

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 285
T.A. No.

1989

DATE OF DECISION 21.8.1989.

Gauri Shanker Shukla & Another _____ Applicant (s)

Shri B.B. Rawal _____ Advocate for the Applicant (s)

Versus

Union of India & Others _____ Respondent (s)

Shri S.N. Sikka _____ Advocate for the Respondent (s) 1 and 2.

CORAM : Mrs. Rajkumari Chopra, counsel for respondents No.3.

The Hon'ble Mr. B.C. MATHUR, VICE-CHAIRMAN

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 Gauri Shanker Shukla, retired Asstt. Central Intelligence Officer, Intelligence Bureau, and Shri Pramod Kumar Shukla, Senior Ticket Collector, Northern Railway, New Delhi, against impugned orders No. EC/141/ADA/LIT/1988-III dated 29.6.89 passed by the Estate Officer, New Delhi, regarding notice under sub-section (1) and clause (b) of sub-section (2) of Section (4) of the Public Premises (Eviction) of Unauthorised Occupants Act, 1971, for starting eviction proceedings for unauthorised occupation of house No. 481, Sector 8, R.K. Puram, New Delhi.

2. Brief facts of the case, as stated by the applicants, are that applicant No.1 (Shri Gauri Shankar Shukla) after having put in nearly 39 years of service retired from the Govt. of India service and requested that either his Govt. accommodation from General Pool be allotted to his son, Shri Pramod Kumar Shukla (Applicant No.2), employed as Senior Ticket Collector in Northern Railway New Delhi or the Railway authorities should allot him an alternate accommodation from the Rail-

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way pool on reciprocal basis. Applicant No. 1 joined the Central Government service of Intelligence Bureau, New Delhi, on 13.3.70 on deputation from the MP Police and was subsequently absorbed into the Government of India service. On his posting to Delhi, in June 1970, he was allotted General Pool accommodation under the control of the Directorate of Estate - Qr. No. 481, Sector 8, R.K. Puram, New Delhi, where he continued to reside till date. He retired on 31.1.88 and was allowed to retain the Govt. accommodation by the Directorate of Estates till 31.5.88. Before his retirement, the applicant submitted two separate applications dated 25th January 1988 addressed to the Secretary, Railway Board, and the General Manager, Northern Railways, requesting that his son (Applicant No.2), who is also a Central Government servant being in Railways, may kindly be allotted accommodation in Delhi Railway Pool on reciprocal basis after his retirement. He also submitted that his son was ready to refund the amount of House Rent Allowance which he drew. Both these applications were duly forwarded and recommended by the I.B. (Annexure A-1). Applicant No. 2 joined the service of Indian Railways in the year 1982 and was posted at Mughalsarai upto May 1983 from where he was transferred to Delhi and to New Delhi on 17.10.88. He too submitted a representation through proper channel to the General Manager, Northern Railways on 25th January, 1988 i.e. a week before the retirement of his father from Govt. service about the allotment of Railway accommodation to him on reciprocal basis. He also submitted that he was ready to refund the HRA drawn by him in the event of his request being acceded to. The applicant No. 2 also submitted an application for allotment of Railway quarter on medical grounds on 30th January, 1988 but the General Manager, Northern Railways, replied vide his letter dated 13th April, 1988 asking the applicant to submit a medical certificate from Medical Superintendent, Delhi, or Chief Hospital Superintendent, Northern Railways Central Hospital, New Delhi, indicating the nature of illness with specific recommendation for allotment of quarter in his favour. The applicant No.2 submitted another representation on 10th May 1988 in which he stated that he had applied only on the ground of injury on account of Oleum gas leak for which there were no better medical

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facilities and authority other than the A.I.L.M.S. which treated him alongwith other gas victims on the direction of the Supreme Court and that the Railways have not got even the comparable facilties. Applicant No.2 also made a representation to the Hon'ble Minister of State for Railways for out of turn allotment of accommodation on 27th April 1988 giving the background of his injury by gas leakage. (Annex. A-7). Applicant No. 1 also made a representation to the Hon'ble Minister for Urban Development, with a copy to the Secretary, Railway Board on 27th April, 1988. Whereas the Railway authorities kept mum, the Directorate of Estates cancelled the allotment of the General Pool accommodation of Applicant No.1 vide letter dated 29th June, 1988 with effect from 31st May, 1988. Applicant No. 1 was directed to attend, if he desired, or present himself before the Estate Officer on 24.10.88 on which date the same was adjourned to 20.1.89 and again to 18.2.89. Meanwhile the wife of Applicant No. 1 suffered a serious set back to her physical condition and Applicant No.1, therefore, requested the Directorate of Estates for permission to retain the accommodation for two more years on medical grounds against which he was given an extension of four months and the same application is stil pending decision.

