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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
OA.No.2497/94

Dated this the 16th of May, 1995.

Shri N.V. Krishnan, Hon. Vice Chairman(A))
Dr. A. Vedavalli, Hon. Member(J)

1. Smt. Gyanwati Jain,
W/o Late Shri Navin Chand Jain,
Research Development Inspector,
Northern Railway, Baroda House,
New Delhi.
R/o Quarter No.1, 2nd Entry,
Station Building, Lodhi Road,
New Delhi.
2. Ms. Archana Jain D/o
Late Shri Navin Chand Jain,
working as Clerk, Personnel Branch,
Northern Railway, New Delhi.
R/o Quarter No.1, 2nd Entry,
Station Side Building, Lodhi Colony,
New Delhi. ...Applicants

By Advocate: Shri S.K. Sawhney.

versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Superintending
Engineer (Estate), Northern
Railway, DRM Office, Chelmsford Road,
New Delhi. ...Respondents

By Advocate: Shri K.K. Patel.

O R D E R (Oral)
(By Shri N.V. Krishnan)

The first applicant is the Widow of Shri Navin Chand Jain, Research Development Inspector in the Northern Railway, who died in harness on 20.10.88. The 2nd applicant is their daughter. The grievance of the applicants is that the respondents have, by the impugned Annexure A-1 order dated 28.6.94, rejected the request of the 2nd applicant regarding regularisation in her name of the Railway quarter allotted in the name of her father for the reasons mentioned therein. That letter states that the regularisation cannot be made because she is already

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married and also has two major brothers. Therefore, she was asked to vacate the Railway quarter, failing which, *she was informed that* eviction proceedings would be initiated.

2. The brief facts are that Shri Navin Chand Jain was employed under the Railways and a railway quarter was allotted to him. On his death, on 28.10.88, the 2nd applicant sent an application for compassionate appointment on 27.1.89. That appointment was ultimately given on 9.2.93 and she assumed charge on 13.4.93. In the meanwhile, the applicants were living in the aforesaid quarter. Their request for regularisation has been rejected by the impugned Annexure A-1 order. When the matter came up for admission, an interim direction has been issued to the respondents not to evict the applicant pending disposal of this OA.

3. The respondents have filed their reply stating that the applicants are not entitled to any relief. The 2nd applicant became a major only on 23.10.89 and passed the higher secondary examination latter in August 1990. Further, as she was deaf and dumb, there was some problem in her appointment, for which further instructions were sought. It is thereafter that it was decided to appoint her on compassionate basis on 9.2.93. She took the appointment on 13.4.93.

4. We have heard the parties.

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5. The learned counsel for the respondents states that the 2nd applicant is not entitled to regularisation of her deceased father's quarter, on more than one ground. In the first place, she is married. Secondly, there are other persons to help out the family and lastly, he relies on a circular of the Railways No.E(G) 87 QR3-6 dated 12.2.88, a copy of which has been produced for our perusal, according to which, this regularisation could be done only if the gap between the death of a Government employee and the compassionate appointment to a ward giving rise to the claim for regularisation does not exceed 12 months.

6. The learned counsel for the applicants points out that the second applicant sought compassionate appointment on any job and not on one which requires passing the matric as a pre-requisite. She could have been employed immediately, when she applied, because the lower age limit of 18 years could have been reduced by one year by the General Manager. It is the fault of the respondents that she was given appointment only in 1993 though she applied for it in January 1989. Further, these are not the objections that are raised in the impugned order. He also submitted that on the date on which the applicant was appointed, she was still unmarried and, therefore, rejection of her applicant on the ground that she is married, is not valid. Therefore, the delayed appointment ^{should not} stand in the way of the applicant.

