant of the accommodation and by annexing the ration card it is contended that he was sharing accommodation with his father. It is stated that as per rules for allotment applicant fulfils all the conditions but not allotted out of turn railway accommodation on the ground of Ministry of Railway's letter dated 22.4.82, which envisages that out of turn allotment is to be given only if the compassionate appointment is secured within 12 months from the death of the deceased Railway employee.

5. By referring to the RBE's letter No.7/90 dated 15.1.90 it is contended that all earlier instructions have been superseded and the embargo of 12 months has been done away and out of turn accommodation is permissible on

fulfilling the condition of sharing accommodation six months before the death of the deceased railway servant on non-drawal of HRA during this period.

6. Learned counsel for applicant further states that applicant has been discriminated arbitrarily under Articles 14 and 16 of the Constitution of India, as his earlier request was turned down in 1996, cannot be the cause of action as subsequently the recommendations have been made in 2001 through letter dated 3.7.2001 to seek approval of DRM. As such his case was not processed.

7. Sh. Sawhney further stated that in similar circumstances Ram Lal Mehta, who retired on medical grounds in 1996, his son was appointed on 14.1.98, i.e., after a gap of about more than 12 months but he has been allotted out of turn accommodation whereas applicant has been denied by putting the embargo of 12 months, which cannot be countenanced.

8. On the other hand, respondents' counsel Sh. R.L. Dhawan denied the contentions and stated that in so far as jurisdiction of this court is concerned, relief of normal rent is not admissible in view of the decision of the Apex Court in Union of India v. Rasila Ram, JT 2000 (10) SC 503. It is further stated that the claim of applicant is barred by limitation as the request for out of turn allotment was rejected on 20.6.96, whereas the OA is filed after six years without assailing the aforesaid order, which is not sustainable in the light of the decision of the Apex Court in P.K. Ramachandran v. State of Kerala, JT 1997 (8) SC 189. It is further stated that

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applicant had suppressed the material facts regarding the order passed, rejecting his request on 20.2.96 and his appearance before the Estate Officer before the impugned order was passed in February, 2002. It is further stated that the out of turn allotment can be accorded only if the compassionate appointment is given within one year and even if it is wrongly given to a similarly circumstance de hors the rules this illegality would not invest applicant with a vested right in the light of the decision of the Chandigarh Admn. v. Jagjit Singh, JT 1995 (1) SC 445. It is further stated that the instructions contained in Board's letter dated 22.4.82 are superseded to the extent that allotment would be given in the same station but the condition of 12 months of getting compassionate appointment has not been done away.

9. Shri R.L. Dhawan placing reliance on the decision of the Division Bench of this Court in OA-408/96 etc. etc. in Manoj Kumar Mishra v. Union of India, decided on 4.11.96 contended that in the light of the decision of the Apex Court embargo of 12 months of getting appointment on compassionate ground has been upheld. This decision, on all four, covers the case of applicant and he is not entitled for accord of out of turn allotment.

10. I have carefully considered the rival contentions of the parties and perused the material on record.

11. As per the law laid down, for out of turn allotment the pre-requisite is that the person sharing the accommodation with the deceased at least six months and is

not drawing HRA. One of the conditions imposed through the Railway Board's letter dated 22.4.82 is that the out of turn allotment would be given to the dependant relative appointed on compassionate grounds if the compassionate appointment is given within a period of 12 months on the death of the Railway employee on whom the incumbent was dependant. Aforesaid instructions and all other instructions have been done away through subsequent Railway Board's letter dated 15.1.90, which provides out of turn allotment on sharing accommodation with the deceased for at least six months and non-claim of HRA during this period. Before a person is qualified for consideration for out of turn allotment. It is to be established that he stayed with the deceased for at least six months and was dependant. From the documents annexed it is transpired that applicant was residing with the deceased prior to the date of his death at least for six months.

12. In so far as HRA is concerned, applicant was drawing HRA till 2001 since 27.2.95 the same was paid continuously to him. The contention of applicant that as the accommodation unauthorizedly occupied by him was cancelled by the Estate Officer on 3.8.92 he cannot be said to be in possession of Government accommodation and drawl of HRA would not be an impediment for out of turn allotment. Once the allotment was cancelled applicant ceased to be in occupation of the government accommodation and in that event he has rightly claimed HR What has been prescribed under the rules is that at least for six months he should have stayed with the deceased and was not claiming HRA for the period. Applicant after the death of the deceased had retained the accommodation from 1992 and

prior to this death for six months he has not drawn any HRA. As such he fulfils all the criteria laid down by the respondents for out of turn allotment.

13. In so far as conditions of accord of compassionate appointment within 12 months from the death, which entitles applicant for out of turn allotment is concerned, applicant immediately on the death of his father prayer for compassionate appointment which has been delayed by the respondents and this fact is apparent from the reply of the Divisional Personnel Officer to the DSE (Estate) where it is stated that compassionate appointment could not be finalised due to administrative grounds. The delay in according compassionate appointment cannot be attributed to applicant. Moreover, I find that the decisions cited by the learned counsel for respondents are not applicable in the facts and circumstances of the present case and are distinguishable as Manoj Kumar's case (supra) pertains to some other department. *Instructions dt. 15.3.91 would have no application.*

14. In the subsequent letter of the Railway Board issued on 15.1.90 all the earlier letters and instructions have been superseded and there is not condition stipulated as to curtailment of right of out of turn allotment right to those who could not be appointed on compassionate grounds within 12 months from the death of the deceased. Applicant's case is well covered under this letter.

15. Moreover, I find that one Ram Lal Mehta who retired on medical grounds, his son Sanjay Kumar Mehta was allotted out of turn accommodation despite his

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compassionate appointment was made beyond 12 months from the death of the deceased. As in the light of the 1999 instructions condition of 12 months has not been applied differential treatment to applicant cannot be countenanced as violative of Articles 14 and 16 of the Constitution of India. Applicant cannot be treated differently being on equal footing with the case of Sanjay Kumar Mehta.

16. In the result, for the foregoing reasons impugned order cannot be sustained. The same is accordingly quashed and set aside. Respondents are directed to allot an accommodation to applicant of the type to which he is entitled as per rules on out of turn basis, within a period of three months from the date of receipt of a copy of this order.

17. In so far as relief 8 (iii) is concerned, the same is not pressed by the applicant. No costs.

S. Raju

(Shanker Raju)
Member (J)

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