

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A. No. 2073/97

decided on 14.08.1998

Name of the applicant: Sh. Harshwardhan Singh Negi,

(By Advocate Sh. S K Sawhney)

Versus

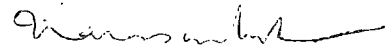
Name of respondent/s Union of India & Others.

(By Advocate -Sh. R L Dhawan)

Corum:

Hon'ble Shri N Sahu, Member (A)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No


(N SAHU)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2073 of 1997

New Delhi, this the 14th day of August, 1998

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

Sh. Harshwardhan Singh Negi,
Khalasi, Operating Branch,
Northern Railway R/O Quarter No.
153/8, Minto Bridge, New Delhi.

---APPLICANT.

(By Advocate Sh. S K Sawhney)

Versus

1. Union of India through
General Manager, Northern
Railway, Baroda House, New
Delhi.

2. Divisional Supdtg. Engineer
(Estate) Northern Railway,
DRM Office, Chelmsford Road,
New Delhi.

---RESPONDENTS.

(By Advocate -Sh. R L Dhawan)

O R D E R (ORAL)

By Mr. N. Sahu, Member(Admnv) -

The prayer, in this OA, is for a direction to the respondents to regularise Railway Quarter No. 153/8, Minto Bridge, New Delhi w.e.f. 1.12.1992 and to recover normal rent from the applicant from that date. The other prayer made was for a direction not to recover damages/penal rent from 1.12.1992 to 22.6.1995 from DCRG of the applicant's late father. The brief facts are as under:-

2. The applicant's father Sh. Jeet Singh Negi died on 1.2.1990. At the time of his death he was a Dresser in the Northern Railway, Central Hospital and his son, the applicant, was a minor, who became eligible for appointment as a Khalasi on compassionate ground w.e.f.

(2)

1.12.1992. The impugned order, in this case, is Annexure A-1, dated 22.3.96 which records that the applicant had taken possession of the said quarter on 23.6.1995 and directs recovery of penal rent at the rate of Rs. 15/- per sq.mt. per month from 2.8.1990 to 31.5.1991 and at Rs. 34/- per sq.mt. per month from 1.6.1991 to 30.11.1991. Normal rent was charged from 2.2.1990 to 1.8.1990, the permissible period of retention. The other charges relate to consumption of water and conservancy charges.

3. Learned counsel for the applicant brings to my notice Annexure A-4 dealing with "regularisation of allotment of railway quarters in the name of eligible dependent of railway employee who retires or dies while in service." He refers to para 2 of the said circular which states that a deceased railway employees' son could be allotted 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. Sh. Sawhney, learned counsel for applicant submits that all the above conditions were satisfied and that it is a case of allotment on out of turn basis. He next brings to the notice of the Court Note No. 6 which reads as under:-

"The date of regularisation should be from the date of cancellation in case the eligible dependent is already in railway service and is entitled for regularisation and not from the

(3)

date of issue of the orders.
which was the practice being
followed till now."

13

He also explains Annexure A-5 which is a correspondence of the Establishment Section to the General Manager which reads that "the regularisation of the Railway Quarter in the case of compassionate appointees has to be from the date of regular appointment and not from the date of cancellation or death of the employee."

4. Counsel for applicant, therefore, submits that the letter issued (Annexure A-6) for recovery of damage rent alongwith other penalties is not in accordance with law. He also mentions that in a similar case, of another railway appointee on compassionate ground, Kr. K Rawat, the date of death of parent of this lady was 20.2.1986 and the letter of appointment was 10.2.1989 and the order issued by the competent authority dated 14.5.91 was to regularise the quarter w.e.f. 10.2.1989. Different standards cannot be applied to the applicant's case, he also being a compassionate appointee. The regularisation must be from the date of his appointment.

