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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1554 of 1989
T.A. No.

DATE OF DECISION 7.12.1989

Harinder Singh _____ Applicant (s)

Shri O.P. Gupta _____ Advocate for the Applicant (s)

Versus

Union of India & Others _____ Respondent (s)

Shri M.L. Verma, _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Harinder Singh, a Running Goods Clerk, and posted in Control Central Railway, New Delhi. His father, Shri Jagjit Singh, was living in Railway Quarter No. 161/6, Thompson Road, Railway Colony, New Delhi, who retired on 30.6.1988. His father was permitted by the Railways to retain the quarter upto 28.2.89. The applicant was appointed to the Railways and he joined the Railways on 16.4.88 in the R.T.R. Office in New Delhi. His case is that he has been sharing accommodation with his father eversince he was born and as he has been a Railway employee since 16.4.88 and is eligible for Government accommodation of the same type as was allotted to his father, the accommodation which he is sharing with his father should be regularised in his name and that he should not be evicted according to the impugned orders as his father was allowed to retain the house till 28.2.1989. It is his case that no house rent allowance is being paid to him eversince he joined the service.

2. The respondents in their counter have stated that the applicant has not come to the Tribunal with clean hands as Respondent No. 4, who is father of the applicant, was allowed to retain the house upto 28.2.89

on condition that he could keep it only upto 28.2.89 and that it would not be extended further. Respondent No. 4 could retain the house only for four months on normal rent and after that he had to pay double the normal rent. The respondents have pointed out that the relations of Government servants eligible for Railway accommodation should have been sharing accommodation with the retiring Railway servant for at least six months before the date of retirement, if he is eligible for the same type of accommodation. The father of the applicant was informed in terms of Railway Board's letter dated 30.6.86 about the conditions of extension of the accommodation in his favour. He was also advised to vacate the quarter after the expiry of the date of permission (28.2.89) failing which action would be taken under the P.P.Act. The respondents have stated that Shri Jagjit Singh is in unauthorised occupation of Railway quarter and his gratuity and passes have been withheld.

3. The learned counsel for the respondents also stated that the cases under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 cannot be taken up by this Tribunal at present as the jurisdiction of this Tribunal has to be decided by the Hon'ble Supreme Court. The learned counsel for the applicant stated that this is not a case under the P.P.Act. His prayer is for regularisation of the quarter under the Railway Instructions. His case is not against his eviction from the quarter. Although he has come to the Tribunal against the apprehension of being evicted, but his main case is that he is entitled to continue in the Railway accommodation which was in occupation of his father. He is not concerned with any action which may be taken against his father in the matter.

4. Shri O.P. Gupta, counsel for the applicant, cited Railway instructions dated 25.6.66 which state as follows:

"When a Railway servant who has been allotted Railway accommodation retired from service or dies 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 is a railway servant eligible for Railway accommodation and has been sharing accommodation with the retiring or deceased railway servant for at least six months before the date of retirement or death."

He said that the Railway instructions do not say that a person should have been a Railway officer for six months and sharing accommodation for at least a period of six months. The rule can be divided into two parts:

- (i) at the time of demise of the railway servant, his/her son, daughter, wife, husband or father, should be a railway servant entitled to the same category of accommodation and
- (ii) that he should have been sharing accommodation for at least a period of six months prior to the demise or retirement of the railway servant.

In this case, both the conditions are fulfilled. Besides, the question of sharing Railway accommodation as a Railway servant for a period of six months would not arise. The applicant joined the Railway service on 16.4.88. The learned counsel for the applicant also cited two judgments in this regard:

S.L.R. 1986(3) - 618 - R.P. Goel and another Vs. Union of India and others.

In this case, the Delhi High Court held that "in case a person is appointed to Government service within a period of three years preceding the date of retirement or had been transferred to the place of posting of the retiring Govt. servant any time within the preceding three years, the date on which he was so appointed or transferred would be the date applicable for the purpose."

