

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.

~~Ex. No.~~

884 of 1995

DATE OF DECISION 8.9.95

Smt. Indira Mansharamani Petitioner

Shri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Shri Romesh Gautam Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. Adige, Member (Administrative)

The Hon'ble Mrs. Lakshmi Swaminathan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

Lakshmi Swaminathan

(Lakshmi Swaminathan)

Member (Judicial)

S.R. Adige

(S.R. Adige)

Member (Administrative)

Central Administrative Tribunal
Principal Bench, N. Delhi

....

O. A. No. 884/95

New Delhi, this the 8th of September, 1995

Hon'ble Shri S.R. Adige, Member (Administrative)
Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

Smt. Indira Mansharamani,
Clerk, SdO (FTA) Office,
Delhi Kishanganj,
Delhi.

Residential address:

Smt. Indira Mansharamani,
Pr. No. 15/A-2,
Railway Colony, Punjabi Bagh,
New Delhi.
(By Shri G.D. Bhandari, Advocate)

...Applicant

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The General Manager,
Western Railway, Church Gate,
Bombay.
3. The Sr. Accounts Officer, (FTA)
Office, Delhi Kishanganj,
Delhi.
4. The Chairman,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi.

...Respondents

(By Shri Romesh Gautam, Advocate)

Order

By Smt. Lakshmi Swaminathan, Member (J):

5.

The applicant is aggrieved by the decision of the

Railway Board not to regularise the railway quarter No. 16/A-2, Railway Colony, Punjabi Bagh, New Delhi occupied by her in her favour as it was not as per the rules (Annexure A-I & A-II). She ^{has} filed this O.A. praying that these orders may be quashed and set aside and the respondents be directed to regularise the said railway quarter in her name from the ^{date} she was appointed as Accounts Clerk with the respondents on 26.7.1988 and charge normal rent from the date her brother died on 16.9.1984, to whom the said quarter was earlier allotted. // The brief facts of the case are that the applicant was appointed as Accounts clerk on compassionate grounds on 27.7.1988 after the death of her brother on 16.9.1984 who died in harness as Senior Accounts Clerk under respondent no. 2. After his death, his widow Smt. Asha Mansharamani applied for appointment on compassionate grounds on 1.4.1985 i.e. after expiry of six months. Although this was processed by the respondents, she ultimately withdrew her application on 14.7.1987 in favour of her sister-in-law i.e. the applicant who is the spinster ^{of her} sister/husband. Thereafter the applicant's case was considered and she was appointed on 27.7.1988 as Accounts Clerk. The applicant states that she and her mother have been residing in the railway quarter in question, which had been allotted to her late brother since many years. She has made several representations right from 5.8.1988 (Annexures A-V to A-VIII) to the respondents to regularise the said quarter in her name which had been finally rejected by the Railway Board i.e.

12

respondent no. 4 by the impugned orders, although her own Head-office, Western Railway, had strongly recommended her case (Annexure-XVIII). One of the points mentioned in the recommendation letter dated 28.7.1994 is that since an amount of over Rs. 45,000/- is recoverable from the applicant for her unauthorised occupation and the amounts withheld by the administration on account of her brother's D.C.R.G. and what would become payable to her would be only less than Rs. 14,000/-, if the quarter is regularised in her name, they could make necessary recoveries from the applicant's salary. The applicant is due to retire in two years i.e. on 30th September, 1997.

The applicant relies on the judgement of this Tribunal in Pinki Rani's case (OA No. 407/86 decided on 13.3.1987 - Annexure A-10). In this case the Tribunal considered the Railway Ministry's letters dated 25.6.1966, 29.11.1977 and 22.12.1979 and the applicant's prayer for regularisation of the quarter No. 56-4/3, Chhoti More Sarai,, New Delhi in her favour was allowed. Shri G.D. Bhandari, counsel for the applicant submits that since the applicant has been employed by the respondents on compassionate grounds and the family is in indigent and helpless condition, the Railway administration ought to have considered her case for regularisation of the quarter and charging of normal rent sympathetically, although

js.

13

he admits that her case may not be strictly covered by the extent rules.

The applicant had filed an earlier application in the Tribunal (O.A No. 581/89) which had been disposed of by the following oral order dated 25.2.1994 in the presence of applicant's counsel Shri Bhandari:-

"After we had heard the learned counsel for the applicant for quite some time, he sought permission to withdraw the O.A. Permission granted. This application is dismissed as withdrawn. No costs."

The applicant's counsel states that O.A. No. 581/89 was withdrawn on the assurance given by the administration that the railway quarter in question will be regularised in her name. The respondents have on the other hand stated that there is no circular of theirs which supports the claim of the applicant for regularisation of the railway quarter in her name. They have, thus, taken the preliminary objection that this application is barred by res judicata as the applicant has filed the present application on similar facts as in O.A. No. 581/89 and had withdrawn the same so as to avoid the order of dismissal.