Finer
5. Sh. R L Dhawan, learned counsel for the respondents states that under the instructions of the Railway Board dated 15.3.1991 (Annexure R-I) regularisation of allotment of Railway Quarter in the name of eligible dependent is permissible only when the said dependent is appointed within one year from the

(A)

death of the railway employee. In this case, there is a gap of two years and nine months. In this regard, counsel for respondents explained the law laid down by the Hon'ble Supreme Court in the case of S S TIWARI VS. UNION OF INDIA 1996 (9) Scale 680 and in Kehar Singh's case that a ward who got appointment more than one year after the death of the original allottee is not entitled for regularisation of the quarter in his name. He cited the decision of Division Bench of this Tribunal in the case of MANOJ KUMAR MISHRA VS. UNION OF INDIA in OA 408/1996 decided on 4.11.1996. There can be no distinction between regularisation and out of turn allotment and penal rent has to be charged for the period of unauthorised occupation from 2.8.90 to 22.6.95 at the prescribed rates because the applicant became a regular allottee w.e.f. 23.6.95. He laid emphasis on the applicant's own letter dated 24.10.1994 addressed to DS (E), DRM Office, Northern Railway, New Delhi to the effect that he was willing to pay damage rent of the quarter No., 153/8, Railway Colony, Shivaji Bridge, New Delhi which was allotted to his late father and under his occupation beyond the retention period permitted.

6. Counsel for applicant has drawn my attention to the use of the words "out of turn allotment" in Annexure A-4 which is the basic circular on this issue and states that regularisation and out of turn allotment are undistinguishable. The facts in this case are that the applicant's appointment was on compassionate grounds and his application was also for regularisation of the quarter occupied by his late father.

15

7. I have heard the rival counsel at length. The file shown by the learned counsel for the respondents No. 290-W/18/2551/WQ records in a note dated 14.12.1994 that the competent authority had taken into consideration the affidavit of the applicant that he or any member of his family had no house or plot in the Union Territory of Delhi and or in the adjoining municipalities. The approval of the General Manager is to the following note:-

"Such cases have been done as out of turn allotment effective from the date of order. Employees' family had no right to hold the quarter. Estate Branch along with pool holder has slept over in effecting vacation.

May approve out of turn allotment subject to recovery of damages please."

8. I am also informed by Sh. Dhawan, learned counsel for the respondents that the General Manager has a discretionary quota of 5% for allotment on out of turn basis and this is not to be confused with regularisation to the compassionate appointee. There may be other instances of regularisation from the date of appointment; but they do not strengthen the applicant's case. What I have to see, in this case, is whether the law has been properly applied or not. After the decision of the Hon'ble Supreme Court in Kehar Singh's case, there is no doubt that there cannot be regularisation of a quarter of a compassionate appointee after the period of 12 months of the death of the parent employee. In the file submitted by Sh. Dhawan for my perusal, at page 18, it

is clarified that the regularisation of quarter in favour of the compassionate appointees should be considered only in a case where the appointments have been made within the prescribed period of 12 months. In case the appointee unauthorisedly remained in occupation beyond the permitted period, it would not confer any right in favour of the compassionate appointee and eviction proceedings should have been initiated.

9. I am satisfied that the orders of the General Manager dated December 1994 was clearly not regularisation of the Quarter qua the compassionate appointee but was a case of out of turn allotment under the discretionary quota of the General Manager. As the applicant himself voluntarily agreed for payment of the damage rent by his letter dated 24.10.1994 and as the prescribed rates of damage rent being not disputed. I have no other alternative except to hold that the impugned order (Annexure A-1) does not call for any interference.

10. I rely on the following.

In the case of RAM POOJAN VS. UNION OF INDIA & ANOTHER, Full Bench, Allahabad, OA No. 936 of 1993, decided on 21.2.1998, the following principles are laid down:-

"In the light of the discussion hereinabove, our answer to the two questions formulated for our consideration in the reference order is as follows:-

17

- a) In respect of a Railway employee in occupation of railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation is necessary on expiry of the permissible/ permitted period of retention of the quarters on transfer, retirement or otherwise and further retention of the accommodation by the Railway servant would be unauthorized and penal/ damage rent can be levied.
- b) Our answer is that, retention of accommodation beyond the permissible period in view of the Railway Board's circulars would be deemed to be unauthorized occupation and there would be an automatic cancellation of an allotment and penal rent/ damages can be levied according to the rates prescribed from time to time in the Railway Board's circular."