S.L.R. 1983 (1) - 277 - Sukhdev Singh Vs. The Union Territory of Chandigarh and another.

This case related to a person governed under the Chandigarh House Allotment Rules which came into effect on 3.4.1974 whereas the applicant's father had retired on 1.4.1974. The contention of the respondents in that case was that these Rules were not applicable retrospectively, but the Punjab & Haryana Court held that since the petitioner was legally in possession of the house on the relevant date, the petitioner would have a right for allotment under the Chandigarh House Allotment Rules.

5. In the present case, since the applicant's father had been allowed retention of the Railway accommodation till 28.2.1989, he was in legal possession of the same and in terms of the Punjab & Haryana Court's ruling in Sukhdev Singh's case it becomes relevant that the period between 30.6.88

and 28.2.89 will also be counted and since the applicant was appointed in the Railway service on 14.4.1988, the period of six months is also covered although strictly speaking it is not necessary for this period of six months to qualify under the Railway instructions.

6. I agree that if a person is appointed to Railway service within six months of a retiring Railway servant, then that date becomes relevant for the purpose of regularisation of a house. As far as the question of permission of sharing of accommodation is concerned, it has been stated by the respondents that no such permission was granted and in the absence of any such permission, the question of regularisation of accommodation would not arise. To this the learned counsel for the applicant has quoted Rules for the sharing of accommodation allotted to Railway employees on the Northern Railway which may be made applicable to other railway employees. Conditions when sharing is permitted are in cases of (a) a railway servant who is eligible for accommodation from the railway pool; (b) a close relative; (c) friends in very special cases, including officials of other Government Departments. In such cases, it would be obligatory for the allottee to apply for sharing of accommodation to the competent authority. He said that this permission would not be necessary in the case of a son as the Railways instructions as mentioned in letter of 25.6.66 provide specifically the cases of son, daughter, wife, husband or father who are sharing accommodation and the instructions do not provide for specific permission in such cases.

7. I have gone through the pleadings and the arguments by the learned counsel on both sides. While it is true that this Tribunal will not at present have jurisdiction to try cases under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, but this is a case for regularisation of Railway accommodation under the Railway rules. No action has so far been started under the P.P. Act and we are dealing at the moment only about the question whether house No. 161/6, Thompson Road, Railway Colony, New Delhi, could be regularised in the name of the applicant. The Railway Board's instructions in letter dated 25.6.66 dealing with the subject of regularisation of allotment of Railway quarter in the name of dependents of a railway servant who retires from or dies while in service mention clearly that the son of a retiring father may be allotted Railway

accommodation on out-of-turn basis provided he is a Railway servant eligible for Railway accommodation and has been sharing accommodation with the retiring Government servant for at least six months before the date of retirement. It is not in dispute that the applicant is eligible to the same type of accommodation which was allotted to his father. Nor is it in dispute that he has been sharing accommodation with the retiring father for more than six months. What has been brought out is that such accommodation was not shared by the applicant for at least six months as a Railway servant. It is possible that the intention of the Railway Board's instructions of 25.6.1966 was to help only such persons who had put in at least six months as Government servants, but such an interpretation would not apply in the case of Railway servants who die in service as accommodation would be then given to a dependent on compassionate grounds.

With 25.6.1966
 The present letter puts both retirement and death in the same sentence and, therefore, the Courts would not give any different interpretation in the case of a retiring or a dying Railway servant. It will be a narrow and technical interpretation of rules if the question of sharing is stretched to include that six months period should have been as a Government servant and that specific permission should have been given although once the house rent allowance has not been paid to the applicant, such permission can also be presumed. In the circumstances, it appears to be a fit case where the Railway authorities may regularise the quarter in favour of the applicant. The application is disposed of accordingly. There will be no orders as to cost.

B.C. Mathur
 (B.C. Mathur)
 Vice-Chairman