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Central Administrative Tribunal
Principal Bench

O.A 1341/2000

New Delhi this the 9 th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Naresh Kumar Jawa,
Director,
Ministry of Surface Transport,
Transport Bhawan,
New Delhi-110 001.

... Applicant.

(By Advocate Shri Shyam Babu)

Versus

1. Union of India through
Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
 2. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
 3. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 4. Divisional Superintendent Engineer/
Estates,
Northern Railways,
New Delhi.
 5. Deputy Secretary (General),
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
- ... Respondents.

(By Advocate Shri E.X. Joseph, Sr. Counsel with Shri S.S. Sabharwal)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who belongs to the Indian Railway Service of Mechanical Engineers (IRSME), is aggrieved by the orders passed by the respondents issuing him notices, cancelling allotment of the Railway Quarter bearing Flat No. 11-A, Sarojini Nagar, New Delhi, earlier allotted to him and

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claiming damage rate of licence fee, dated 8.6.2000, 22.6.2000 and 19.4.2000, respectively (Annexures P-1, P-2 and P-5).

2. The brief facts of the case are that the respondents by their Memorandum dated 27.7.1999 had approved the appointment of the applicant as Director in the Ministry of Surface Transport for a period of five years. It is not disputed by the parties that the applicant, who is a Railway employee, was so appointed on deputation basis. The applicant has stated that on his deputation to the Ministry of Surface Transport, he had applied for the General Pool accommodation vide his letter dated 7.12.1999. According to him, a number of officers similarly situated like him, who have been sent on deputation to other Ministries have been allowed retention of the Railway quarter earlier allotted by the respondents till appropriate accommodation was allotted to them from the General Pool. Examples of these officers have been referred to in Paragraph 4.4 of the O.A. The applicant has been allowed retention of the aforesaid quarter at Sarojini Nagar by the respondents upto 22.3.2000, including the period from 6.11.1999 to 22.3.1999 on payment of special licence fee and, thereafter, the same has been cancelled. By the impugned order dated 19.4.2000, they have also stated that the licence fee in respect of the unauthorised occupation beyond 22.3.2000 is liable to be charged at damages rate and eviction proceedings will also be initiated against the applicant if he does not vacate the quarter.

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3. This application was filed on 18.7.2000 and by an ad-interim order dated 21.7.2000 the respondents were directed to maintain status quo as on that date, with regard to the allotment of the Railway quarter to the applicant. That order has been continued till date.

4. One of the main contentions of Shri Shyam Babu, learned counsel is that in identical situations like the applicant, in the cases of the other 10 persons referred to in paragraph 4.4. of the O.A., the respondents have permitted them to retain the Railway accommodation till allotment is made from the General Pool accommodation, on various dates mentioned in the last column against each one of the officers. He has very vehemently submitted that there is accordingly absolutely no reason for the respondents not extending similar permission to the applicant to retain the aforesaid Railway accommodation till his application for allotment of General Pool accommodation is agreed to by the competent authority. He has submitted that this, therefore, shows discrimination and mala fide action on the part of the respondents in singling out the applicant, while the respondents are not taking any action to deal with the other 10 persons according to the rules/circulars, which they are now relying upon in the case of the applicant. He has relied on the judgement of the Supreme Court in R.D. Shetty Vs. The International Airport Authority of India & Ors. (AIR 1979 SC 1628, paragraphs 20 and 21).

5. Another submission made by the learned counsel is that the applicant has been sent on deputation from Railways to the Ministry of Surface Transport under the Central Staffing Scheme which is beneficial to both the parties. He

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has, therefore, submitted that there is a reason for allowing the O.A. by which the respondents should be directed to allow the applicant to retain the Railway quarter till he is allotted a quarter from the General Pool.

