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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A. No.210/94

New Delhi, this the 6th September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

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1. Bishamber Lal,
s/o Pooran Chand,
aged 62 years
Ex.Fitter Loco Shed,
Sarai Rohilla, Delhi,
Resident of
L-36, N.Loco Colony,
Delhi Sarai Rohilla,
Delhi.
2. Shri Khushi Ram,
s/o Sh. Bishamber Lal,
aged 44 years,
Wash out Khalasi,
R/o L-36, Loco Colony,
Delhi Sarai, Rohilla,
Delhi.

... Applicants

(By Shri V.K.Rao, Advocate)

Vs.

1. Union of India,
through General Manager,
Northern Railway,
Burdwan House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Bikaner,
3. The Estate Officer,
Northern Railway,
Bikaner.
4. The Loco Foreman
Northern Railway,
Loco Shed,
Delhi Sarai Rohilla,
Delhi.

... Respondents

(By Shri R.L. Chauhan, Advocate)

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The applicant No.1 is the father who was employed as Ex.Fitter Loco Shed, Sarai Rohilla, Delhi and was allotted railway quarter No.L-36,N, Loco Colony, Delhi Sarai Rohilla, Delhi. While in service the

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applicant No.1 lost his eyesight in January, 1986 and had to seek premature retirement from service u.e.f. 31.1.86. Applicant No.2 is the son of applicant No.1 who earlier joined Loco Shed at Hanumangarh in February, 1978 and was subsequently transferred and posted at Loco Shet, Delhi Sarai, Rohilla, Delhi in June, 1986. He has been sharing the accommodation with his father and has not been drawing the H.R.A. since July, 1985. Applicant No.2 is also eligible for allotment of Type I railway accommodation. Applicant No.2 applied for regularisation of the quarter in his favour in February, 1987 (Annexure 8).

2. The applicants filed this application in January, 1994 and prayed for the grant of the following reliefs.

- a) That the railway accommodation be deemed to have been regularised in favour of Applicant No.2 on the retirement of Applicant No.1.
- b) The payment of QCRG amount payable to Applicant No.1 be arranged with 17% interest till the date of payment.
- c) Normal rent is recovered in respect of railway quarter from 1.2.86 onwards.
- d) The impugned order dated 30.11.92 be considered quashed.

3. By the order dated 21.1.84, the respondents were restrained not to dispossess the applicants from the railway quarter. This interim order was vacated by the order dated 10.5.94. This order was passed in view of the fact that the applicant pursued

the remedy under section 9 of the Public Premises (Eviction of unauthorised occupants) Act, 1971 by filing an appeal before the Civil Court and the learned Additional District Judge by the order dated 2.11.93 upheld the order of eviction but regarding assessment of damages remanded the case to the Estates Officer.

4. The respondents in their reply contested the application and stated that Applicant No.1 i.e. the father sought voluntary retirement on 31.1.86 and the request for regularisation was rejected in accordance with the Railway Board instructions dated 4.6.83 (Annexure R-1). The applicant was also informed regarding this rejection of the request by the order dated 14.7.87 (Annexure R-II). The gratuity of the applicant No.1 has been withheld because of non vacation of the railway quarter. The respondents in their reply also denied the various averments made by the applicant in the application, and stated that the Applicant No.1 is not entitled to any interest on the withheld amount of gratuity in view of the decision of the Hon'ble Supreme Court in its judgement dated 27.11.89 passed in the case of Raj Pal Wahi & ors. Vs. U.O.I. SLP 7688-91/88.

5. The applicants have also filed the rejoinder. In the rejoinder it is stated that the respondents have wrongly relied on the circular of the Railway Board dated 4.6.83 while circular invoked are Railway Board instructions dated 15.1.90, 15.3.91 and 1.7.91 according to which those who are retiring voluntarily are also entitled to the same benefits as on superannuation etc.

