

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

G.A.NO.1619/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 18th day of December, 1996

1. Shri Bhupinder Singh
s/o Shri Hari Singh
working as Enquiry and Reservation Clerk
under C.T.E., Northern Railway
Delhi
r/o Quarter No.72/3, Railway Colony
Kishanganj, Delhi.

2. Shri Hari Singh
s/o Shri Nandoo Ram
Ex. A.C.C.I. under C.E.F.O
Northern Railway, Delhi
r/o Quarter No.72/3
Railway Colony
Kishanganj
DELHI.

... Applicants

(By Shri S.K.Sawhney, Advocate)

Vs.

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.

... Respondents

(By Shri R.L.Chawan, Advocate)

ORDER

The Applicant No.2 was retired from service on 11.11.1993 on being medically invalided. His son Applicant No.1, on that account, was given compassionate appointment as a Reservation Clerk vide letter dated 18.7.1994(A-3) and was posted on 5.5.1995(A-4). He was required to undergo training on appointment which he did from 1.9.1994 to 6.10.1994 but he failed to qualify. He was again sent for training from 17.2.1995 to 4.4.1995

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and this time he had qualified. Further practical training followed from 18.4.1995 to 1.5.1995 before his posting on 5.5.1995. It is claimed that Applicant No.1 was entitled to regularisation of the quarter allotted to his father in case he obtained eligible employment within one year of the date of retirement of the father. Such entitlement is allowed in terms of Railway Board's letter dated 21.6.1990 (Annexure A5) which provides that the allotment shall be purely temporary and on an adhoc basis subject to such induction training being regularised as regular appointment in due course. However, the request for regularisation for the allotted quarter in favour of Applicant No.2 was rejected by the impugned order dated 25.6.1996 (Annexure A1) on the ground that there was delay in appointment beyond one year on employee's own account. It is also submitted that on the appointment of Applicant No.1 on 18.7.1994 rent of the quarter was to be recovered from Applicant No.1 and not Applicant No.2, yet respondents have withheld the DCRG of Applicant No.2 for recovery of penal rent vide Annexure A2. By way of relief a direction is sought to respondents to regularise the Railway Quarter in favour of the Applicant No.1 from 18.7.1994 from which date the normal rent should be charged and also to direct respondents to pay DCRG after recovering rent for the period 12.11.1993 to 17.7.1994, with 18% interest and also to issue railway passes due to Applicant No.2.

2. The respondents state in their reply that Applicant No.1 was deputed for orientation course at ZTS Chandausi from 1.9.1994 to 6.10.1994 but he failed to qualify the prescribed course. Thereafter, he was again sent for training from 17.2.1995 to 4.4.1995 when he

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qualified. The failure of the Applicant No.1 to qualify training in the first course has resulted in late appointment. This resulted in crossing the one year period during which the appointment had to be secured after the retirement of his father and hence Applicant No.1 is no longer eligible for regularisation of the quarter under the extant rules.

3. I have heard the counsel on both sides. Shri S.K. Sawhnay, counsel for the applicants, relied on the case of Smt. Indrasan Devi & Another Vs. Union of India & Others, ATJ 1995 Vol.19 Page 478. In that the Calcutta Bench of this Tribunal on the basis of Apex Court Judgment in Smt. Phoolwati Vs. Union of India & Others, AIR 1991 SC 469 allowed regularisation of the quarter even where the compassionate appointment of the son had been obtained after 15 months of the death of the Government employee. He submitted that in this case also the appointment had been made vide letter dated 18.7.1994 which was within 9 months of the retirement on medical grounds of Applicant No.2. The Applicant No.1 had also been deputed for training on 1.1.1995 which again was within 12 months of the date of retirement of his father. The applicant was entitled to more than one chance to complete the training and though he did not succeed the first time, he duly qualified on the second occasion. The Railway Board's letter (Annexure A5) provides for regularisation from the date of induction in the training and not from the date of successful completion of training. In the present case the induction in training having been ultimately completed satisfactorily and followed by a regular appointment, the Applicant No.1 was entitled to regularisation of the quarter from the date of the first induction in training. Even if this was not accepted,

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then in terms of Smt. Indrasan Devi & Anr.'s case (Supra), the applicant was entitled to regularisation of the allotment from the date of regular appointment.

4. On the question of withholding the DCRG, Shri S.K.Sawhney also relied on the decision of a Full Bench Judgment of this Tribunal in Wazir Chand Vs. Union of India & Others, Full Bench Judgments(CAT), Vol.II, Page 287. He submitted that the right to gratuity is a valuable right to property and this has also been confirmed by the Supreme Court in R.Kapoor Vs. Director of Inspection, JT 1994(6) SC 354. The respondents should therefore be directed to release the DCRG along with 18% interest from the date on which it was due.

5. On the other hand, Shri R.L.Dhawan, learned counsel for the respondents stated that in a Full Bench Judgment of this Tribunal in Liaquat Ali and Others Vs. Union of India & Others, (1995) 31 ATC (FB) 544, it was held that allotment of Railway Quarter is not a statutory right or condition and on retirement of railway servant who was living in the quarter allotted to him along with his son or ward, the son or ward has no right for regularisation of the quarter in his name. In the present case, the delay of appointment was only on account of the failure of the Applicant No.1 to qualify the training at first time. The respondents are also entitled to withhold the Gratuity for ~~for~~ this non-vacation of Government accommodation as held by Supreme Court in Raj Pal Wahi Vs. Union of India & Others (SLP No.7688-91/88).

6. I have carefully considered the rival contentions. In Smt. Phoolwati's case (Supra), the Supreme Court had

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directed that the authority should consider the case of compassionate appointment expeditiously. In the present case there has been no delay on the part of the respondents. It is admitted that the applicant was deputed for training well within the period of one year but he failed to qualify the same. Thus the delay in having the compassionate appointment is not on account of the respondents but only due to the failure of the Applicant No.1 to complete the induction training satisfactorily. Therefore, he is not entitled to the benefit of the decision of the Tribunal in Smt. Indrasan Devi's case (supra). Moreover, the Supreme Court in interim orders in S.S.Tiwari Vs. Union of India and in particular Mr. Keshar Singh's case has indicated that in any case if the ward or dependent of the deceased Government employee got employment more than one year after the death of the original allottee he/she is not entitled to the transfer of the house in his/her name. In view of this, the applicant cannot make a grievance of the decision of the respondents conveyed by A1 rejecting the claim for regularisation of the allotment.

7. I, therefore, hold that the applicant No.2 is liable for payment of penal rent for over stay in the Railway Quarter after the permissible period in terms of the Full Bench Decision of this Tribunal in Wazir Chand's case (Supra). The respondents cannot withhold the whole of the DCRG on account of over stay in Government accommodation. There is however, no such allegation that the respondents have withheld the whole of the DCRG. While in respect of government employees the Supreme Court has held in R.Kapur's case (supra) that the DCRG cannot be withheld on account of over stay in

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Government accommodation after retirement, in Raj Pal Wahi's case (Supra) the Supreme Court has held that the delay in payment of DCRG on account of non-vacation of railway quarter was not a matter of administrative lapse and the retired employee was in these circumstances not entitled to get interest on the delayed payment. The challenge to the withholding of railway passes till the vacation of the railway quarter was also rejected. In my opinion, in the present case the Applicant No.2 being a Railway employee and the case of Raj Pal Wahi being specific to the railway employees its ratio would apply to the present case, and the respondents can withhold a part of the DCRG on account of non-vacation of the Government Railway Accommodation in order to recover the penal/damage rent.

8. In view of the above discussion, the OA is dismissed. There shall be no order as to costs.

R. K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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