

Central Administrative Tribunal
Principal Bench

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O.A. No. 405/95

New Delhi, this the 1st day of December, 1995

Hon'ble Shri B.K.Singh, Member (A)

1. Shri Balmukand Gupta,
s/o Shri Girwar Singh
Retired Shunting Master
Northern Railway
New Delhi R/o H.No.18/5, Railway
Colony, Dayabasti,
Delhi.
2. Shri Purshotam
s/o Shri Balmukand Gupta,
R/o House No. 18/5,
Railway Colony,
Dayabasti,
Delhi.

...Applicants

(By Shri S.K.Sawhney, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Chelmsford Road,
New Delhi.

..Respondents

(By Shri K.K.Patel, Advocate)

O R D E R

delivered by Hon'ble Shri B.K.Singh, Member (A) :

No order has been impugned in this O.A. No. 405/95.

The grievance of the applicants is that neither an appointment
on compassionate ground has been given nor the quarter
has been regularised in the name of applicant No.2. It is
admitted that the applicant No. 1 was declared unfit by the

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competent authority vide their order dated 7.9.1993. He was offered an alternative post, as per extant rules of Railway Board, in the scale of Rs. 1400-2300/- but he declined to accept the job and accordingly he was retired w.e.f. 31.12.1993. He filed a representation before the respondents that he has got a plot in Shastri Nagar and he wants to construct a house after payment of his retiral benefits. As per his request, he was allowed to retain the quarter on submission of medical certificates for the period from 1.1.1994 to 30.4.1994 on normal licence fee. The competent authority allowed him to retain the said quarter for further period from 1.5.1994 to 31.8.1994 on double the licence fee. It is an admitted fact that the applicant no. 1 continues to occupy the quarter beyond the permissible limit from 1.1.1994.

The applicant No. 2, who is the son of applicant No. 1 applied for compassionate appointment after applicant no. 1 who is the father was medically decategorised. The rule position is indicated below:-

"Para 3. It is clarified that request for regularisation of quarter in favour of the compassionate appointees should be considered by the railway administration only in cases where the compassionate appointments have been made within the prescribed period of 12 months and no special case should be made out. In case the compassionate appointee had remained in Railway accommooation occupied unauthorisedly beyond the permitted period, that in itself would not confer any right in favour of the compassionate appointee in the matter of regularisation of the railway accommuation in his/her name. Further, the Railway Administration should also initiate eviction proceedings soon after the prescribed period for retention of accommodation is over".

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The applicant no.- 1 was issued a show cause notice by the respondents on 2.11.1994 directing him to vacate the quarter failing which the eviction proceedings under 1971 PPE Act/ were proposed to be initiated against him. He did not submit any reply to the said show cause notice. There was a further notice regarding subletting of the quarter on the basis of a complaint received on 24.12.1994 from the Divisional Secretary of Northern Railway Mens'Union, Delhi stating therein that the said quarter has been sublet and the subletter is running a cable TV business in the said quarter. It has been further mentioned in that complaint that he has also constructed 10 jhuggies on the adjacent railway line and the same has been sublet on huge rent of Rs. 400/- per month each. It is further mentioned in that complaint that a lot of undesirable people are living and creating nuisance in the residential colony of the Railways and have prayed for his eviction in accordance with law.

A joint check was conducted by the department on 23.1.1995 alongwith the representatives of both recognised Unions as per extant rules and it was found that one Shri Purshotam Lal was residing in that quarter and running his shop there. It was also found that three jhuggies had been built there and sublet to the outsiders.

The relief prayed for in the OA are as under

(i) Direct the respondents to grant appointment on compassionate ground to applicant no. 2 on retirement of applicant no. 1 on being medically invalidated.

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(ii) Direct the respondents to regularise railway quarter No. 18/5, Railway Colony, Dayabasti, Delhi in the name of applicant no. 2 after his appointment on compassionate ground.

(iii) Direct the respondents to release DCRG due to applicant no. 1 on his retirement on 31.12.1993.

(iv) Direct the respondents to pay interest at 18% on the delayed payment of DCRG for the period from 1.1.1994 to the date of payment; &

(v) Direct the respondents to release post retirement passes due to applicant no. 1 which have been illegally withheld by the respondents in breach of the statutory rules.

On notice, the respondents filed their reply contesting the application and grant of relief prayed for.

Heard the learned counsel for the parties and perused the record of the case.

It is admitted by both the parties that the appointment on compassionate ground has not been made till the date of arguments, therefore, the question of directing the respondents to regularise the railway quarter No.18/5, Railway Colony, Dayabasti, Delhi in the name of applicant no. 2 does not arise. The question of regularisation would have arisen only after he would have been offered an appointment on compassionate ground.

The applicant no. 1 was allowed to stay in the said quarter on payment of normal licence fee for four months and on medical grounds for another four months on payment of double the licence fee. The charge of subletting has also been proved in the eviction proceedings. In case of eviction proceedings, court/Tribunal does not come in the picture. The

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Railways can either follow the provisions of Section 190 of the Indian Railways Act where DSE has been designated as the Estate Officer and he is fully competent to initiate eviction proceedings against the delinquent employee who refuses to vacate the quarter and after obtaining the orders of the Metropolitan Magistrate/Judicial Magistrate 1st Class/Railway Magistrate 1st Class, he can evict a person. Alternatively, Railways can also follow the provisions of Section 4 & 5 of the PPE Act, 1971 and pass eviction orders. It has been held by the Full Bench in case of Rasila Ram and Anr. Vs. UOI (CAT)(FB) Vol.I Page 346, that when the proceedings are pending before the Estate Officer, it would be right and proper for the aggrieved party to place his case before the Estate Officer. This view was also reiterated by the Hon'ble Supreme Court in case of Harish Chander Vs. UOI. In the light of the full Bench rulings and of Harish Chander's case, it has been clearly laid down that when the proceedings are pending before the Estate Officer, the Court/Tribunal was under an obligation should not interfere, and the applicant no. 2/ to file his reply before the Estate Officer. If recourse has been taken to the provision of Section 7 for levying damage rent, the aggrieved party has a right to approach the ADJ who is the designated Officer for hearing the appeal against the orders of the Estate Officer, if there is a denial of the principles of natural justice.

