

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1457 of 1997

New Delhi, this the 11th day of March, 1998.

Hon'ble Mr. N. Sahu, Member(A)

Remujer
S/o late Sh. Satai
R/o Qr. No. T-38,
Block No. E-10, Railway Quarters
Hazarat Nizammudin
New Delhi

...Applicant

(By Advocate: Sh.K.K.Patel)

Versus

Union of India: through

1. The General Manager (ENGG)
Northern Railway
Baroda House
New Delhi

2. Divisional Superintending
Engineer (Estate)
Northern Railway
State Entry Road
DRM's Office
New Delhi

...Respondents

(By Advocate : Sh.R.L.Dhawan)

ORDER

By Sh. N. Sahu, Member(A) -

The applicant challenges the orders of the respondents rejecting his request for regularisation of railway quarter No. T-38, Block No. E-10, Hazrat Nizammuddin, New Delhi. The applicant's father died on 02.07.1994 in harness. He applied for compassionate appointment. He was issued the offer of appointment of a Safaiwala in the scale of Rs. 750-940 on 27.07.1995. He joined on the same date. The father of the applicant was allotted the above quarter during his tenure of service. The applicant was permitted to retain the quarter from 03.07.1994 to 02.07.1995. Under the instructions of the Railway Board dated 15.01.1990, it is stated that on death or

retirement of a railway employee, his son, daughter, wife, husband or father may be allotted railway accommodation on 'out of turn' basis provided 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 month before the date of retirement or death and had not claimed any HRA during the period. The residence may also be regularised in the name of the eligible dependent if he is entitled to either the same type or the higher type. The applicant states that he is a scheduled caste employee and is entitled for allotment under the 10% reserved category of quarters. He abandoned his HRA claims by his letter dated 20.01.1996, 30.01.1997 and 28.02.1997. In the above circumstances, the present OA is filed.

2. After notice, the respondents state that after pursuing her case and after completion of the requisite formalities, an appointment was given to the applicant as a Safaiwala. Under the railway board's instructions dated 15.03.1991 regularisation of railway quarter is permissible only in cases where the ward gets compassionate appointment within one year of the date of the death of the deceased railway employee. This is also stated that the applicant had been drawing house rent allowance since his appointment on 27.07.1995 and in terms of board's instructions dated 15.01.1990 he is not eligible for regularisation/out of turn allotment. The respondents have also cited the decision of the Supreme Court in

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S.S. Tiwari Vs. Union of India & Ors. - 1997(1) SCC

444 and also in Kehar Singh's case to the effect that a ward who secured an employment more than one year after the retirement/death of the original allottee is not entitled for regularisation of the quarter in his name. This condition of "twelve month" period has been reiterated in the letter dated 15.03.1991 by the Railway Board.

3. The applicant stated that the delay was about only 25 days over and above one year. The applicant is not responsible for the delay. He stated that on various dates, he represented the respondents for deducting his HRA and requested to regularise the quarter in his name. In his written submissions it is stated that the applicant belongs to that category which is entitled to Type-I and II accommodation because he is drawing a monthly salary in the scale of pay of Rs.950-1500. Type-III accommodation is for the slab drawing Rs.1500-2800. Learned counsel has brought to my notice that the Hon'ble Supreme Court in S.S.Tiwari's case (supra) had left out of consideration the two lowest ranks of employees who are eligible for Types I and II:

"21. We propose to deal with the written submissions of Shri Ramaswamy first. It has been stated therein that the economic conditions of these allottees, whose basic pay is less than Rs.2800 per month (the majority drawing less than Rs.2500 per month) is not much better than the condition of Types I and II allottees whose cases are not being considered by us; and so, we should exclude Type III allottees also. As to this submission, it may be pointed that Types I and II accommodation are meant for those drawing



basic monthly salary of less than Rs.950 to 1500 respectively. Type III is for the next slab namely, drawing monthly salary between Rs.1500 to 2800. Then comes Type IV for those drawing salary between Rs.2800 to 3600 and so on. It is thus clear that a line has to be drawn somewhere. It Type III allottees have to be left out as contended, Type IV allottees could also urge to exclude them as well. Similar argument can be advanced by other. Therefore, it was thought fit by us from the beginning that we would leave out of consideration the two lowest ranks of employees.....

4. With regard to out of turn allotment at paras 5 and 6, the Hon'ble Supreme Court directed the concerned departments to make appropriate rules. With regard to HRA the applicant again drew attention to the fact that he had praved for deduction but it was not heeded and it is only now that the HRA had been deducted. Learned counsel also had drawn my attention to the fact that the order of this Tribunal in the case of Sh.R.K. Nigam (C.W.No.5399/97, dated 11.12.1997) and Parvej Naquvi Vs. Union of India & Ors. (Special Leave to Appeal (Civil)No.15531/97 dated 05.09.1997 were stayed by the High Court and the Supreme Court. He also cited the decision of the CAT, Principal Bench in OA 2819/91 decided on 03.04.1992. On the question that the applicant did not claim the HRA but it was given to him, no document has been produced to prove that the applicant in that case had asked for stoppage of HRA or protested against its payment.

5. I shall first take-up the question of HRA. In the letter written dated December, 1996 it is stated that he was an illiterate person and could not



protest against the payment of HRA. He admits that it was "an official mistake". He states that he has no house in Delhi area. He promises to deposit the amount engaged by him as HRA back to the Treasury. The applicant had admittedly claimed and enjoyed HRA since his appointment on 27.07.1995. The applicant has been given the appointment after one year. The Hon'ble Supreme Court had laid down not only in S.S.Tiwari's case(supra) but in the case of Kehar Singh also that when a compassionate appointment is secured after a year of the death or the retirement of the employee he is not entitled to regularisation of the father's allotted quarter. I would respectfully follow the law laid down by the Hon'ble Supreme Court. There is no provision in the instructions for regularisation of these ad hoc allotments to the ward of a deceased/ retiring employee as a matter of course. The reason is also obvious. There is no vested right for a quarter. There is always a long waiting list of employees at any point of time for securing an allotment of a quarter. No doubt a compassionate appointment is provided in the rules for relieving the distressed family, lest they are thrown on the road because of the death/retirement of the breadwinner. It is unfortunate that a decision regarding compassionate appointment had been delayed causing the applicant the loss of regularisation. If the decision had been taken well within time it would have enabled the applicant to apply for regularisation. The tacit acceptance of HRA after the

appointment is really relevant to the issue. Before his appointment, there is no question of his receiving any HRA. The applicant should have protested and informed the respondents that he had no intention of enjoying house rent allowance consistent with his claim for regularisation. This initiative should have come from him. There is no evidence that he has shown this initiative. It was only after he was informed that this aspect could come in the way regularisation that he started informing the respondents to withhold the HRA from his salary. This does not help the applicant's case. In view of the Hon'ble Supreme Court decision and in the absence of any amended rule which gives discretion to the administrative authority to consider regularisation after the one year period, I am not in a position to consider applicant's case. The impugned order does not call for any judicial interference.

6. OA is dismissed. No costs.

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(N. Sahu)
Member(A)

11.3.98

/Kant/