Regarding the applicable rules, the respondents state that the circular dated 25.6.1965 (Annexure R-1) provides that for allotment of a railway quarter to a dependent of a government servant who retires or dies while in service on out of turn basis, that person has to share the accommodation with the retiree or deceased railway servant

15.

for atleast six months before the date of retirement or the death. The rules for regularisation of railway quarter Board's including Railway/ letter dated 22.12.1979 have been amended by Railway Ministry's letter dated 12.2.1988 (Annexure R-2). The relevant portion of the letter of 1988 provides as follows:-

"It is clarified that requests for regularisation of quarters 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 cases should be made out in case the compassionate appointee had remained in occupation of the Railway accommodation 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 accommodation in his/her name. Further, the Railway Administration should also initiate eviction proceedings soon after the prescribed period for retention of accommodation is over."

Since the applicant was appointed on compassionate grounds on 27.7.1988 after the death of her brother on 16.9.1984, she was not eligible for regularisation of the railway quarter in her name as per the above circular. Besides, the respondents have stated that she is residing in the railway quarter without paying any rent, electricity or water charges and, therefore, her case should be dismissed.

We have heard Shri G.D. Bhandari counsel for the applicant and Shri Romesh Gautam counsel for the respondents and perused the record. We have also seen the record in O.A. No. 581/89.//The relief claimed by the applicant in O.A. No. 581/89 is the same as in the present application.

15

On perusal of the order dated 25.2.1994 passed in O.A. No. 581/89, it appears that the applicant's counsel sought permission to withdraw the O.A. If, as submitted by Shri G.D. Bhandari, this was done on the assurance given by the administration, since he was very much present when the order was dictated, he could have made the submission accordingly, which could have been reflected in the order itself. As this has not been done, we agree with the contention of the respondents' counsel that this case is liable to be dismissed on the ~~ground~~^{ground} of res judicata alone. However, since the matter ~~was~~ argued at some length by Shri G.D. Bhandari counsel for the applicant, we proceed to consider the case on merit too.

On the merits of the case, the applicant has been appointed on compassionate grounds on 27.7.1988 i.e. nearly three years 10 months after her brother's death. His widow applied for employment on compassionate ground on 1.4.1985 but she later on withdrew her application in favour of her sister-in-law i.e. the applicant on 14.7.1987, after which the applicant's case was considered. This would mean that on the facts, the delay in giving her appointment cannot be attributed to the respondents. In the circumstances, the applicant is not covered by the Railway Board's letter dated 12.2.1988 referred to above in Para No. 5 as she was not appointed within the prescribed period of 12 months.

js. The hardship condition of the applicant was stressed

by Shri Bhandari that because she has an old mother to look after, she being a spinster lady and has only two years left to retire and her claim is not covered under any rule, relief should be given to her by further relaxing the rules on sympathetic consideration. Here, it will be relevant to bear in mind that all compassionate appointment cases are indeed hardluck cases. In order to help the families of government servants dying in harness, Government has provided a scheme so that some financial help can be given to the families by providing suitable employment to a dependent of the deceased in indigent and deserving cases. As the very words "compassionate appointment" implies, employment itself in such cases stems from sentiments of compassion and sympathy. This has been done in this case by providing employment to the applicant on compassionate grounds. Any further concessions or relaxations in terms of out of turn allotment of house has to be done in terms of the applicable rules/circulars; otherwise it will lead to arbitrariness and disregard of law which is impermissible. In one case i.e. LIC V/s Asha Ramchandra Ambedkar & Anr. reported in JT 1994 Vol. II Page 183, the Hon'ble Supreme Court of India has held that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration in disregard of law. It was also observed that "Yielding to instinct will tend to ignore the cold logic of law. It should be remembered 'law is

js

the embodiment of all wisdom'. Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be". Further, it was held that "the Courts should endeavour to find out whether a Particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, should never be done".

The applicant has already got the benefit of the compassionate appointment scheme so far as employment is concerned. Now to get further benefits based on the compassionate appointment, she will have to come within the provisions of the rules/circulars. The applicant is clearly not covered under either the Railway Board's letter dated 22.6.1988 or 12.2.1988. The letter dated 22.12.1979 dealt with in the case of Pinki Rani V/s. UOI (Supra) has been modified by the letter dated 12.2.1988 and this case will, therefore, not assist the case of the applicant. The circular letter dated 12.2.1988 is neither arbitrary or unreasonable. Since the applicant has failed to show any circular issued by the respondents to support her claim for regularisation of the railway quarter in question in her name, and having regard to the aforesaid observations of the Hon'ble Supreme Court of India in LIC V/s. Asha Ramchandra Ambedkar & Anr's case (Supra), we reject the claim of the applicant for regularisation of the railway quarter No. 15/A-2, Railway Colony, Punjabi Bagh, New Delhi in her name.

12

However, before we part with the case, we would like to make the following observation:

In view of the age and indigent circumstances of the applicant and the particulars given by the respondents themselves in the letter dated 28.7.1994, in case the applicant makes a fresh representation to the respondents within one month from the date of receipt of this order to permit her to pay only normal rent during the period she had occupied the railway quarter in question, nothing contained in this order shall preclude the respondents from considering such a request sympathetically in relaxation of the rules, if they deem fit.

The original application is dismissed with the above observation, leaving the parties to bear their own costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)