In the relief clause, it has been prayed that the Tribunal should direct the respondents to grant appointment on compassionate ground to applicant No.2 after the medical decategorisation of applicant no. 1. This Tribunal is not competent to issue any such

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direction. The law has been well settled in case of Umesh Kumar Nagpal v/s. State of Haryana & Ors. JT 1994(3) SC 525. The ratio of that judgement is that appointment in public service has to be made through open advertisement and on merit and compassionate appointment is a deviation from that rule. To make an exception to the established rule, the respondents have to consider various factors including the financial position of the person seeking compassionate appointment. The other condition is that the compassionate appointment is meant to tide over an immediate crisis or an emergency which the family is facing on account of the death in harness of the sole bread winner. It cannot be claimed after the crisis is over.

The case of Sushma Gosain has been relied on by the learned counsel for the applicant. The Hon'ble Supreme Court in Civil Appeal No. 5967/90 has quoted the case of Sushma Gosain. In case of Umesh Kumar Nagpal, there is an observation to the effect that court decision in Sushma Gosain case has been misrepresented to the point of distortion. The compassionate appointment cannot be granted after a lapse of reasonable period which must be specified in the rules itself. The Hon'ble Supreme Court have laid down the law that consideration for such appointment is not a vested right which can be exercised at any time in future, the object being to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner and as such if it is not given immediately when the emergency

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is on the compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over.

The learned counsel for the applicant has relied on the Circular No. E(NG)2/90/RC-I/117 (Master Circular) dated 12.12.1990. In this Circular, various grounds on which the appointment has to be made have been enumerated. The medical incapacitation finds a mention in this. The son/ward of a person who dies in harness is also eligible for such an appointment. Para (v) of the circular also envisages the offer of an alternative appointment, which was done in the instant case after medical decategorisation but the same was refused by the applicant no. 1, In such cases only one son/daughter/a near relative has to be appointed. It prescribes a time limit of one month in case of death in harness and in other cases ~~maximum~~ three months subject to vacancies being available. Para vii(a) of the Circular also refers to the benefit of compassionate appointment being conferred on only one person in case of death/medical incapacitation. Learned counsel for the applicant relied on the supplementary affidavit, where Annexure I has been enclosed alongwith it, in which there is a reply to the letter of the applicant that his case is under process for obtaining the approval of General Manager. On receipt of General Manager's approval, it has been stated that the case will be processed further. The compassionate appointment has to be made by the competent authority taking into consideration the various factors including the financial position, moveable and immovable property of a person who dies in harness or a person who has been medically

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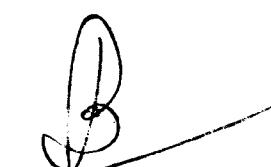
decategorised. No direction in this regard can be issued. It is for the respondents to consider the question taking a synoptic view of the financial position and other factors relevant to the present case. Since there is a policy decision, the respondents are expected to follow the policy decision of the Railways and the instructions contained in the Master Circular as quoted above. Unless the appointment is given, there is no case for regularisation of the quarter. In case of a son/daughter or ward sharing the accommodation with the retiring/retired railway employees, is not entitled to regularisation as a matter of right as has been held by the Full Bench in case of Liyakat Ali & Ors. Vs. UOI & Ors. decided on 29th May, 1995. SLP against this judgement of the Hon'ble Tribunal has also been dismissed by the Hon'ble Supreme Court and, therefore, this judgement has become final.

After hearing the rival contentions, it is clear that the question of regularisation will arise only when compassionate appointment is offered. Till then the applicant no. 1 would be treated to be in an unauthorised occupation of the quarter beyond permissible limit. The respondents are well within their right to proceed against him under section 190 of the Indian Railways Act or alternatively Under Section 4 & 5 of the PPE Act, 1971 to evict him and to charge damage rent taking recourse to section 7 of the PPE Act, 1971. In the light of the decision of Hon'ble Supreme Court in case of Harish Chander (supra) and also of Full Bench in case of Rasila Ram v/s. UOI (supra), the applicant has to approach the Estate Officer and state his case before him and in case he has been denied

opportunity to be heard, he has to approach the designated officer i.e. ADJ, Delhi for redressal of his grievance who is fully competent to adjudicate upon it and either to uphold the decision of the Estate Officer or to remand the case back to him.

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In view of the statement made by the counsel for the respondents that the applicant has been given full opportunity to state his case but without going before the ADJ, he has approached this Tribunal for redressal of his grievance as stated above, the Tribunal cannot grant the relief prayed for. Compassionate appointment is a pre-condition for regularization and if the appointment has not been made, no case is made out for regularization or for retention of the quarter. The Railway rules clearly envisage that if the quarter is not vacated within the stipulated period, the respondents will not release the DCRG and GPF contribution and will keep it in cash and will not deposit in any bank and as and when the applicant vacates the quarter, DCRG etc. will be released to him after deducting the damage/penal rent and water & electricity charges. The rule position being clear, no case is made out for interference by the Tribunal and accordingly this OA fails and is dismissed leaving the parties to bear their own costs.



(B.K.Singh)

Member (A)