

Central Administrative Tribunal
Principal Bench

...

O.A.No. 1065/1995

11

New Delhi, this the 25th day of November, 1995

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

1. Smt. Bhanmati, w/o late Shri Om Prakash
2. Shri Budhai Prasad both r/o 14/5, Rly Colony, Kishan Ganj, New Delhi.

..Applicant

(By Shri B.S. Maines, Advocate)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Superintendent Engineer(Estates)
Northern Railway,
D.R.M. Office,
State Entry Road,
New Delhi.
3. The Deputy Controller of Stores,
Northern Railway,
Shakurbasti,
Delhi.

..Respondents

(By Shri H.K. Gangwani, Advocate)

O R D E R

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

This O.A. No. 1065/1995 has been filed against the orders dated 10.5.1994 (Annexure A-1) and 28.6.1994 (Annexure A-2).

2. The admitted facts of this case are these. Applicant No. 1 is the widow of late Shri Om Prakash, who was working as Safaiwala under the Carriage & Wagon Inspector, Northern

D

(12)

Railway, New Delhi. He was a regular railway employee. He expired on 30.11.1992 while in service at a young age. Applicant no. 2 is the father of late Shri Om Prakash and father-in-law of applicant no.1. Applicant No. 2 served the railway department for 36 years and retired as Fitter with effect from 31.1.1993. The father of Shri Om Prakash had been allotted railway quarter No. 14/5, Kishan Ganj. The son Shri Om Prakash obtained permission of the competent authority and was living in the said quarter and he was foregoing H.R.A. Unfortunately, he died before the retirement of his father.

** 114/5
As ordered
vide court
order dt
19-3-96
Jyoti
S.P.I*

3. The relief prayed for in this OA is to quash the impugned orders refusing regularisation of the quarter in the name of daughter-in-law (applicant no.1).

4. 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 records of the case.

5. The rule position as contended by the respondent's counsel is given below:

As per the instructions contained in Railway Board's circular No. E(G)82 Qr 1/23 of 27.12.1982, "When a Railway employee who has been allotted railway accommodation retires from service or dies while in service, his/her son, daughter, wife, husband or father (other than daughter-in-law) may be allotted railway accommodation on out-of-turn basis provided that the said relation was a railway employee eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death and had not claimed any HRA during the period".

(Signature)

...3p/-

(3)

6. The learned counsel for the applicant relied on a judgement given by Hon'ble Shri J.P. Sharma in O.A. No. 49/95 on 19th April, 1995 in case of Vikram Singh v/s U.O.I. & Ors. In this judgement there are certain observations. that " actual allotment or regularisation to the ward is not because of any right vested ⁱⁿ ~~of~~ such a ward. It is only to rehabilitate the family of the retiree who after serving retires on superannuation is given the benefit that one day when he is not any active earning member may not be uprooted and be without any roof on his head as such an undertaking is taken from the ward of such a retiree that he will continue to maintain and rehabilitate the retiree and it is only on this condition, out of turn allotment is considered for the ward of retiree".

7. If the rule position is strictly interpreted then no ward, son, daughter can claim regularisation of the quarter as of right as has been held by the Full Bench of C.A.T. in its judgement dated 29th May, 1995 leading O.A No. 2684/93 in case of Liyakat Ali & Ors. Vs. UOI in a bunch of cases/ where after going through all the instructions and all the rules, the Full Bench reached the conclusion/no ward or relation can claim regularisation as of right. But the circulars issued by the Railway Board are to the effect that railway employees are entitled to retain the residential accommodation on payment of standard rent which

