

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2684/93 & batch of 4 cases
T.A. No.

DATE OF DECISION 29.5.1995

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Liaquat Ali & Ors. Applicant (s)

S/Sh. B.B.Raval, B.S.Mainee, V.P.Sharma, R.K.Kamal
Advocate for the Applicant (s)

Versus
Union of India & Ors. Respondent (s)

S/Sh- H.K.Gangwani, Romesh Gautam, Shyam Moorjani
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice S. C. Mathur, Chairman

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

The Hon'ble Mr. P. T. Thiruvengadam, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

S. C. Mathur
(S. C. Mathur)
Chairman

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29.5.95

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1) O.A. NO. 2684/93
2) O.A. NO. 845/94
3) O.A. NO. 499/94 ✓
4) O.A. NO. 129/94
5) O.A. NO. 1445/94

(2)

New Delhi this the 29th day of May, 1995.

CORAM :

HON'BLE SHRI JUSTICE S. C. PATHUR, CHAIRMAN
HON'BLE SHRI J. P. SHARMA, MEMBER (J)
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

1) O.A. NO. 2684/93

1. Liaquat Ali S/O Fehmood Ali
R/O House No. 146/2,
Railway Colony, Pinto Road
Bridge, New Delhi.

2. Fehmood Ali S/O Alla Din,
R/O 146/2 Pinto Road Bridge,
New Delhi - 110001.

... Applicante

(By Advocate Shri B. B. Raval)

Versus

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

2. The Divisional Superintending
Engineer (Estate),
Divisional Railway Manager's
Office, Northern Railway,
State Entry Road, New Delhi. ... Respondent

(By Advocate Shri H. K. Gangwani)

2) O.A. NO. 845/94

1. Surender Kumar S/O Ram
Narain, Khalssi under
Chief Electric Foreman
(Train Lighting),
Railway Station,
New Delhi.

2. Ram Narain S/O Budhu Lal,
R/O Qr. No. 160-D-4,
Paharganj, Basant Lane,
New Delhi.

... Applicante

(By Advocate Shri B. S. Mehta)

Versus

(13)

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi.
3. The Divisional Superintending Engineer, D.R.M.'s Office, State Entry Road, New Delhi.

... Respondents

(By Advocate Shri Romesh Gautam)

3) O.A. NO. 499/94

1. Jagan Nath S/O Jiwan Ram.
2. Ram Gulam S/O Jagan Nath, Both R/O Q. No. 109/18, Railway Colony, Delhi Kishan Ganj, Delhi.

... Applicants

(By Advocate Shri V. P. Sharma)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Delhi Dn. Delhi.
3. The Carriage & Wagon Supdt., Northern Railway, Tughlakabad, Delhi.

... Respondents

(By Advocate Shri Romesh Gautam)

4) O.A. NO. 129/94

1. Kewalanand S/O Shambhu Dayal, R/O 112/7, Railway Colony, Kishan Ganj, Delhi.
2. Shambhu Dayal, R/O 112/7, Railway Colony, Kishan Ganj, Delhi-7.

... Applicants

(By Advocate Shri R. K. Kamal)

Versus

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1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Rail Manager, Delhi Division, Northern Railway, Chelmsford Road, New Delhi.
3. The Divisional Superintending Engineer/Estate, Northern Railway, Office of the D.R.M., Delhi Division. New Delhi.

... Respondents

(By Advocate Shri Shyam Moorjani)

5) O.A. NO. 1445/94

1. S. L. Jhangi S/O R. L. Jhangi, R/O 171/A3, Basant Lane, New Delhi.
2. Sunil Jhangi S/O S. L. Jhangi, R/O 171/A3, Basant Lane, New Delhi.

... Applicants

(By Advocate Shri S. K. Sawhney)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Supdtg. Engineer (Estate), Northern Railway, D.R.M.'s Office, New Delhi.

... Respondents

(By Advocate Shri Romesh Gautam)

O R D E R

Shri Justice S. C. Mathur,

Conflicting views expressed by different Division Benches of the Tribunal resulted in constitution of the present Full Bench. The question which the Full Bench is required to answer as formulated in O.A. No. 2684/93 is as follows :-

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"Whether on retirement of railway employee on superannuation or on voluntary retirement excepting retirement on the basis of penalty whether a son or another dependent ward holding only temporary status (casual labourer/substitute) and is not on the rolls of the railway as a temporary employee then on the date of such retirement of his father, as the case may be, would be eligible for out of turn consideration for allotment/regularisation of eligible type of accommodation according to rules."

This question has been formulated by the Division Bench comprising Hon'ble Shri J. P. Sharma, Member (J) and Hon'ble Shri B. K. Singh, Member, (A).