6. Heard the learned counsel of the parties at length and perused the records.

7. It is evident from the record that eviction order passed by the Estate Officer, Northern Railway, Bikaner dated 30.11.92 was upheld by the Addl. District Judge in the order dated 2.11.93. The concluding portion of the same order is as follows:

"In view of the aforesaid I uphold the eviction order but set aside the order/ assessing damages against the appellant and remand this controversy for fresh adjudication according to law."

In the body of the judgement there is also ~~appeared~~ observation that the learned counsel for the appellants before the learned Additional District Judge has given an undertaking to withdraw all the litigations foisted on the railway by the appellant and his son. Since the applicant has approached the forum provided under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that has gone against him, he cannot now claim that the said order passed by the Addl. District Judge be quashed. That order remains.

8. Regarding the issue of regularisation of the quarter in fact the applicants were wrongly advised not to challenge the order of rejecting the request of the applicant No.2 by the order dated 14.7.87. In this application also the applicants are only assailing the eviction order dated 30.11.92 which has already been judicially reviewed by the competent court of the Addl. District Judge. However, in any case since the matter was remanded by the District Civil Court to the Estates Officer for assessment of damages and no action has been taken regarding that the issue which has to be

decided is whether the Applicant No.2 is entitled for regularisation of the quarter of an eligible type of quarter in accordance with circular of the Railway Board dated 4.6.83, 15.1.90 and 15.3.91. In the circular of the Railway Board dated 4.6.83 on the subject of allotment of quarters to the wards of medically ~~unfitted~~ employees on out of turn basis, lays down that when a railway employee occupying the railway quarter retires from the service, a specified relative (son/daughter/wife/husband) may be allotted railway accommodation on out of turn basis provided that the said railway relation is a railway employee eligible for railway accommodation and has been sharing accommodation with the retiring railway employee for at least six months before the date of retirement of the concerned railway employee without claiming any H.R.A. and neither the retiree nor the specified relative owns a house in the place of his/her posting. This concession on out of turn allotment of railway quarter to a specified relative is applicable only in the case of normal retirement i.e. retirement after attaining the age of superannuation and not in case of voluntary/premature retirement. However, there is an exception to the above instructions that when a railway employee seeks retirement on being medically invalidated out of turn allotment/regularisation of the railway quarter in favour of eligible dependent should also be considered subject to the fulfilment of the conditions set forth above. The case of the applicant is that he sought premature retirement because of the loss of vision. Medical certificate has also been filed subsequently dated 2.3.94 from Dr. Agarwal's Eye Institute where it is stated that Shri Bishamber Lal i.e.

applicant No.1 has been visiting the Institute since 1985 and the present condition is that his right eye has corneal opacity - blind vision and left eye over ~~mature~~ cataract - blind vision and at present no treatment is possible. In para 4.5 of the application, the applicant has observed that the applicant ^{not} having lost his eyesight in January, 1986 has to seek premature retirement from service on medical ground that he could no longer perform his duties. In reply to para 4.5, the respondents have not specifically denied this fact of the defective vision and only stated that the applicant sought voluntary retirement on 31.1.86. During the course of the arguments the learned counsel for the applicant stated that the applicant No.1 would have reached the age of superannuation in the year 1990. In 1994 the age given in the title of the application of the applicant No.1 is 62 years and this confirms from the fact that he was short of about 4 years in the age of superannuation when he sought voluntary retirement in January, 1986. Thus, the circular cited by the learned counsel for the respondents of 1983 do not rule out the case of Applicant No.2 for allotment on out of turn basis. Now coming to the circular of January, 1990 this point of voluntary retirement has not been touched specifically but in para 3 of the circular it is stated that in case where the retiring employees including those who take voluntary retirement or the member of his family owns a house from the place of posting or the specified relative also owns a house then he will not be eligible for allotment of railway quarter on