D

(A)

is at subsidised rates. Though the rules do not permit regularisation as held by the Full Bench in a bunch of cases/ in Liyakat Ali's case, but there is a policy decision that the staff who are on essential duty will be provided quarter in the proximity of the place of work and non-essential duty staff can be provided, if the same are available not in the immediate proximity but in the vicinity or in an adjacent area. The Master Circular No. 49 R.B.E. No. 12/93 E(G)92 QR 1-20 (Master Circular) dated 19.1.1993 has issued strong instructions to the zonal railways requiring them to keep in mind the need for special consideration in respect of certain classes of railway staff particularly women and harijan employees, who for traditional reasons, require special protection in the matter of residential accommodation. According to this Circular, they need special dispensation particularly when adequate housing facilities do not otherwise exist in a particular area. The present case is a case of its own type. Here the son of the retiring railway servant had been granted sharing permission and he was not charging any H.R.A. but he died before the retirement of his father. The respondents have granted compassionate appointment to the widow of the deceased employee.i.e. Om Prakash. The Circular No. 4(G)85 QR 1-8 dt. 5.6.1986 of the Railway Board stipulates that on the retirement or death in harness, the ward, son, daughter, wife, husband or father may be allotted railway quarter on out of turn basis provided that the said

(B)

(5)

relation was a railway employee eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for atleast 6 months before the death or retirement and had not claimed HRA during

This rule that period is there on the statute book. In this case, the quarter would have been regularised in the name of the son, if he had not died in harness. It is also admitted by both the parties that a compassionate appointment has been granted to the widow. The widow is now a claimant for the accommodation for which her husband would have been normally entitled to regularisation but unfortunately, he died before the retirement of his father. The son was eligible and now

the daughter-in-law is the only dependent who has been granted compassionate appointment. It is not the case of the respondents that there is any other son who has claimed a compassionate appointment after the death of Om Prakash,

the son of the retired railway servant. Om Prakash was entitled to regularisation in his own right. He is no longer there and nobody has approached the authorities for a compassionate appointment except the widow of Om Prakash.

The widow has been given a compassionate appointment. She is holding the post of a Safaiwali. The circular quoted above indicates that railways are under obligation and have to show special dispensation particularly in case of women and harijan employees. She is a woman is a fact, whether she is

(B)

(16)

also a harijan is not clear from the averments made in the D.A or in the counter reply. As a woman, she requires special treatment, as per Railway Boards' The rule position has already been examined in depth by the Hon'ble Tribunal in its decision in Liyakat Ali's case(supra). If we go by the rule position, no son, ward, daughter, wife, husband can claim any railway accommodation as a matter of right even if he was foregoing H.R.A and was sharing accommodation with the retiring/retired railway servant with the prior permission of the competent authority. But the rule and instructions as a whole do not envisage the regularisation as a matter of right.

8. As regards the broad policy decision of the Railways, as a woman she deserves a sympathetic consideration and a special dispensation is called for as laid down in the circular E(G)92 QR 1-20 (MC) dated 19.1.1993, ^{when} the respondents themselves have taken policy decision. they are expected to stand by it. The matter is not being looked into at all from a legalistic angle but from the angle of a woman being a Safaiwali belonging to the lowest strata of the Society and as has been held by Hon'ble Shri J.P.Sharma in his judgement in Vikaram Singh's case(supra). This policy decision is more so to enable the retired railway servant to spend the twilight/evening of his life comfortably with his dependent. No other ward has come forward to claim compassionate appointment. Only the widow has come forward

(B)

(17)

and the compassionate appointment has been given and therefore, in conformity with their own policy decision to consider the cases of women and harijan employees on a special footing. The respondents are under an obligation to consider the case of the applicant on a special footing as a woman. Since it is their own policy decision to give special protection to women/harijan employees in matters of allotment of accommodation, The rule position has been fairly conceded by Shri B.S.Mainee counsel for the applicant and no direction is being issued against the rules. Only obligation to follow the yard-stick envisaged in the policy decision taken by the Railways themselves. If they have taken such a policy decision to accord special protection to women/harijan employees, they are expected to abide by it.

The application is disposed of with a direction to the respondents to re-consider the case of the applicant on special footing as a woman and if she happens to be a harijan also, then it is a fit case for regularisation. With these observations, the O.A. is disposed of leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER(A)

/nka/