2. In O.A. No. 845/94, the reference has been made by Hon'ble Shri P. T. Thiruvengadam. The question formulated by him is thus :-

"On the retirement of a railway employee who is in occupation of railway quarter on proper allotment, will his son who is holding only 'temporary status' (Casual Labour/ substitute) on the date of retirement of his father, be eligible for out of turn consideration for allotment/regularisation of this accommodation."

3. In O.A. No. 499/94 also the reference has been made by Hon'ble Shri P. T. Thiruvengadam. The language of the question formulated in this case is identical to that of the question formulated in O.A. No. 845/94.

4. In O.A. No. 129/94, reference has been made by Hon'ble Shri B. N. Dhoundiyal and the question formulated by him reads thus :-

"Whether on retirement of Railway employee on superannuation, his son or another dependent ward holding

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temporary status as a substitute would be eligible for out of turn consideration for allotment/ regularisation of the eligible type of accommodation."

5. In the last case, viz., O.A. No. 1445/94, the reference has been made by Hon'ble Mrs. Lakshmi Swaminathan, Member (J). She has not formulated any question but has referred to the referring order in O.A. No. 845/94 and has observed that since the question arising in the O.A. before her is identical to the one arising in O.A. No. 845/94, the two cases may be taken up together.
6. It is in the above manner that these five applications have come up before this Full Bench.
7. Although the language of the formulated questions is not identical, the substance is the same.
8. The facts in all the five O.A.s are not identical but the facts necessary for answering the referred questions are similar. Only these facts may be stated.
9. In all the five applications, there are two applicants : one is the father and the other is the son. The father entered the railway service and was allotted a railway quarter for residence. He resided in the said quarter along with his family including the son. Subsequently, the son also got employment in the railways either as a casual labour or as a substitute. The son continued to live in the railway quarter along with his father and did not draw the house rent allowance. When the father retired or

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was on the verge of retirement, the son or the father applied for regularisation of the quarter in favour of the son. The claim for regularisation was rejected on the ground of lack of eligibility of the son.

The question arising for consideration in these applications is whether under the rules the claim of eligibility is sustainable.

10. Admittedly, the Railway Board issued orders from time to time regarding allotment of railway quarter in favour of a railway employee and regularisation thereof in favour of his eligible dependent, also in railway employment, on his retirement or death. These orders undisputedly have statutory status. They have been considered in some of the decisions which may now be examined.

11. Gurdeep Singh & Anr. vs. Union of India & Anr. (O.A. No. 1220/1990) decided on 7.12.1990 appears to be the first case on the subject decided at the Principal Bench. This was also an application by father and son. The father who was a regular employee of the Railways was in occupation of a railway quarter under a valid allotment order. While he was still in service, his son joined the Railway administration as a casual labourer on 16.3.1986. By order dated 26.8.1986 he was allowed to stay with his father in the said quarter without drawing house rent allowance. On 1.9.1986 the son was granted temporary status. On 28.2.1987 the father retired from service. On 4.2.1989 and 1.8.1989 the son was screened. By order dated 22.9.1989 he was brought on the panel of Khalsais. Regularisation of quarter was claimed by the son on

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these facts. His request for regularisation was rejected by order dated 19.2.1990. The original application was resisted by the Railway administration on whose behalf it was pressed that casual labourers and substitutes with or without temporary status were not entitled to out of turn allotment of railway quarter. Reliance was placed on Railway Board's letter a copy of which was filed as Annexure R-1. In the copy the number and date of the letter are not legible. The letter makes reference to Railway Board's letter No. E(G)78 QR1-23 dated 19.12.1981 and explains the same as follows :-

"It is clarified that the orders contained in Board's letter of 19.12.1981 aforementioned constitute a special dispensation in favour of the eligible wards of retired or deceased employees and their scope is to be confined only to such of the wards as are regular employees. Thus, the casual labour and the substitutes with or without temporary status are excluded from their purview."

With regard to this letter of the Railway Board, the only observation made by the Division Bench is "We do not find anything in the Railway instructions filed as Annexure R-1 to the counter affidavit of the respondents that any time limit has been fixed in this connection." Neither any portion of the instructions has been extracted nor its ingredients or components have been analysed and discussed. There is no discussion on the respondents' plea that the benefit of out of turn allotment was not available to casual labourers and substitutes with or without temporary status. The applicants had raised the plea of discrimination also in respect of which the Bench has to say, "We do not have the relevant