6. The third argument advanced by the learned counsel for the applicant is that Paragraphs 8.1 and 8.8 of the Master Circular issued by the respondents dated 19.1.1993 (hereafter referred to as 'the Circular') are not applicable to this case. According to him, paragraph 8.1 of the Circular deals with cases of permanent transfer and states that a Railway employee has to be transferred from one station to another which necessitates change of residence and not otherwise. He has contended that in the present case the applicant has remained in one station, namely, New Delhi, when he has been sent on deputation from Ministry of Railways to the Ministry of Surface Transport. Paragraph 8.8 of the Circular under the heading "Deputation and Secondment in India" refers to an employee on deputation to another Ministry/Department of the Central and State Government in India, who may be permitted to retain the Railway quarter on the terms and conditions, as applicable in the case of an employee on permanent transfer. The learned counsel has submitted that under these provisions, unless and until there is a transfer from one station to another, the question of applying paragraphs 8.1 and 8.8 of the Circular does not arise nor they will apply to the present case. Learned counsel for the applicant has also relied on the judgement of the Supreme Court in S.C. Bose Vs. Comptroller and Auditor General of India & Ors. (1995 Supp (3) SCC 141). He has contended that as held by the Supreme Court in that case, the

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applicant should be allowed to retain the Railway quarter/accommodation till allotment of the accommodation from the General Pool.

7. I have seen the reply filed by the respondents and have also heard Shri E.X. Joseph, learned Sr. counsel for the respondents. Learned Sr. counsel has submitted that in the past, the respondents did indeed consider the request of the employees, who have been sent on deputation to other Ministries, for retention of the Railway quarters till allotment of the General Pool accommodation, which was beyond the period of eight months retention, after considering each case individually on merits. He has also submitted that the respondents have in some cases relaxed the extant instructions on merits of the case and allowed the officers to retain the Railway accommodation, which is what has happened in the case of the other 10 Railway employees relied upon by the applicant. Learned Sr. counsel has submitted that before any such request of the applicant for relaxation of the extant Rules/Instructions could be considered by the respondents, the Delhi High Court has passed an interim order dated 28.9.1999 and further clarified by order dated 13.3.2000 in a case. Having regard to these orders which have also been reproduced by the applicant in paragraph 4.6 of the O.A., he has submitted that the respondents are precluded from considering any further request of the Railway employees, like the applicant for further retention of the Railway quarter beyond the permissible period. These orders are passed by the High Court in the Writ Petition filed by the Federation of Railway Officers Association (FROA) against the respondents (CWP No.5057/99). In the interim prayer made by the petitioners in the High Court, they had prayed for a

direction to the respondents to make allotment of the Railway Houses in accordance with the existing rules, guidelines, criteria, circulars and office orders. It was in this context that the aforesaid orders were passed by the High Court as an interim measure. Learned Sr. counsel has submitted that the main prayer of the petitioners in the petition in the High Court is for cancellation of the irregular allotments and subsequent retention of houses to irregular/ineligible/unentitled allottees in violation of the existing guidelines and criteria. He has submitted that in view of the clarification issued by the Delhi High Court in its order dated 13.3.2000, which includes further retention of the Railway quarters, it would not be possible for the respondents to agree to the applicant's request. He has clarified that under the Circular issued on 19.1.1993, the respondents actually did not have any power of relaxation and that is one of the reasons that the High Court has passed the interim orders dated 28.9.1999 and 13.3.2000 in the aforesaid CWP.

8. With regard to the other 10 persons referred to by the applicant in paragraph 4.4 of the O.A., learned Sr. counsel for the respondents has submitted that the orders pertaining to them for retention of the quarter were issued prior to the aforesaid orders passed by the High Court. He has submitted that in the circumstances of the case, after the final order is passed by the High Court in the aforesaid pending Writ Petition, necessary action will be taken by the respondents with respect to those 10 persons in accordance with law. On the ground of discrimination, learned Sr. counsel has submitted that none of the orders pertaining to these 10 persons have been passed after the High Court's

interim orders and hence, the applicant cannot claim parity with those persons. In the present case, the applicant's period of retention in accordance with the rules/Circular expired on 22.3.2000, which is after the date of the High Court's order. He has, therefore, submitted that the question of discrimination would arise only when the other 10 persons with whom he is claiming parity are similarly situated, which is not the situation in the present case. He has, therefore, submitted that the respondents have not acted in any discriminatory manner but are required to follow the extant Rules, instructions and circulars, particularly in view of the High Court's order dated 28.9.1999. He has submitted that the judgement of the Supreme Court in S.C. Bose's case (supra) is distinguishable from the facts in the present case. In that case, the situation arose because of the abolition of the permanent cadre of Auditors in the same Department and the petitioners had been allotted the accommodation while they were in the Audit office. Apart from that, he has also submitted that in that case, the Hon'ble Supreme Court had noted that while one of the applicants had already been allotted Departmental General Pool accommodation, the other was also about to be allotted the same, which is not the position in the present case. According to him, the applicant's priority for allotment of General Pool accommodation is not something that will happen in the near future. He has submitted that the judgement in S.C. Bose's case (supra) will also not assist the applicant.