3. Even though the Railway authorities are keeping quite thereby making both the applicants suffer, there are a number of precedents wherein the Railway authorities have allotted accommodation on reciprocal basis or else the railway employees were allowed to continue in General Pool accommodation under Directorate of Estates on super-annuation of their parents. The examples cited by the applicant are:

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1. Shri Dharam Dev, permanent employee of Northern Railways was allowed General Pool accommodation at Qr. No. 151, Sector 12, R.K. Puram.
2. Shri I.K. Khanna, a clerk in Pay & Accounts Office, Northern Railways, has been allotted the General Pool accommodation occupied by his father. Shri R.L. Khanna, who retired as Section Officer in the Railway Board.

4. The grounds urged by Applicant No. 1 are that the non-allotment of accommodation to his ward on reciprocal basis, who is a gas victim, will amount to negation of the Fundamental Rights of equal opportunity before law under Article 14 of the Constitution. The insistence on the medical certificate of only a Railway doctor betrays the bureaucratic red-tape and a lack of humanitarian approach to the suffering employees.

5. The respondents in their reply have stated that the application is barred under Section 20 of the Administrative Tribunals Act, 1985, as the matter is still pending before the Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. and the proceedings are pending final decision and the applicant without waiting for the final decision has moved the Tribunal. As such the application merits dismissal in limine itself. The applicant has *prima facie* no case. There is no such provision for inter-pool adjustments between the General Pool accommodation and other Departments Pool accommodation. Therefore, the relief claimed by the applicant is not tenable.

6. The policy of the Government regarding allotment/regularisation of General Pool accommodation in the name of dependents of retired Govt. servants is that when a Govt. servant, who is an allottee of General Pool accommodation retires from Govt. service, his/her son, unmarried daughter or wife/husband, as the case may be, may be allotted an accommodation from General Pool, provided such Govt. servant is employed in eligible office and had been continuously residing with the Government servant for the last three years immediately preceding the date of his/her retirement. In case, however, a person is appointed to Govt. 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. Eligible Office means the Central Govt. office the staff of which has been declared by the Central Government as eligible for accommodation under SR-317-B-1(e) of the Allotment of Govt. Residence (General Pool in Delhi) Rules, 1963. The office of the applicant No.2, namely, Northern Railway, is not eligible for

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allotment of accommodation from General Pool. There is no inter-pool adjustment between different departments who have their own pool of accommodation which are maintained for exclusive use of the employees of the concerned department. As the department of the Applicant No. 2 has got their own pool of accommodation, on retirement of Applicant No. 1 having General Pool accommodation No. 481/S-VIII, R.K. Puram, New Delhi, the applicant No. 2 is not entitled for allotment/regularisation of the accommodation in his name. The mere fact that the applicant No. 2 was residing with Applicant No. 1 for some time and he is prepared to return to H.R.A. drawn by him does not entitle the Applicant No. 2 to get the public premises No. 481/S-VIII regularised in his name. Applicant No. 1 has already been allowed to retain the accommodation for the period of four months as admissible under the rules. His request for retention of accommodation for two years is unreasonable and not covered under the rules.

7. As regards the case of Shri Dharam Dev, an employee of Northern Railway, the respondents have submitted that he was on deputation to Railway Board. While, he was working in the Railway Board, he was allotted quarter No. 151/S-XII, R.K. Puram, New Delhi, but the same was cancelled in his name with effect from 30.12.82 on his reversion to his parent office, the Northern Railway. On his failure to vacate the accommodation, eviction proceedings were taken^{up} and the eviction order was passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which he challenged by way of writ petition in the High Court of Delhi and later on transferred to the Tribunal. However, Shri Dharam Dev vacated the quarter on 31.5.88.

8. As regards Shri I.K. Khanna, the respondents have submitted that the applicant has not given full details of the Govt. accommodation and, therefore, no information is furnished.