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details of those cases with a view to coming to any definite conclusion on the plea of discrimination." The Bench simply granted relief to the applicants by commanding the Railway administration to regularise the quarter in favour of the son with effect from 22.9.1989, "the date from which he was made regular." Since the language of the Railway instructions was not available in the judgment of the Division Bench, we obtained the paper book of the case and found that on behalf of the applicant no letter or order of the Railway Board had been filed. In paragraph 4.5 of the application it was stated, "in terms of Railway Board letter No. E(G)66QR-1/11 dated 25.6.1966, on retirement of a railway servant, his quarter may be allotted to his serving son provided the said son is eligible for railway accommodation and had been sharing accommodation with the retiring railway servant for at least 6 months before the date of retirement." The eligibility was shown in paragraph 4.10 thus, "the applicant No.1 had attained temporary status and as such in accordance with para 2511 and para 2312 of the Railway Establishment Manual he was entitled for allotment of the railway quarter." In paragraph 4.12 it has been stated, "That in the meantime the applicant No.1 was also screened and regularised as regular railway servant in terms of respondent No.1's letter No. 220E/60/Eii Class-IV dated 22.9.1989." From this averment it would appear that the son became a regular Railway servant only w.e.f. 22.9.1989. Much prior to this date, the father had retired from Railway service on 28.2.1987. It was with reference to this date that the eligibility

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of the son for Railway accommodation was required to be seen. Unfortunately, the Bench did not direct itself to this question and granted relief only on the ground that the Railway instructions did not prescribe any time. Even though the Railway instructions may not provide for time, it is apparent that the cause of action in a case of this nature would arise when the entitlement of the allottee ^{i.e.,} on the date of retirement/death, ceases. On 28.2.1987 the son was not eligible to regularisation of the quarter in terms of Railway Board's order reproduced in Annexure R-1. For the reasons recorded herein, we, with great respect to the learned Members of the Bench, are unable to subscribe to the view taken in this case.

12. In Ajay Praveen vs. Union of India & Anr. (O.A. No. 2367/1991) decided on 17.1.1992, the facts are these: The applicant joined the Railways as a casual labourer on 4.5.1988. His father was already in the regular employment of the Railway administration and had been allotted a railway quarter. The applicant started sharing the said quarter along with his father w.e.f. 29.10.1988 with permission from the competent authority. The applicant was screened in January, 1989 for regular appointment. The applicant's father retired from service on 31.5.1990. The applicant made application for out of turn allotment of the accommodation which had been allotted to his father, on 26.7.1990. The application was rejected as the applicant was not in regular employment of the Railways. The original application was contested by the Railway administration

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on whose behalf reliance was placed upon Railway Board's letter No. E(G) 85 QR 3.2 dated 29.8.1986. The subject of this letter is regularisation of allotment of railway quarter in the name of eligible dependent of the railway servant who retires from or dies while in service. Below this is a reference to the Railway Board's letter No. E(G) 78 QR 1-23 dated 19.12.1981 and the clarification is the same which has been reproduced hereinabove while dealing with the case of Gurdeep Singh. There is reiteration of the fact that casual labourer or substitutes with or without temporary status are excluded from the purview. The Division Bench relied upon paragraph 1501 of the Indian Railway Establishment Manual and on Board's circular No. E(G) 85 QR 1-9 dated 15.1.1990. Paragraph 2 of the circular has been reproduced in the judgment and the same reads as follows :-

"When a Railway employee who has been allotted railway accommodation retires from service or dies while in service, his/her son, daughter, wife, husband or father may be allotted railway 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 H.R.A. during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases, a residence of the entitled type or type next below is to be allotted." (emphasised).

After reproducing the above paragraph, the Division Bench proceeds to state, "The circular quoted above of January, 1990 is a complete answer to the objection taken by the respondents." The Division

Bench did not proceed to examine the question of eligibility which was also mentioned in the circular. The Division Bench has further observed, "A Railway servant who is a casual labourer and obtained quasi permanent status by working for a number of years and has also been screened becomes eligible for allotment/regularisation of quarter particularly in the light of the admission of the respondents in their letter dt. 20.11.1990 (Annexure A5). In this letter it is stated that the applicant is a regular employee and is working against permanent vacancy since 29.10.1988 and has not been paid HRA. It is also admitted in that letter that the applicant has already been screened in January, 1989. In view of the above, if the result of the screening has not been declared which has taken place as early as in January, 1989, the applicant is not to be thrown out of consideration for out of turn allotment on the basis of the circular of the Railway Board of January, 1990 referred to above." From this it would appear that the judgment of the Division Bench is based on the admission contained in Annexure A-5 that the applicant was a regular employee. If the applicant was a regular employee there remained no dispute about his eligibility. Since this judgment is based on the Railway administration's own admission according to which the applicant was not lacking in eligibility, it is of no assistance for resolving the controversy involved in the present bunch of cases.

