

Central Administrative Tribunal
Principal Bench, New Delhi.

(2)

O. A. No. 2373/94

New Delhi this the 19th Day of October, 1995.

Hon'ble Sh. B.K. Singh, Member(A)

1. Sh. Roshan Lal,
R/o C-9/B, Railway Colony,
Lajpat Nagar, New Delhi.

2. Sh. Rakesh Kumar,
S/o Sh. Roshan Lal,
R/o C-9/B, Railway Colony,
Lajpat Nagar, New Delhi.

Applicants

(through Sh. A.K. Sharda, advocate)

versus

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

2. The Chairman,
Delhi Area Housing Committee,
Northern Railway, DRM Office,
New Delhi.

3. Divl. Supdt. Engineer,
Estate, Northern Railway,
DRM Office, Paharganj,
New Delhi.

Respondents

(through Sh. R.L. Dhaman, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A. No. 2373/94 is directed against the
Order No. 159-EO/54/470/93 dated 25.10.1994.

In this application, the applicant claims the
relief for regularisation of the quarter on the ground
that he has been staying with his father who has since
retired from service w.e.f. 18.1.1992 and is working
in the same department and has not claimed any H.R.A.

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and is entitled to the same type of quarter. An interim stay was granted on 2.12.94 on the basis of the following instructions contained in Railway Establishment Manual page 403 in para-9 on the subject 'Allotment of quarter on retirement or death' it is stated that:

"On retirement or death of a Railway servant his/her serving son/daughter/husband/father out of turn, provided the said relation is eligible for Railway accommodation and had been sharing the accommodation with the retiring/deceased Railway servant for at least six months before the date of retirement or death. The same residence may be regularised in the name of the relation if he/she is eligible for a residence of that type or higher type. In other cases the same relation may be allotted a residence of his/her entitled type or a type next below."

On notice the respondents filed the reply contesting the application and grant of reliefs sought for.

When the matter was taken up on 9.10.95, I specifically referred to Full Bench judgement in case of Liaquat Ali and a batch of 4 others Vs. U.O.I. & Ors., leading case being OA-2684/93 decided on 29.5.1995. The learned counsel for the applicant indicated that he had not read the judgement and wanted further time to go through it. The learned counsel for the respondents had no objection and he furnished a copy of the judgement in case of Liaquat Ali & a batch of 4 others Vs. U.O.I., leading case being OA-2684/93 decided on 29.5.1995.

The matter was heard on 11.10.95 when Sh. Bhardwaj, learned counsel for the applicant argued that this judgement will have a prospective

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effect like that Mohd Ramzan Khan decided on 20.11.1990 by the Hon'ble Supreme Court.

In case of Mohd. Ramzan Khan, the Hon'ble Supreme Court following the ratio of the judgement given in case of Narain Mishra by Chief Justice Hidayatullah reiterated the view that in 1969 / a copy of the enquiry report when it is used by the authorities in the D.E. should be furnished to the delinquent employee in the interest of the principles of natural justice. On 20.11.1993 the Hon'ble Supreme Court on account of the denial of of second opportunity in the form of second show cause as a result of the 42nd amendment of the Constitution, laid down the norm that a copy of the enquiry report has got to be furnished and a Constitution Bench of the Hon'ble Supreme Court laid down the law that it will have only prospective application and will apply to those disciplinary proceedings which were launched after 20.11.1990. In the present case, the Full Bench has not decided any norm to be followed. It has only interpreted the rules/instructions on the statute book of the Railways. The rule position has been explained in this and on the basis of the rule position and the various instructions issued from time to time, the Full Bench ruled that no son/daughter/ward of a retiring or a retired railway servant can claim railway quarter as a matter of right. It held the view that it is only a concession and not a right. The Railway can allot a quarter to those performing duties of essential nature who have^{to} live in the proximity of their work places for performing essential duties or performing roster duties during day and night. This concession cannot

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be claimed as a matter of right and on this basis the Full Bench decided the matter and dismissed the O.As filed in the Tribunal. The ruling of Full Bench is binding cannot be doubted. There is another ruling which stands as a hurdle in the case of the applicant i.e. a ruling given by the Full Bench in case of Rasila Ram & Another Versus Union of India (CAT(FB) Vol.1, page 346) which was decided in November, 1993 against which a S.L.P. was filed which was dismissed by the Hon'ble Supreme Court. In this the Full Bench had laid down the law that when the proceedings have been initiated under Section 190 of the Indian Railways Act or under the alternative procedure laid down in Sections 4 & 5 of the P.P.E. Act, 1971, the applicant has to place his case before the Estate Officer since cancellation of allotment does not give rise to any grievance. It is denial of the principles of natural justice which can give rise to a grievance if an eviction order is passed by the competent authority. The Estate Officer in the Directorate of Estates of the Railways is Divl. Superintending Engineer and he can take recourse either to Section 190 of the Indian Railways Act or he can follow the provisions laid down under Sections 4 & 5 of the P.P.E. Act, 1971 and for charging damage rent also he can take recourse to Sections 138 & 190 of the Indian Railways Act or Section-7 of the P.P.E. Act, 1971. Appeal is also provided before the designated officer who is A.D.J. Delhi, nominated by the District Judge. Alternatively a suit can be filed before the Tribunal if it is not felt necessary.

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to approach the A.D.J. who is the Appellate Authority for the proceedings pending before the Estate Officer.

After hearing the rival contentions and going through the record & decisions of the Full Bench in case of Rasila Ram & another Vs. U.O.I. & Liaquat Ali & Ors. Vs. U.O.I. & Ors, the railway quarter cannot be claimed as of right even though the son/daughter/ward has been sharing the accommodation with him and has not been charging rent from the Railways for atleast a period of six months will not entitle him to claim regularisation of a quarter in his name. Secondly the application is pre-mature. Since the eviction proceedings are still pending before the Divl. Supdt. Engineer and the applicant has not filed his show cause before Estate Officer, he is directed to state his case before the Estate Officer and the Estate Officer is directed to give him full opportunity to state his case before eviction orders are passed against him. The Estate Officer has to function in a fair and just manner as a quasi judicial officer and has to pass a reasoned order taking into consideration the facts and circumstances of the case. The applicant is directed to approach the Estate Officer and make all the submissions orally and also in writing to the Estate Officer as held by the Full Bench in case of Rasila Ram & Anr. Vs. U.O.I. The Estate Officer is directed to consider the matter taking into consideration the facts and circumstances of this case and to pass a reasoned order within a period of three

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months from the date of receipt of a certified copy of this order. The application is dismissed as pre-mature but without any order as to costs.

(B. K. SINGH)
MEMBER (A)

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