9. Regarding the contentions of Shri Shyam Babu, learned counsel, with regard to the applicability of Paragraphs 8.1 and 8.8 of the Circular, learned Sr. counsel for respondents has submitted that Paragraph 8.8 refers to

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deputation of Railway employees to another Ministry/Department and the terms and conditions are to be the same as applicable in the case of permanent transfer. He has submitted that the question of transfer from one station to another is not relevant to a Railway employee who is on deputation to another Ministry or Department for the purpose of retention of the Railway quarter which is to be governed by the terms and conditions of Paragraph 8.1 of the Circular. Therefore, on this ground also, he has submitted that the applicant's contention that the provisions of the Circular will not apply to him is without any basis. For these reasons, learned Sr. counsel has submitted that the O.A. may be dismissed and the interim order vacated.

10. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

11. The Circular issued by the respondents dated 19.1.1993 (Annexure R-I) deals with the subject of allotment of quarters and retention thereof. The main issue raised in this case is with regard to the right of the applicant to retain the Railway quarter allotted to him prior to his deputation to the Ministry of Surface Transport by order dated 27.7.1999 w.e.f. 6.9.1999 for a period of 5 years. Before proceeding with the matter, it will be relevant to quote the relevant portions of Paragraphs 8.1 and 8.8 of the Circular which read as follows:

"8.1 (a). A Railway employee on transfer from one station to another which necessitates change of residence, may be permitted to retain the railway accommodation at the former station of posting for a period of 2 months on payment of normal rent or single flat rate of licence fee/rent. On request by the employees, on educational or sickness account, the period of retention of railway accommodation may be extended for a further period of 6 months on

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payment of special licence fee, i.e. double the flat rate of licence fee/rent. Further extension beyond the aforesaid period may be granted on educational ground only to cover the current academic session on payment of special licence fee.

8.8 (a). An employee on deputation to another Ministry/Department of Central or State Government in India may be permitted to retain the Railway quarter on the terms and conditions as applicable in the case of permanent transfer".

Paragraph 8 of the Circular deals with the subject of retention of Railway quarters by Railway employees on occurrence of various events, such as transfer, retirement, etc. It is clear from a reading of Paragraph 8.8(a) of the Circular that what is provided in that paragraph is that a Railway employee who is on deputation to another Ministry or Department may be permitted to retain the Railway quarter on the terms and conditions as applicable in the case of those employees who are on "permanent transfer". The contention of Shri Shyam Babu, learned counsel, that because the expression "permanent transfer" is used in paragraph 8.8 (a), it will apply only if there is a transfer from one station to another cannot be accepted in the context of the terms laid down in these paragraphs. While paragraph 8.1 deals with permanent transfer of a Railway employee from one station to another, paragraph 8.8 deals with deputation of a Railway employee to another Ministry/Department of Central or State Government, for the purpose of retention of the Railway quarter on the same terms and conditions as applicable in the case of permanent transfer. Paragraph 8.1(a) provides that the Railway accommodation allotted to an employee may be retained initially for a period of 2 months on payment of normal rent and on request by the employees, on educational or sickness account, for a further period of 6 months on payment of special licence fee. On a plain reading of Paragraph 8.1(a) of the Circular, the further requirement as contended by

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applicant's counsel that there must be a change from one station to another ^{in 18.} ~~and it~~ does not apply the case of an employee on deputation ^{to another Ministry/Department 18.} in the same city, like in the present case, ^{as it 18.} is not borne out from the provisions of the Circular. Hence, this submission on behalf of the applicant is rejected as contrary to the provisions of the Circular.

