

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2664/96

New Delhi this the 29 Day of May 1998

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

1. Smt. Uma Rani Sharma,
Widow of Late Shri Ved Prakash,
Resident of C-3/A, Railway Colony,
Lajpat Nagar,
New Delhi.
2. Manoj Kumar Sharma,
S/o Shri Ved Prakash Sharma,
Sr. Clerk, Stores Branch,
Headquarters Office,
Baroda House, New Delhi
and Resident of C-3/ A, Railweay Colony,
Lajpat Nagar,
New Delhi.

Petitioners

(By Advocate: Shri P.L. Mimroth)

-Versus-

1. Union of India,
through General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Divisional Superintending Engineer/Estate,
Northern Railway,
D.R.M. Office,
New Delhi.
3. The Chief Hospital Superintendent,
Northern Railway.
Central Hospital,
New Delhi.

Respondentgs.

(By Advocate : Shri P.S. Mahendru)

ORDER

This O.A. has a background of a long litigation on the question of allotment of railway quarter. The husband of applicant 1 and the father of Applicant No.2, Shri V.P. Sharma was working as a Sr. Pharmacist in railway hospital, Delhi and was allotted railway quarter No. C-3/A, Railway Colony, Lajpat Nagar, New Delhi. He was transferred from Delhi to Jagadhari Workshop Hospital on

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temporary basis vide order dated 12.9.1988. Railway rules provide that temporary transfer which is not to exceed four months will not entail the vacation of railway quarter at the place of permanent posting. The posting of Shri Sharma at Jagadhari continued till 14.12.1990 and he was reverted back to Delhi. In the meantime the allotment of the house in his favour at Delhi was cancelled. An O.A. No. 1770/89 was filed against the eviction notice dated 1.6.1989 which was decided on 28.11.1989. The Tribunal held that Shri Sharma should make a representation with the department and he will not be dispossessed from the quarter till his representation is disposed of and he will be charged rent for the house according to the rules. The representation was filed on 31.1.1990 but it is alleged that even till date the same has not been disposed of. The respondents railway, however, initiated action to recover market rent @ 849/- per month from the salary of Shri Sharma w.e.f. 1.10.1990 and also demanded arrears amounting to Rs. 14,267/-. This led to the 2nd O.A. No. 2436/90 seeking the quashing the order of recovery and charging of the market rent. However, Shri Sharma expired on 27.1.1991 during the pendency of the 2nd O.A leaving behind his widow, 3 sons and 2 unmarried daughters. Applicant No. 2 one of the sons was thereafter given compassionate appointment as Clerk in Stores Branch of the Northern Railway. An application was also made in June 1991 for regularisation of the quarter in favour of Applicant No. 2. Despite a number of reminders and representations it is stated that no decision was taken on the representation for regularisation till a communication was sent on 4.5.1995

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to the effect that the case of the regularisation had already been rejected and conveyed by a letter dated 8.10.1991.

2. The applicants now submit that the respondents are not entitled to charge the arrears of market rent for the alleged unauthorised occupation and to recover the same from the gratuity due to applicant No. 1 because of the orders of this Tribunal in OA No. 2436/90 and also because the representation dated 30.1.1990 filed by her late husband is still not being decided. The applicants further submit that the decision not to regularise the allotment in favour of applicant No. 2 is illegal as applicant No.2 fulfils all the requisite conditions for such regularisation. Finally, the applicants seek quashing of the impugned letter dated 5.11.1996 regarding rejection of regularisation of railway quarter with a direction to respondents to decide the representation of late Shri Sharma on the matter of transfer and the charging of rent for the relevant period as per rules and also to release DCRG to Applicant No.1.

3. The respondents have filed a reply stating that the transfer of late Shri Sharma, husband of applicant No. 1 from Delhi to Jagadhari was as a result of cadre restructuring. They say that the temporary transfer are only for a maximum period of four months and once that period had lapsed, the transfer was to be regarded as a permanent one. Therefore, after allowing the period for further retention, in case of transfers, the allotment in favour of the husband of applicant No. 1 was cancelled. When the allottee had come before the Tribunal in OA No.

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1770/89, the direction given by the Tribunal was that he should file his representation within a fortnight. Since the order of the Tribunal was given on 28.11.1989, the representation was to be filed within 15 days thereafter. However, this was done by representation dated 30.1.1990. The respondents say that allottee having filed the representation beyond the time stipulated by the Tribunal, there was no obligation on the part of the respondents to consider the same. They further state that the Tribunal had not directed that market rent could not be charged. As regards regularisation the stand of the respondents is that the decision to reject the request for regularisation was taken and communicated as far back as in 1991 and the same cannot be agitated now in 1996.

4. Having heard the counsel on both sides and having considered the material on record, I find that the applicants do not have any case. It is an admitted position that the husband of applicant No. 1 was transferred to Jagadhari in 1988 and continued to stay there upto 14.12.1990. Admittedly such transfers are for a maximum period of four months. The claim regarding the order of transfer being temporary one is founded on the transfer order also showing that the post itself was being transferred from Delhi to Jagadhari on a temporary basis. In fact the post was also brought back to Delhi along with its holder in 1990. A temporary transfer of the post does not mean that the transfer of its holder was for a maximum period of four months since no period for which the post had been transferred was indicated. In any case the matter was agitated before the Tribunal in OA No. 1776/89 and the applicant therein was asked to file a

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representation. Admittedly again the representation was filed more than two months after the date of the order though the time stipulated was only a fortnight. The applicants say that the husband of the applicant No. 1 had come to know of the order passed by the Tribunal only on 17.1.1990. Obviously that is not a issue to be decided in the present O.A. The question of cancellation of allotment and charging of the market rent have already been agitated in OA No. 2436/90 and the Tribunal had left decision to the respondents. The respondents have chosen to stick to the earlier decision. On that basis neither the question of cancellation of allotment nor the charge of market rent is to be decided in the present O.A.

5. As regards regularisation of the quarter, the question does not arise since the father of applicant No. 2 was not holding the accommodation authorisedly, his allotment having been cancelled as far back as in 1989. No satisfactory explanation is forthcoming as to why the present applicants did not agitate the matter when the decision of the respondents was conveyed to them in 1991; the only explanation if that, given in affidavit of applicant No.2 is that since the letter conveying this decision was addressed to applicant No.1 he could not know about it. If the letter had gone to applicant No. 1 there was no reason to infer that it was not in the knowledge of applicant No. 2 since both had been living in the same quarter.

6. In the light of the above discussion, the OA is dismissed. There is no order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)