

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO. 1923/1996

NEW DELHI, THIS 2nd DAY OF APRIL, 1997

MR IRIS WILLIAM CHAND
W/o Shri William Chand
Retd. as ECG Technician
Northern Railway
Central Hospital
New Delhi

2. MR. SOLOMAN
S/o Shri William Chand
working as Hospital Attendant
Central Hospital
Northern Railway
New Delhi

R/o 152/9 Railway Colony
Minto Bridge
NEW DELHI

..APPLICANTS

Advocate - Shri K.K. Patel

VERSUS

1. UNION OF INDIA, through
The General Manager
Northern Railway
Baroda House,
New Delhi

2. Divisional Suptd. Engineer
(Estate)
Northern Railway
D.R.MN.'s Office
NEW DELHI

..RESPONDENTS

(By Advocate - Shri P.S. Mahendru)

ORDER

In this O.A., the applicants challenge the order passed by the Divisional Superintending Engineer, Northern Railway, dated 13.12.96 whereby the application for regularisation of railway quarter No.152/9 Railway Colony, Minto

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Bridge, New Delhi, originally allotted to applicant No.1 before her superannuation, in favour of applicant No.2, has been refused.

2.. The case of the applicants is that applicant No.1 retired on 30.11.1993 as ECG Technician in the Central Hospital, Northern Railway, New Delhi. Applicant No.2 was also appointed as Hospital Attendant in the same hospital on 2.2.84 and is working as such in the same hospital. Applicant No.1 was allotted the afore-mentioned railway quarter. It is claimed that applicant no.2 had been living with his mother w.e.f. March 1992 after applying for sharing permission vide application dated 30.1.92 on the basis of which the competent authority had stopped making payment of HRA w.e.f. 1.3.92. Copy of application and certificate regarding non-drawal of HRA are annexed with O.A. as Annexure III & IV respectively. It is submitted that applicant No.2 was originally living with his grandfather from 1984 till 1989 and his name was also entered in the grandfather's ration card. Again from 1989 to February 1992, he was living alone at Mallikpur, Delhi, and ration card to that effect is also enclosed with the O.A. Thereafter, applicant No.2 came to stay with his mother, applicant No.1, as mentioned earlier. He fulfilled all the three conditions stipulated for regularisation of railway quarters, viz., he had been living with the original allottee for a period of six months prior to the latter's superannuation; secondly, that, had not been claiming HRA for that period; and thirdly that he was otherwise eligible for allotment of such accommodation. It is further stated that after the request for regularisation was rejected, the applicants came before this Tribunal in O.A. No.799/95 which was allowed and the order of rejection was quashed and set aside and the matter was remitted to respondent No.2 for reconsideration in the light of the observations made by the Tribunal

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and to pass a reasoned and speaking order within a period of one month. The applicants allege that the impugned order dated 13.2.1996 passed by the respondents in pursuance of the Tribunal's directions in O.A. 799/95 is based on the same reasons which were rejected by this Tribunal in that O.A. and the same therefore suffers from non-application of mind. The applicants therefore pray that it be set aside and the respondents be directed to regularise the quarter in the name of applicant No.2.

3. Respondents in their reply statement deny that any application for sharing permission was made on 31.1.92 as alleged by the applicants. They say that since applicant No.2 was living in the railway accommodation allotted to applicant No.1, he was not entitled to draw HRA. The applicant No.1 sought sharing permission only on 28.6.93, i.e., less than six months before his mother's superannuation. They also contend that no separate ration card showing the residence of applicant No.2 in the allotted quarter with his mother was made and thus refute the claim of the applicants that the second applicant had been living separately and then had shifted back to stay with his mother.

4. I have carefully considered the matter after having gone through the record and also having heard the counsel on both sides. In O.A. No.799/95, the Tribunal in its order passed by a Division Bench in which I was one of the Members, noted that para 2 of the RBE circular No.7/90 lays down three conditions for regularisation, namely, (i) that the said relation, i.e., son/daughter/wife/husband or father ~~may be~~ was a railway employee eligible for railway accommodation; (ii) that he/she had been sharing accommodation with the retiree railway employee for at least six months before the

date of retirement; and (iii) that he has not claimed HRA during the period of six months. The order then went on to say that "in this case conditions (i) and (iii) are admittedly fulfilled by applicant No.2. The only dispute is with regard to fulfillment of condition No.(ii) above". In other words, what had to be determined was whether the applicant No.2 was sharing the accommodation with the retiree railway employee for at least six months before the date of her retirement. It was noted in the order that a ration card dated 13.9.92 had in fact been submitted in which the name of the applicant No.2 had been entered with that of his mother and father at the same address of Minto Bridge. A copy of this ration card has been enclosed with the present O.A. also as Annexure VII. In the impugned order, it is stated as follows:-

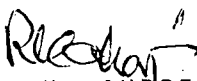
"..... but he has failed to submit documentary proof by way of ration card living separately from 2.2.84 to 28.5.90....."

In the earlier order in O.A. No.799/95 it had been noted that the question before the competent authority was not whether applicant No.2 was living separately from 2.2.84 till 1990 since this period obviously was not relevant under RBE 7/90. What had to be determined was whether applicant No.2 was in fact residing with applicant No.1 for six months before the latter's retirement. There is no mention in the impugned order in regard to this period. I find that the applicants are correct when they say that the impugned order has been passed without application of mind since this aspect has not been dealt with at all. On the other hand, Annexure VII which is a copy of the ration card shows the name of applicant No.2. The respondents have also filed a copy of application dated 31.1.92 by applicant No.1 for sharing the accommodation. It is thus clear that there was sufficient proof that applicant No.2 was residing with applicant No.1

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at least for the period six months prior to the date of superannuation of applicant No.1. Whether he drew HRA for that period from 1984 till 1990 even if he was staying with his mother is an entirely separate matter ~~for~~ which the respondents can look into separately as per rules but they cannot make that a basis for rejecting the claim of the applicant for regularisation of the quarter in favour of applicant No.2

5. In the facts and circumstances of the case, I allow the O.A. The impugned order is set aside and respondents are directed to regularise the railway quarter in question in the name of applicant No.2 w.e.f. the date of superannuation of his mother, applicant No.1. No costs.


(R.K. AHUJA)
MEMBER (A)

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