13. In Atma Ram & Anr. vs. Union of India & Ors. (O.A. No. 281/1990) decided on 24.5.1993 by a Single Member, the facts were as follows -

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The son had been appointed as a casual labourer on 4.2.1981 and had been living with his father, who was a regular allottee of railway accommodation, from 2.5.1985 with permission of the competent authority. The son was not drawing house rent allowance since then. The father retired from Railway service on 31.8.1989. In August, 1989 itself, application was made for regularisation of the quarter in favour of the son. Instead of regularising the quarter in favour of the son, the Railways issued notice on 23.1.1990 for vacation of the quarter and payment of damages. It was at this stage that the father and son filed original application in this Tribunal. As in the earlier cases, in this case too the plea of the Railway administration was that the facility of regularisation of railway quarter in the name of the ward of the retiring Railway servant is confined only to regular employees and casual labourers and substitutes with or without temporary status were excluded from eligibility. In support of its plea, the Railway administration had relied upon the Board's letter dated 3.2.1989. Apart from the Board's letter, the learned counsel for the Railway administration cited before the learned Single Member the decision of the Tribunal in Kailash Chand vs. Union of India & Ors. (O.A. No. 724/91) decided on 26.8.1991. The learned Single Member granted relief to the applicant by relying upon another decision of the Bench in Tilak Raj & Anr. vs. Union of India & Ors. (O.A. No. 542/92) decided on 20.5.1992, observing -

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"It was also mentioned that para 25.11 of the Indian Railway Establishment Manual (IREM for short) provides that casual labourers treated as temporary are entitled to all the rights and privileges admissible to temporary Railway servants as laid down in Chapter-XXIII of the IREM. It was held that "temporary status holders are entitled to regularisation of quarter on the retirement of father because they are entitled to allotment of quarter in terms of rule 25.11 of the Indian Railway Establishment Manual".

In paragraph 4.8 of the Railway administration's reply it was stated, "the scope of the said orders is confined to such of the wards of the retiring Railway servants who are regular Railway employees and the casual labour and substitutes, with or without temporary status, are excluded from the purview of the said orders." The judgment of the learned Single Member does not allude to this defence. Under the relevant Railway Board's letters noticed hereinabove, mere acquisition of temporary status is not sufficient to make a casual labour or substitute eligible to claim regularisation. With utmost respect to the learned Single Member, we are unable to subscribe to the view taken in this case.

14. Shri Totaram & Anr. vs. Union of India & Anr. 1993 (2) ATJ 544 was a case decided at the Bombay Bench by a learned Single Member. The father was a regular Railway employee. While in service, his son also joined the Railway administration on 1.2.1984 as casual labour/substitute Bungalow Peon. He was granted temporary status w.e.f. 1.6.1984 and was permitted to share accommodation with his father.

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on foregoing house rent allowance. The application was allowed by the learned Single Member directing the respondents to regularise the quarter which stood allotted in the name of the father w.e.f. 1.10.1986, the date next to the date of retirement of the father. In granting relief to the applicants, the learned Member relied upon paragraphs 2312, 2315, 2318 and Chapter XXIII of the Indian Railway Establishment Manual. The learned Member has recorded his finding in paragraph 4 of the report thus —

"...the net result of all these provisions in the various paras in Manual is that the casual labour or a substitute if continuously employed for four months or more gets the temporary status and gets all the benefits which are available to temporary servants under Chapter XXIII including the benefit of the allotment of the accommodation."

Apart from the provisions contained in the Manual the applicant had placed reliance upon two decisions of the New Bombay Bench - (1) O.A. 271/86 decided on 26.11.1987, Vithalrad Arjun Kale & Anr. vs. Union of India & Ors., and (2) O.A. 314/90 decided on 12.2.1992, Mrs. Prema Paul & Anr. vs. Union of India & Ors. It appears from paragraphs 5 and 6 of the report that on behalf of the Railway administration reliance was placed upon Railway Board's circulars dated 11.12.1981, 11.4.1983 and 29.8.1986. On the basis of these circulars, it was pressed that the benefit of regularisation could be extended only to those who were in regular service of the Railways. The learned Single Member did not proceed to examine the contents of these circulars and rejected the Railway administration's claim on the basis that the contention based

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on these circulars had already been rejected in the earlier two decisions of the Bench against which SLP was preferred but the same was rejected.

15. Tilak Raj & Anr. vs. Union of India & Ors. 1994(1) ATJ 195 was decided at the Principal Bench by a Division Bench. In this case, the son got employment in the Railway administration as a casual labourer before the retirement of the father. The son was granted temporary status before the retirement of the father and was allowed to share accommodation with his father forfeiting house rent allowance. On behalf of the applicant reliance was placed on paragraph 2511 and Chapter XXIII of the Indian Railway Establishment Manual, on Railway Board's circular dated 15.1.1990 and the judgment of the Tribunal in O.A. No. 1015/87 decided on 10.1.1992 filed by Mohan Singh. On behalf of the Railway administration reliance was placed on office memorandum dated 15.3.1991 and the judgment of the Tribunal in Kailash Chand - O.A. No. 724/91 decided on 26.8.1991. The Division Bench distinguished the judgment in Kailash Chand's case on the basis that the son had been screened but result had not been declared while in Mohan Singh's case the son had not only been screened but the result had also been declared at which he was successful. This judgment proceeds on the basis that once temporary status is acquired, the casual labour becomes entitled to all the rights and privileges of a temporary Railway servant including the eligibility to get allotment of Railway accommodation.