7. We have carefully considered the submissions.

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8. We are unable to accept the plea that as the applicant is married and has two major brothers, therefore, the regularisation cannot be done. Admittedly, she was not married on the date she was given compassionate appointment. That is the date, on which, she could claim regularisation of the quarter. According to note No.6 under para-3 of the Annexure A-5 memorandum dated 15.1.90, the date of regularisation would be from the date of cancellation in case, the eligible dependent is already in service and not from the issue of the orders. This note applies ^u ~~to officers~~ to a case whether the dependent is already in service, when death took place. That analogy should apply here also and the regularisation has to be from the date of appointment. The mere fact that, subsequently, she married cannot deprive her of the benefit of regularisation. Likewise, the facts that she has two major brothers cannot stand in the way of regularisation, because, that is a factor which ought to have been taken into account when compassionate appointment itself was given. If there are major brothers to take care of the family, the question of granting compassionate appointment could not have arisen at all. Therefore, in so far as these two grounds are concerned which are mentioned in the impugned order, we do not find any merit.

9. The question is whether the respondents can now raise the objection based on the circular dated 12.2.88 namely when the gap between appointment and regularisation is more than 12 months. The contention that this was not raised in the Annexure A1 memorandum and that therefore, it cannot be permitted

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to be raised now, would have been valid, only if the Annexure A1 order was a statutory order. Obviously, the Annexure A-1 order is not a statutory order. It is open to the respondents to supplement the Annexure A-1 order by other grounds also.

10. Whether the circular of 12.2.88 stands superceded by the Annexure A-5 memorandum is the next question. The learned counsel for the applicant submits that the manner in which the reference has been given in this circular to the earlier circulars would indicate that the circular dated 12.2.88 has indeed been superceded. We notice that in the Annexure A5 memorandum, reference to the earlier circular is given in the following terms:-

"Railway Ministry's Letters No.E(G)66QR1-11 dated 25.6.66, E(G)72 QR1-10 dated 29.1.73, E(G)75 QR1-23 dated 29.11.87, E(G)78QR1-23, dated 22.12.79, 19.12.81 etc., regarding regularisation of allotment of Railway Quarters to the eligible dependents of deceased/retired Railway Officers and staff who were sharing accommodation with the deceased employee and who are appointed on compassionate grounds or eligible dependents of retired Railway employee who were sharing accommodation." (emphasis supplied)

Some circulars have been specified but at the end of the last circular dated 19.12.81, the word 'etc' has been added. Obviously, it means that all circulars having a bearing on 'Regularisation of allotment of Railway quarter in the name of the eligible dependents of Railway employee who retires from/or dies while in service' which is the subject of Annexure A-5 O.M. stand superceded in terms of para-1 of that memorandum'. It is also worthy of note that the subject matter of the circular dated 12.2.88 is

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the same. Therefore, we have no doubt that the Annexure A-5 circular superceded the circular dated 12.2.88 also.

11. That being the case, the claims of the applicant cannot be resisted in terms of the circular dated 12.2.88.

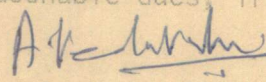
12. In the circumstances, we find that the application of the 2nd applicant for regularisation has been rejected without any basis. Accordingly, the the applicants are entitled to the reliefs and the OA is disposed of with the following orders and directions:-

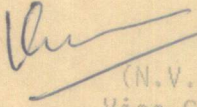
(i) The impugned Annexure A-1 order is quashed.

(ii) The Railway quarter held by the 2nd applicant's father should be regularised in the name of the 2nd applicant w.e.f. 13.4.93 when she was appointed on compassionate ground.

(iii) The respondents are directed to recover the normal rent from the 2nd applicant on the basis of direction No.ii above w.e.f. the date of regularisation ie. 13.4.93.

(iv) The respondents are also directed to release the post retiral benefits to the first applicant, to which she was entitled and which had been held up only on account of the fact that the quarter had not been regularised either on her name or on the 2nd applicant's name after adjusting the reasonable dues, if any, in accordance with law.


(Dr. A. Vedavalli)
Member(J)

 16/5/95
(N.V. Krishnan)
Vice Chairman(A)

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