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out of turn basis. This goes to show that circular of January, 1990, Railway Board July, 1990 do not debar the consideration for out of turn allotment of the wards of railway employees who seek voluntary retirement. However, the instructions of the Railway Board dated 15.3.91 clarification has been given of the circular of January, 1990 referred to above. In sub para IV of para 2 the query is "whether the ward of a railway employee, who also happens to be in railway service, is entitled for out of turn allotment in the event of voluntary retirement by his parent" and the reply given is "cases of compassionate appointment of persons who seek voluntary retirement are to be dealt with as per normal retirement rules". Though in the reply the word appointment has been used yet it is in reply to a query regarding out of turn allotment. Again in July 1991 this ambiguity has been removed by substituting after the aforesaid reply quoted above the word 'yes'. This goes to show that the contention of the learned counsel of the respondents that Applicant No.2 is not entitled to out of turn allotment did not justify and is fully covered by the aforesaid circular instructions issued by the Railway Board referred to above. Applicant No.2 is therefore entitled to out of turn allotment of the railway quarter or for the regularisation of the same quarter if the retiree and the son are eligible for the same type of quarter.

9. The applicant No.1 has also claimed the amount of DCRG alongwith interest. The objection by the respondents is that the railway quarter allotted

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to applicant No.1 has not been vacated. It is a fact. Though the learned Additional District Judge has upheld the eviction of the applicants from the railway quarter by the order dated 2.11.93 and there has been also a statement given on behalf of the applicants by their counsel appearing before Civil Court yet the quarter has not been vacated. In January, 1994 an interim direction was also issued to the respondents not to dispossess the applicants. Taking all these facts into account and further the quantum of damages/rent has not yet been decided by the Estate Officer of the railway the applicant No.1 remains in unauthorised occupation of the quarter in spite of the fact that applicant No.2 is entitled to regularisation of the quarter. The order of Additional District Judge dated 2.11.93 cannot be quashed in these proceedings. It was open to the applicant No.1 to assail that order before High Court by way of Revision. Thus, the applicant No.1 cannot claim any interest on the withheld amount of DCRG because of the case of Raj Pal Wahi & Ors. Vs. UOI referred to above decided by Hon'ble Supreme Court.

10. Regarding the amount of rent to be paid by the applicant since the quarter has been regularised in the name of applicant No.2 from the date of retirement of applicant No.1 the respondents can only deduct the normal licence fee plus other dues outstanding against the Applicant No.1 from the amount of DCRG.

11. The application is therefore partly allowed with the following directions.

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a) The respondents Railways shall regularise the quarter No.L-36N, Loco Colony, Delhi Sarai Rohilla, Delhi in favour of Applicant No.2 from the date of retirement of applicant No.1. If the applicant No.2 is not entitled to that quarter according to extant rules he should be allotted eligible type of quarter and till then the applicants should not be evicted from the said quarter. In case alternative quarter is allotted to applicant No.2 as said above he will shift to that quarter within the specified period allowed in the allotment letter and failing to do so will incur the applicant No.2 liable for payment of damage rate of rent of Q.No.L-36N.Loco Colony,Delhi Sarai Rohilla till vacation.

b) The applicant No.1 shall be entitled to amount of DCRG less the rent which shall be normal licence fee of the said quarter for the period of occupation from the date of retirement. The proceedings for assessment damages by the Estate Officer as directed by the learned Additional District Judge in the Civil appeal shall abate. The respondents shall also be free to deduct any outstanding dues against the applicant No.1 due to the occupation of the said quarter like water charges and electric charges etc. The liability of payment of this amount if not fully set off from the amount of DCRG shall also be of the applicant No.2. The applicant No.1 shall not be entitled to any amount of interest on the withheld amount of DCRG if it is paid within

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a period of 2 months from the date of receipt of this order. If the amount of DCRG is not paid within 2 months, then applicant No.1 shall be entitled to interest at the rate of 12% per annum at the simple ~~rate~~ from the date of this order.

c) The respondent to comply with the above directions within a period of 2 months from the date of receipt of copy of this order.

Parties to bear their own cost.

J. P. S. R. M.

(J. P. S. R. M.)
Member (J)

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