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16. We may now consider the decisions in which contrary view was expressed and the O.A.s were rejected.

17. Kailash Chand vs. Union of India & Ors., O.A. No. 724/91 was a case of similar nature decided by a Division Bench on 26.8.1991. For claiming out of turn allotment of accommodation, the applicant had relied upon Railway Board's circular dated 4.6.1983 and for negativing the applicant's claim, the respondents had relied upon Railway Board's circulars dated 29.8.1986 and 3.2.1989. The Division Bench took the view that a casual labour with temporary status may be entitled to allotment of railway accommodation but so far as out of turn allotment is concerned, the same is possible only if he is in regular employment. For this, the Division Bench relied upon Railway Board's circulars dated 29.8.1986 and 3.2.1989.

18. Relying upon the above Division Bench decision, another Division Bench of the Tribunal dismissed a similar claim raised in O.A. No. 463/91 - Mehmood Ali & Anr. vs. Union of India & Ors. decided on 27.2.1992. In negativing the claim of the applicant, apart from relying upon the judgment in Kailash Chand's case (supra), the Division Bench relied also upon the Board's circulars dated 29.8.1986, 3.2.1989 and 15.1.1990. As in Kailash Chand's case, it was held in this case also that a casual labour with temporary status may be eligible for normal allotment but for out of turn allotment he must acquire the status of a regular Railway employee. The Division Bench

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distinguished the judgment of the Tribunal in Mohan Singh's case (supra). Subsequently, a review application was filed in the above case on the ground that subsequent to the decision of the Tribunal, result of screening which the son had already undergone had been published and the son had been regularised w.e.f. 16.3.1992. On this basis, modification was sought in the judgment as the son had become entitled to be considered for regularisation of quarter even on the basis of the existing instructions. The Division Bench entertained the review application and taking note of the fact that the son had become a regular employee, issued directions to the following effect :-

"The applicant 2, Liaquat Ali had appeared for screening in Nov. 1991 but the result of screening was declared only later and he became a regular employee under the respondents as a result of this screening w.e.f. 16.3.92 and has been in a regular pay scale since 1.9.1986.

The respondents should therefore consider his case afresh in the light of prevailing instructions and facilities given to similarly situated persons. The applicant may not be evicted from quarter No. 146/2, Railway Colony, Minto Bridge, New Delhi till the respondents have passed final orders in the matter."

The review order does not take a view contrary to the one which had been expressed in the main judgment.

19. From a survey of the above decisions, it is apparent that different Benches of the Tribunal have not taken uniform view on the claim of regularisation preferred by casual labour who had acquired temporary status but had not become a regular

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employee of the Railway administration and who had been staying in Railway accommodation along with his father who was in regular employment of the Railway administration and was a valid allottee of Railway accommodation. We may now proceed to examine the position reflected in the Indian Railway Establishment Manual and the orders issued by the Railway Board from time to time.

20. We will proceed on the basis of two assumptions -

(1) the applicants have acquired temporary status in the Railways, and (2) those Railway employees who have acquired temporary status but have not become regular are eligible to be considered for allotment of Railway accommodation. In view of these two assumptions, it is not necessary for us to refer to the provisions of the Indian Railway Establishment Manual, for short the Manual, and the circulars of the Railway Board relied upon by the applicants for claiming that by virtue of the acquisition of temporary status, they are eligible to be considered for allotment of Railway accommodation.

21. The basic rule of allotment of Railway accommodation is contained in paragraph 1701 of Chapter XVII of the Manual which reads as follows :-

"1701. While residential quarters for railway servants may be provided by Railways where conditions are such that private enterprise does not adequately meet the demand for housing the railway servants or where it is necessary for special reasons to provide quarters for certain railway servants near to their work, no railway servant has any right to be provided with quarters." (emphasis supplied).

