

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.No. 424/94

(2)

New Delhi this the 27th Day of May 1994

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

Shri Gurpreet Singh,
Son of Shri Balwant Singh,
D-11, College Lane,
New Delhi and

Shri Balwant Singh
D-11 College Lane,
New Delhi

... Applicants

By Advocate : Shri Anis Suhrawardy)

Vs.

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

2. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.

3. Divisional Superintendent Engineer/State,
Northern Railway,
State Entry Road,
New Delhi; and

4. Special Railway Magistrate,
Main Railway Station,
Delhi.

... Respondents

(By Advocate : Shri Shyam Moorjani)

ORDER

Hon'ble Mr. J.P. Sharma, Member J

Applicant No. 2, Shri Balwant Singh, retired as Divisional Engineer from the Northern Railway on superannuation with effect from 30.11.1990. Applicant No. 1 has joined the service in Class IV in the railways in May 1987 and was sharing the allotted premises D-11, College Lane, New Delhi with his father. He was also granted sharing permission of the accommodation in July 1989. On retirement of his father he applied for eligible type of quarter in January 1991. Since the respondents did not consider the case, he filed J.A. No. 86/92 which was disposed of by the judgement dated 1.5.1992 directing the respondents

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to consider the case of applicants in accordance with the circular of the Railway Board dated 15.1.1990. The applicants again filed O.A. No. 2546/93 which was disposed of on 31.12.1993 directing the respondents to consider the case of the applicant's son for allotment of Type of quarter to which he is entitled on out of turn basis and provide this type of accommodation to him within a period of one month from the date of receipt of a certified copy of this order. Since the alternate accommodation is available to the son, the applicant shall vacate the quarter occupied by him within ten days thereof. On vacation of the said quarter the amount of gratuity and Post Retirement Complementary Passes may also be released as per rules. The representation of Applicant no. 1 earlier was rejected on the ground that he could not furnish the ration card of sharing of government accommodation with his father i.e. the Applicant No. 2. This contention was not accepted by the judgement in OA No. 2546/93 decided in pursuance to this direction by the Memo dated 18.2.1994. The applicant no. 1 was allotted Type I Railway Quarter at Ajmeri Gate, Delhi in lieu of Type III Railway Quarter No. D-11, College Lane, New Delhi.

2. The present application has been filed on 23.2.1994 challenging the aforesaid order of allotment dated 18.2.1994 on the ground that the said allotment is not in consonance with the eligibility of the Applicant no.1. The relief claimed by the applicant is to quash the impugned order of 18.2.1994 and further the eviction proceeding initiated by the respondents in the court of Spl. Railway Magistrate under Sec. 190 of Indian Railway Act be also quashed. The direction be issued to the respondents to

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allot the type II quarter in favour of the applicant in the same area. Further a direction to release the amount of gratuity and also the Post Retirement Complementary Passes and in the meanwhile the respondents not to dispossess the Applicant from the Quarter No. D-11, College Lane, New Delhi. The Tribunal heard the counsel for the applicant on 4.3.1994 and granted an interim order that the applicant be not dis-possessed from the quarter No. D-11, College Lane, New Delhi. This interim order continued. The respondents did not file any reply though Shri Shyam Moorjani appeared on behalf of the respondents.

3. Heard the learned counsel for Applicant who did not press the request for allotment of Type II quarter and as such he did not press for quashing of the order dated 18.2.1994 allotting Type I quarter in favour of the Applicant No.1. Regarding the relief for quashing of the evication proceedings, the learned counsel for the applicant Shri Anis Suhrawardy had given an undertaking that the applicants shall vacate and hand over the vacant possession of Type III quarter D-11 College Lane, New Delhi to the respondents within two months and till then the eviction proceedings be stayed. He also pressed that the amount of gratuity and the Post Retirement Complementary Passes be issued in favour of the retiree Shri Balwant Singh. The learned counsel for the respondents Shri Shyam Moorjani had stated that the applicants shall be liable to pay according to the extant rules the licence fee ~~or~~ the damages for retention of the aforesaid quarter by the applicants after the date. The Applicant No.2, Shri Balwant Singh retired on superannuation on 30.11.1990. He also argued that the post Retirement Complementary Passes cannot be issued because of illegal retention of the quarter by the applicants.