12. Much emphasis has been placed by Shri Shyam Babu, learned counsel, on the fact that the respondents have acted in a discriminatory manner with regard to the applicant, as they have allowed the request of the other 10 persons mentioned in paragraph 4.4 of the O.A. to retain the quarter till allotment of the General Pool accommodation. It is settled law that discrimination will only apply in the case of similarly situated persons. In the present case, perhaps unfortunately for the applicant, the respondents had already passed the orders with regard to the other 10 persons prior to the Hon'ble Delhi High Court's orders dated 28.9.1999 and 13.3.2000. These orders read as follows:

"28.9.1999.

On request of Mr. Gangwani four weeks time is granted to file reply. Adjourned to 3rd November, 1999. In the meantime, the respondents are directed to make allotment only in accordance with the existing rules, guidelines, criteria, circulars and office order.

13.3.2000.

The interim order dated 28.9.1999 is to continue pending the petition. It is further clarified that interim order applies even to retention of quarters. Thus no person will be allowed to retain the quarters in violation of existing rules, guidelines, criteria and circulars".

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(Emphasis added)

13. The interim order of the High Court dated 13.3.2000 makes it amply clear that their earlier interim order dated 28.9.1999 applies even to "retention of quarters" and no person is to be allowed to retain the quarters in violation of the existing rules, guidelines, criteria and circulars. It has been pointed out that under the Circular dated 19.1.1993, there is no power of relaxation and admittedly in the cases of the other 10 persons, the respondents had erroneously exercised the power of relaxation. The erroneous exercise of power cannot be relied upon by the applicant to claim discrimination, especially when the High Court has clarified that the respondents are to make allotment only in accordance with the existing guidelines/circulars and office orders which also includes, "retention of quarters". It is noted that in terms of the provisions of paragraph 8.1(a) read with paragraph 8.3 of the Circular, the applicant's request for retention of the Railway quarter has already been allowed by the respondents. The contention of the learned counsel for the applicant that these provisions do not apply to the applicant's case is also untenable as the subject matter of this Circular, including the various provisions referred to above, clearly apply to the facts of the case. It is also relevant to note that the learned counsel has submitted that he has not challenged the validity of the Circular.

14. The orders passed in respect of the other 10 cases relied upon by the applicant have been passed prior to the High Court's orders (supra), that is in 1996 to 1998. I also see force in the submissions made by Shri E.X. Joseph, learned Sr. counsel for the respondents, that considering the prayer of the petitioners in the writ petition (CWP

5057/99) in the Delhi High Court, the question of cancelling the allotment of quarters with respect to these 10 persons will follow upon the final orders to be passed by the High Court. However, in the light of the clarificatory order passed by the High Court dated 13.3.2000, there is no doubt that the respondents have to consider the request for retention of the Railway quarters strictly in accordance with the existing rules, guidelines, criteria and circulars. In this view of the matter, the action taken by the respondents cannot be faulted and there is no merit in this application.

15. Shri Shyam Babu, learned counsel submits that at least till the time the Delhi High Court finally passes the order in the writ petition and further orders to be passed in respect of those 10 persons, the applicant may be allowed to retain the present quarter. I do not see any force in these arguments because such a direction to the respondents, at this stage, will be clearly contrary to the High Court's orders dated 28.9.1999 and 13.3.2000 and cannot be done. Therefore, this plea of the learned counsel for the applicant is also rejected. In the facts and circumstances of the present case, the judgement of the Hon'ble Supreme Court in S.C. Bose's case (supra) will also not assist the applicant. Under the relevant provisions of the Circular dated 19.1.1993, the period of retention of the Railway quarter by the applicant, who is on deputation to the Ministry of Surface Transport can be considered and allowed as per the existing rules, guidelines, criteria and circulars, as ordered by the Delhi High Court. The contention of the learned counsel for the applicant that as the Memorandum dated 27.7.1999 did not contain the provision that the applicant will not be allowed to retain the Railway quarter,

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it, therefore, shows that he can retain the same till the end¹⁸.
of ^{the 18} deputation or till the allotment ¹⁸ of the ~~right of the~~
~~provision of the~~ General Pool accommodation, is untenable
for the reasons given above and is accordingly rejected.

16. In the result, for the reasons given above, as
there is no merit in this application. O.A. is accordingly
dismissed. Interim order dated 21.7.2000 stands vacated. No
order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'