This provision is a complete answer to the claim for allotment of railway quarter brought before a court or tribunal. Courts and tribunals enforce rights and not concessions. The first and the last emphasised portions clearly make out that a railway servant has no right to claim allotment of railway quarter. The primary purpose of allotting a residential quarter to a railway employee is apparent from the second emphasised portion. It is the interest of the administration and not the interest of the employee. Trains run day and night. Certain employees work on sensitive posts. Their services may be required at any hour of the day or night. It is in the interest of the railway administration that such employees reside near to the place of work. Proximity to the place of work serves not only the interest of the railway administration but also of the consumers of the railway services, namely, the public. In other words, in allotment of railway quarters to appropriate persons, public interest is also involved. Public interest will be better served if those working on sensitive posts stay near to their place of work. Who are such railway servants can better be appreciated by the railway administration than by courts or tribunals. It is, therefore, in public interest that allotment of railway quarter should remain in the hands of the railway authorities and it should not be usurped by courts or tribunals.

22. The Railway Board has issued a large number of circulars on allotment of railway quarters. All these circulars will have to be read in the backdrop

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of the basic law contained in paragraph 1701. These
circulars ^{are} in furtherance of what is provided in
paragraph 1701 and not in derogation thereof.

23. We may now take up the circulars issued by the Railway Board from time to time.

24. Paragraph 2.1 of circular No. E(G)57 LG 5-1 dated 21.2.1958 reproduced in circular No. E(G) 92 QR 1-20 (MASTER CIRCULAR) dated 19.1.1993, reads as follows :-

"One of the benefits to which the Railway employees are entitled is provision of residential accommodation, on payment of standard rent which is at subsidised rates. As per extant policy, separate pools of allotment are maintained for essential and non-essential staff. Actual classification as per local condition has been left to the discretion of Zonal Railway Administrations...."

Under this circular the railway staff is divided into two categories - (1) essential, and (2) non-essential. The obvious reason for this classification is to give priority in allotment to essential staff.

25. Paragraph 3.1 of circular No. E(G) 66 QR 1-21 dated 12.10.1966 reads as follows :-

"Out of turn allotment, wherever conceded, should be done strictly on the basis of date of registration in the out of turn register to be maintained for the purpose. Placing of an employee in the out of turn list, however, is left to the discretion of the competent authority, based on merits of each case." (emphasis supplied).

Under this circular a register is required to be maintained in which the names are to be entered of those persons who deserve allotment out of turn.

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Whose names will be entered in this register is left to the discretion of the competent authority. The discretion conferred upon the competent authority is not an arbitrary one. The decision is to be based on the merits of each case. Once the name of a Railway employee has been entered in the out of turn register, his turn for allotment will come strictly on the basis of the date of registration in the register.

26. Paragraph 3.3 of circular No. E(G)85 QR 1-8 dated 5.6.1986 provides -

"Heart ailments, having the following symptoms, should be included for ad-hoc allotment on medical grounds. The concession should, however, be restricted to self ailment only.....

Existing 5% reservation of vacancies in general pool for ad-hoc allotment on medical grounds and physical handicap would continue." (emphasis supplied).

From this provision, it would appear that certain ailments also qualify for out of turn allotment. The use of the word 'concession' is, however, significant. It indicates that out of turn allotment even by a railway employee suffering from serious ailment cannot be claimed as a matter of right.

27. Paragraph 2 of circular No. E(G) 85 QR 3-2 dated 29.8.1986 provides thus -

"It is clarified that the orders contained in Board's letter of 19.12.1981 aforementioned constitute a special dispensation in favour of the eligible wards of retired or deceased employees and their scope is to be confined only

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to such of the wards as are regular employees. Thus, the casual labour and the substitutes with or without temporary status are excluded from their purview." (emphasis supplied).

This circular specifically excludes those casual labourers and substitutes who have not yet become regular railway employees although they may have acquired temporary status, from eligibility for allotment of railway quarter out of turn. The circular dated 29.8.1986 was clarified through circular No. E(G) 86/QRS-2 dated 3.2.1989 in which it was mentioned :-

"The matter has been examined in consultation with the legal Adviser in the Ministry of Railways. It is clarified that orders contained in the Ministry's letter of even number dated 29/8/86 do not prevent Casual Labour and substitutes with temporary status from allotment of Railway Quarters under normal rules in their own turn. They only exclude them from the purview of instructions relating to out of turn allotment of quarter to regular employees who are eligible wards of retired or deceased railway employees. These orders, therefore, are not affected by the judgment of the Supreme Court in W.P. Nos. 15862-15896 of 1984 referred to by you and may continue to be followed." (emphasis supplied).

This circular emphasises the position that casual labour and substitutes with temporary status are not completely excluded from the eligibility to allotment of railway quarter; what they are excluded from is out of turn allotment.

28. Paragraph 2 of circular No. E(G) 85 QR 1-9 dated 15.1.1990 reads as follows :-

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"When a Railway employee who has been allotted Railway accommodation retires from service or dies while in service, his/her son, daughter, wife, husband or father may be allotted railway accommodation on out-of-turn basis provided that the said relation was a Railway employee eligible for Railway accommodation and has 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. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases, a residence of the entitled type or type next below is to be allotted."