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4. The short question, therefore, involved is whether the applicant should be allowed to retain the quarter for a period of further two months and what should be the just order for relaxing time withheld amount of gratuity, if not already paid and the release of the Post Retirement Complementary Passes in favour of Shri Balwant Singh. In fact the applicants have to blame themselves for delaying the proceedings unnecessarily. Shri Balwant Singh was Divisional Engineer and was occupying the Railway quarter of his status. At the time when Shri Balwant Singh retired, his son Gurpreet Singh was only a Class IV employee and, therefore, entitled to Type I quarter in accordance with the circular of the Railway Board dated 15.1.1990. Applicant No.1, Gurpreet Singh, therefore, can get an alternate accommodation of eligible type on the date his father Shri Balwant Singh retired. It appears that Applicant No.1 so also the Applicant No.2 had been pressing the claim for allotment of Type II Quarter to which the Applicant No.1 was not entitled as per the Circular of the Railway Board of 15.1.1990. The present application, therefore, is totally misconceived as regards the relief for allotment of Type II Quarter to Applicant No.1. The interim direction obtained by the applicants was also granted when certain material facts were not brought before the Tribunal when the aforesaid order was passed. The Tribunal cannot be a party to illegal retention of the quarter by the applicants. The concession available to Applicant No. 1 was only with regard to allotment of Type I quarter and not Type II quarter. The railway's have to initiate the proceeding justifiable under Section 190 of the Indian Railway Act as Applicant No.2 after his retirement in November, 1990 continued to retain the premises which he should have vacated within four months

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after his retirement. He cannot take an excuse that the respondents have not allotted eligible type of quarter to the Applicant No.1. There was no question of regularization of Type III quarter occupied by the Applicant No. 2 during the service in favour of the Applicant No. 1.

5. In view of the above facts and circumstances the application is disposed of as follows:

- a) The relief for quashing the order dated 18.2.1994 and the relief for allotting Type II Quarter in favour of the Applicant No. 1 is disallowed and the same has also not been pressed at the time of hearing by the counsel of the applicants;
- b) The proceedings for eviction of the applicants under Section 190 of the Indian Railway Act shall continue but the order of eviction shall be deferred for a period of one month from the date of this order;
- c) Applicant No.2 shall be liable to pay normal rent for the premises D-11, College Lane, New Delhi on the normal licence fee for a period of four months from the date of his retirement that is from 1.12.1990 to 31.3.1991. Thereafter the Applicant No.2 shall be liable to pay the double the licence fee for a period till alternative accommodation was allotted to Applicant No.1 i.e. from 1.4.1991 to 18.2.1994. From 19.2.1994 till the date of the vacation of the quarter, the applicant No.2 shall be liable to pay the damages as per extant rule as penal rent of the premises D-11, College Lane, New Delhi;

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d) The respondents shall pay to Applicant No.2 the amount of gratuity less the amount of compensation for use and occupation of the quarter as referred to in Para 3 above. The Applicant No.2 shall not be entitled to any interest on the withheld amount of gratuity. If the amount of gratuity falls short, the balance amount outstanding can be recovered from Applicant No.1 as he is the beneficiary of out of turn allotment.

e) The respondents shall also release the Post Retirement Complementary Passes if the vacant possession of Quarter No. D-11, College Lane is delivered within one month after the vacation of the quarter, commencing from the second half of the year 1994. In case the quarter is not vacated as said above, the respondents will take action according to the extant rules.

The parties are directed to bear their own costs.

Signature,
(J.P. Sharma)
Member(J)

Mittal