In the case of LIAQUAT ALI AND OTHERS VS. UNION OF INDIA AND OTHERS, Full Bench, PB, New Delhi, OA No. 2684 of 1993, decided on 29.5.1995, it is held that:-

"Out-of-turn allottees of Railway quarters constitute a distinct class; their claims are to be considered strictly in accordance with Railway Board circulars and not in any other manner which may enlarge the scope of the circulars."

11. This matter has to be viewed also from another angle: The applicant's father died on 1.2.1990 and the applicant was allotted the quarter by the order dated 25.4.1995. Till the order of appointment dated 1.12.1992, he has no right under the law to occupy the quarter. The period of five years, therefore, cannot be considered as a subject matter of regularisation. I have

18

not been shown any rule or instruction to this effect that this gap can be regularised. I am of the view that this is not an allotment of the applicant qua compassionate appointee but an allotment to the applicant as a railway servant under the powers of the General Manager in his discretionary quota. No one has vested right to occupy the quarter or to continue in the same quarter, if the rules or regulations do not permit him to do so. The grant of allotment of a quarter takes effect from the date of grant and by no stretch of imagination can such order be read to have a retrospective effect. For the period after the death of the father and till grant of the quarter, the rent to be collected for occupation of the quarter has to be in accordance with rules.

12. The applicant belongs to the poorer sections of the society. He claimed compassionate appointment. He retained the quarter with the knowledge of the respondents and the respondents have not declared him as an unauthorised occupant so far. He cannot be considered to be contumacious in holding on to the quarter. Under these circumstances, I would direct the applicant to present a petition to the General Manager impleaded in this OA as respondent No. 1, to consider his case as that of a bonafide occupant with the consent of the respondents without infringing any rule and if there is any discretion vested with the General Manager or any of his subordinates, including respondent No. 2 under any rule, law or instructions, it should be suitably considered in favour of the applicant's claim for scaling down or waiving the damages/penal rent.

9

13. I am informed at the Bar that the period of retention on the death of the parent is now extended up to two years. Relevant portions of OM F. No. 12035/4/98 Pt. II, dated 9.6.1998 of the Directorate of Estate is extracted hereunder:-

"As per provisions of SR 317-B-II permissible period of retention of Govt. accommodation is one year in case of death of the allottee on payment of normal rates of licence fee. No further retention is permissible under SR 317-B-22 and the family is required to vacate the premises immediately thereafter and is liable to pay damages rates of licence fee for the period of ever-stay. Representations have been received from various quarters to allow further retention as the families of deceased Govt. who are in dire need of accommodation, face great hardship. The matter has been considered in this Ministry and it has now been decided to allow further retention of one year, on payment of normal licence fee, to mitigate the hardship being faced by the families of the deceased allottees.

2. Retention of accommodation for a period of one more year will be permissible under the provisions of SR 317-B-22, on payment of normal rate of licence fee. The Family of the deceased allottee shall be required to apply for such retention and the licence fee shall be paid in advance through Bank Draft drawing in favour of the Asstt. Director of Estates (Cash). The extended period of retention under Sr-317-B-22 will, however, not be permissible in cases where the deceased officer or his/her dependents own a house at the place of posting.

Amended

20

3. A copy of the Notification dated 29.5.1998, amending the provisions of the Allotment Rules (SR-317-22) is enclosed herewith (not published) which has been given effect from 1.7.1998 i.e. the date of publication of the Notification in the Gazette.

4. The benefit of retention of Govt. accommodation under SR-317-B-22 will be admissible in all such cases where the normal retention period of one year, as admissible under SR-317-11, has not expired as on 1.6.1998. All Allotment sections are requested to decide such cases accordingly."

14. In this case the computation of damage rent has been calculated for the period expiring after the permissible extension of six months. It is not known as to whether extension of one year and subsequently two years has been adapted by the Railways in their rules. In the background facts of this case where the applicant had been staying in the Quarter with the full knowledge and consent of the respondents, I would direct respondent No. 2 to consider a representation to be filed by the applicant within a period of two weeks from the date of receipt of a copy of this order as to whether extended period of one or two years could be applied in his case and if so, the damage rent be recalculated only after exempting the applicant from paying penal rent for the extended period within a period of eight weeks from the date of receipt of the representation.

15. The OA is accordingly disposed of. No costs.

Narasimhaiah
(N SAHU)
MEMBER (A)

/sunil/