(emphasised).

Paragraph 3 of the above circular contains certain notes which indicate nature of the right, if any, created in respect of allotment of Railway quarter. Some of these notes bear reproduction. They are —

"(ii) The concession of adhoc allotment would not be available in the case of a dependent who secures employment in the railway after the date of retirement of parent or during the period of re-employment.

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(iv) The concession of adhoc allotment to the eligible dependent would not be available in case of any other dependent is already in occupation of Government accommodation." (emphasised).

These notes emphasise the point that out of turn allotment is a mere concession and not a right.

29. The above circulars bring out in unmistakable terms the position that the railway administration maintains railway accommodations for the efficient functioning of the railways. It is for this purpose that some employees may be given priority in

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allotment and given an accommodation near to their place of work. In order to give effect to the policy of efficiency, elaborate procedure has been prescribed, including maintenance of register for out of turn allotment. Obviously, whenever an application would come from a railway employee seeking out of turn allotment, the register for out of turn allotment will have to be consulted in order to find out whether the applicant's name is entered therein. If the name is not there, the application may be rejected. If the application is entertained, it will have to be considered along with applications of other claimants. It cannot be considered in isolation. Priority will have to be decided vis-a-vis the claims of others. When an application is filed before a court of law, the court invariably will not have ^{before it} the details of all the employees seeking out of turn allotment and the merit of the claim of each individual. Divorced from the claim of others, the applicant before the court may have a good case for out of turn allotment, but on comparison with the claims of others, his claim may fade away. In such a situation the judicial order will cause prejudice to the claimant with better merit. The interest of railway administration may also suffer when it is unable to allot accommodation to an employee holding sensitive assignment near to his place of work because such accommodations have been occupied by holders of judicial orders. The out of turn register will become redundant. In such a situation the courts will, perhaps, be able to do justice only when they take in their hands the entire process of allotment of quarters, including

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out of turn allotment, and not merely the claim of an individual. It also needs to be pointed out that the language of the last circular on which heavy reliance is placed is not mandatory in character. The emphasised expressions clearly exhibit its recommendatory or discretionary character.

30. In the present bunch of cases, there is no averment by any of the applicants that his name is entered in the out of turn register. The applications are liable to be rejected on this short ground alone. If the circulars of the Railway Board have to be enforced through judicial orders, the said circulars will have to be enforced in entirety and relief cannot be granted on the basis of certain paragraphs of one circular alone. In the cases decided by the Tribunal in which directions were issued for regularisation, paragraph 1701 of the Manual was not considered and it was also not considered whether the circulars created an enforceable right or merely provided a concession to certain categories of railway employees. Relief was granted merely on the ground that they were eligible to be allotted railway accommodation. What was required to be considered even at that stage was whether the circulars created a right or they merely gave a concession and whether the provision contained in the circulars was for the benefit of the railway administration, the general public or the railway employee. In our opinion, for non-consideration of these important aspects, the said decisions cannot be treated as laying down the law correctly; the law was correctly applied in the cases in which relief for regularisation was refused.

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31. Learned counsel for the applicants submitted that the ineligibility prescribed in respect of casual labour and substitutes by circular dated 29.8.1986 stood removed by circular dated 15.1.1990. The learned counsel pointed out that the latter circular specifically states that it is in supersession of previous instructions. It is submitted by the learned counsel that the circular dated 15.1.1990 does not contain any clause excluding casual labour and substitutes from eligibility to allotment of accommodation. Paragraph 2 of the circular dated 15.1.1990 has been reproduced hereinabove. This paragraph or any other paragraph does not contain any statement excluding casual labour and substitutes with or without temporary status from eligibility to allotment of accommodation. However, we find that by this omission the railway administration never intended to make substitutes and casual labour eligible for allotment as the position was clarified almost immediately thereafter through letter dated 15.3.1991. The contents of this letter have been reproduced in the referring order made in D.A. No. 2684/93. The clarifications are in respect of the points raised. The first point raised and the clarification are as follows :-

<u>"Point Raised</u>	<u>Clarification</u>
Whether casual labour/ substitutes with or without temporary status are still not entitled to such benefits?	Reply is in affirmative"

The submission of the learned counsel for the applicants, however, was that it is merely a clarificatory order and cannot be equated with a circular issued by the Railway Board. The Railway

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Board has again issued circular No. E(G) 92 QR 1-20 (Master Circular) dated 19.1.1993 and in this circular also substitutes and casual labour have been excluded from eligibility. This circular was issued in order to consolidate all the circulars in one single master circular as would be apparent from the opening paragraph which reads thus :-

"At present instructions/orders regarding allotment of quarters and/or retention thereof, in the event of transfer from one station to another are contained in a number of letters issued by this Ministry from time to time. It has been decided to consolidate all of them in one single Master circular, for the purpose of facility and convenience."