9. The case of the applicants is that it is a fundamental right of the applicants under Article 14 of the Constitution to get accommodation allotted to Applicant No.1 regularised in the name of Applicant No.2 on reciprocal basis on the ground that a retiring officer's son must always get accommodation of the retiring father or in the alternative Railways must allot a quarter to Applicant No.2 on priority basis on medical grounds. Applicant No.2 had suffered from Oleum Gas leakage from Shri Ram Urea, Delhi, while on duty at the Old Delhi Railway Station in December, 1985. He was examined by the various doctors and also at the All India Institute of Medical Sciences on the direction of the Hon'ble Supreme Court before whom the application of all gas sufferers is pending. The Supreme Court has ordered the respondents (Shri Ram Mills) to deposit a huge amount towards the gas leakage sufferers. The applicant also stated that the Railways have transferred Applicant No.2 for malafide reasons and that that case should be clubbed with this case and heard together. While Applicant No.2 has obtained a stay order against his transfer from this Tribunal, it was not considered necessary to hear the two cases together as the allotment or regularisation of a house has to be heard on its own merits and does not depend on a subsequent transfer or otherwise of Applicant No.2. On 16.8.89, when the case was finally heard, the learned counsel for the applicants further argued and also filed ^A rejoinder that the case of the applicants had been taken up with the Minister for Urban Development as well as Railways and that the applicants were allowed to retain the house for a period of four months according to rules. He also gave details of the file in which the Minister of State for Railways has considered the case of Applicant No.2 for allotment of a house on priority basis and he said that the Railways are not producing ^{ing} that file. He also gave details of the house allotted to Shri I.K. Khanna and also to Shri H.L. Pathak, Additional PS to Shri Tewari who had been allotted quarters from Railway pool although they were not entitled to the same and wanted production of those files. It has also been stated by the applicants that the respondents were not producing Shri H.R. Bhagat before the court and were exerting influence on him not to appear before the court although Shri Bhagat, a retired Deputy Director (Welfare)

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of the Railway Board had informed the applicant that while he was Deputy Director, he had allotted many quarters on reciprocal basis and the present application before the Tribunal had actually been filed by the applicants at the instance of Shri Bhagat.

10. I have gone through the pleadings and have also given careful consideration to the arguments by the learned counsel on both sides. As far as respondent No. 4, Shri H.R. Bhagat, is concerned, he is a retired Deputy Director of the Railway Board and it is not clear how and why he can be intimidated by the respondents. He was made but a respondent if he chooses not to file a reply or make any deposition before the Tribunal, he cannot be forced to do so. No malafide against any senior Railway Officer or respondents has been alleged. Merely because the respondents have not been able to accede to the request of Applicant No.2 to allot a house on priority basis, it cannot be presumed that they will go to the extent of preventing a retired officer from bringing out the rules which the respondents have denied. It has been specifically stated on behalf of the respondents that there is no provision for inter pool adjustment between General Pool and Railway Pool accommodation. In the absence of any rule or authority quoted by the applicants, I have to accept the statement made by the respondents. I also see no justification for calling for the files in which the Ministers have dealt with the applications of the applicants. It has been stated that the Minister for Urban Development has allowed retention of the house for a period of four months. This is strictly according to rules which permit a retired Government servant to retain the house for four months after superannuation. In fact, an officer after retirement can retain a house for a further period of four months under certain conditions but the decision in such matters has to be taken by the authorities concerned according to rules. The applicants have represented to the respondents and the Ministers concerned directly and through a Member of Parliament and it is for the Ministers to take decisions on such matters. The plea that the respondents are not acting on the orders or advice of the Minister has to be taken up with the Minister concerned. There

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is also no averment that the Minister has passed any orders in favour of the applicant which the respondents are not executing.

11. Applicant No. 2 suffered from Oleum gas in 1985. If any compensation has to be paid to the gas victims, perhaps he would also be eligible to get the same. At the time of the gas leakage, he was not living in a Railway quarter or in the house allotted to his father, Applicant No.1.

12. As far as the regularisation of a quarter in favour of the son of a retiring Government servant is concerned, the policy has been pointed out in para 6 of this judgment. In the case of accommodation from General Pool, the Government servant employed in an eligible office should have been residing continuously with the retiring Government servant for the last three years immediately preceding the date of his retirement. In this case, the period of living together is much shorter. Besides, an eligible person would mean a person eligible for accommodation under the General Pool. As the applicants belong to different offices not eligible to the same pool of accommodation, clearly regularisation cannot be done under the rules.

13. I am not clear of the circumstances under which the General Pool accommodation has been allotted to Shri I.K. Khanna and Shri H.L. Pathak. The case of Shri Dharam Dev has been satisfactorily explained by the respondents. Even if it is accepted that Shri Khanna and Shri Pathak have been given accommodation in relaxation of the rules, it is admitted that Government have the powers to relax rules, but such relaxation has to be allowed by the competent authority and it is not for a court to direct the respondents to allot a house in relaxation or against the rules. It is for the competent authority to examine such cases and decide whether a relaxation is warranted and whether such relaxation is permissible.

14. In the circumstances, there is no alternative but to reject the application, but I leave it to Respondent No.2 to consider the case of Applicant No.2 for allotment of a Railway quarter to him on sympathetic grounds. The application is disposed of accordingly.

No order to crack

Dr. Mathew
21.8.89.