In paragraph 4 of this circular the following provision is contained :-

"Requests from eligible dependents/specified relations of retired railway employees and of deceased Railway employees who are appointed on compassionate ground may be considered by the competent authority only in cases where the compassionate appointments have been made within the prescribed period of 12 months. In case, the compassionate appointee had remained in occupation of the Railway accommodation unauthorisedly beyond the permitted period, that in itself would not confer any right in favour of the compassionate appointee in the matter of regularisation of Railway accommodation in his/her name. Further the Railway Administration should also initiate eviction proceedings soon after the prescribed period for retention of accommodation is over. The special dispensation allowed in favour of the eligible wards of retired/deceased employees and their scope is to be confined only to such of the wards as are regular employees. Thus the casual labour and the substitutes with or without temporary status are excluded from their scope. The requests are to be considered as under :-" (emphasised).

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At the foot of paragraph 4, reference is made to various earlier circulars including circulars dated 15.1.1990 and 15.3.1991. All the applications included in the present bunch were filed after the issue of this circular. Out of the five applications included in the bunch only one was filed in the year 1993 and its date of filing is 22.12.1993. Accordingly, all these cases will have to be decided on the basis of the circular dated 19.1.1993 even if the argument of the learned counsel for the applicants is accepted that the circular dated 15.1.1990 created a gap.

32. We have already held hereinabove that the circulars relied upon by the applicants do not create any right. Accordingly, the applicants cannot claim that their cases have to be determined on the basis of the position obtaining at the time of the retirement of their father. It is only vested rights which are required to be enforced with reference to the date on which they were acquired. Of course, it was submitted on behalf of the applicants that allotment of accommodation is a condition of service and is, therefore, a statutory right. This question we have already discussed with the finding that it is not a right; it is also not a condition of service.

33. Under the circulars out of turn allottees constitute a distinct class. Since they may take precedence over others who have been waiting for allotment for a long time, it is necessary that their claims are considered strictly in accordance with the circulars and not in a manner which enlarges the scope of the circulars.



34. In certain applications filed on behalf of the substitutes it was submitted that the substitutes stood on a different footing than the casual labour. The circulars referred to hereinabove do not make any distinction between the substitutes and the casual labour so far as the eligibility for consideration for allotment is concerned. Our attention was invited to paragraph 2315 of Chapter XXIII of the Manual which defines the term "substitute". Because of the view taken by us, it is not necessary to make comments on the definition.

35. Our attention was invited also to paragraphs 2318 and 2511 which were relied upon for submitting that the rights of substitutes and casual labour who have acquired temporary status are identical with the rights and privileges of temporary railway employees, and one of the rights of the temporary railway employees is eligibility for allotment of railway accommodation and, therefore, the applicants cannot be denied regularisation of railway accommodation in their occupation. We have proceeded on the assumption that the applicants have acquired temporary status and are eligible for allotment of railway quarter and, therefore, detailed examination of these two paragraphs is not required. The rights and privileges referred to in paragraphs 2318 and 2511 are of general nature and they are subject to the specific provisions made in respect of a particular item. In the case on hand, we are concerned with the question of out of turn allotment of railway accommodation. On this aspect, the railway administration has issued specific directions, instructions



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and circulars. These specific instructions will prevail over the general rights conferred under the two paragraphs relied upon by the applicants.

36. In our opinion, the questions referred to the Full Bench require re-casting. The questions to be answered by the Full Bench should read as follows :-

- (1) Whether allotment of a railway quarter can be claimed as a matter of right?
- (2) Whether ward of retired or retiring railway employee who was living in railway quarter along with the retiring or retired railway servant with the permission of the railway administration foregoing house rent allowance has a right to claim regularisation of quarter in his name?
- (3) Whether casual labour and substitutes with or without temporary status and who have not become regular railway employees are eligible to be considered for out of turn allotment on the basis of the circulars of the Railway Board.

37. Our answer to all the three questions is in the negative.

38. From the referring orders, it appears that the Full Bench was not required to express its opinion on the formulated question alone but was required to finally dispose of the original applications as the

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fate of these applications depended entirely on the answer to the questions. Accordingly, it is not necessary to direct listing of these original applications again before the Division or Single Benches. The applications can be disposed of finally by this Full Bench.

39. In view of the above, all the original applications are dismissed but without any order as to costs. Interim order, if any operating in any case, shall stand discharged.

(P.T.Thiruvengadam)
Member(A)

(J.P.Sharma)
Member(J)

(S.C.Mathur)
Chairman
29.5.83

/as/

Attested
Suresh Kumar
30/5/83
Court Officer
Controller of Legal Services
and Legal Aid
Paralegal Officer
Central Bureau
of Control of Legal Services