

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1595
T.A. No.

1989.

DATE OF DECISION November 21, 1989.

Smt. Lalita Rani Petitioner

Shri G.D.Gupta, Advocate for the Petitioner(s)

Versus
Union of India and Another

Respondents

Shri P.H.Ramchandani, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice, Chairman (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to other Benches? *No*

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

Amitav Banerji
(Amitav Banerji)
Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 752/ 1989.

DATE OF DECISION November 18, 1989.

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Sh. Joginder Singh & Anr. Applicant (s)

Shri B.S. Mainee Advocate for the Applicant (s)

Union of India Versus
Respondent (s)

Shri C.N. Meelri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. To be circulated to all Benches of the Tribunal ? No.

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for quashing the impugned order dated 21.3.1989 (Annexure A-1 to the application) and for a direction to the respondents to regularise Quarter No.127/11, DCM Railway Colony, Delhi, which was allotted to applicant No.1 while he was in service, in favour of the applicant No.2 who is his married daughter. In the impugned order dated 21.3.89, the applicant No.1 was asked to vacate the above said quarter and was also intimated that damage charges / penal rent, as mentioned therein, is recoverable from him with effect from 1.3.89, in addition to the disciplinary action which will be taken against him. It was further intimated that after expiry of the notice period, electric and water supply will be disconnected and that for the period of unauthorised retention of the Railway quarter, one set of post retirement passes will be disallowed.

Decided:

2. The relevant facts of the case, in brief, are that the applicant No.1 retired on superannuation on 30.6.1988 and was allowed to retain the residential accommodation allotted to him upto 28.2.89. Applicant No.2 is the daughter of applicant No.1 and is working as Accounts Clerk in the Accounts Office of Northern Railway, at Kishanganj, Delhi. She is entitled to the same type of accommodation which was allotted to the applicant No.1. The case of the applicants is that applicant No.2 started living with the applicant No.1 from December, 1987 and advised the FA&CAO to effect necessary recovery of the house rent allowance amounting to Rs.250/- from her salary w.e.f. December, 1987. She also advised him that sharing permission was being applied for (Annexure A-3 to the application). Recovery of house rent allowance from the salary of the applicant No.2 was started from December, 1987. Applicant No.1, vide his application dated 11.2.88 applied for sharing residential accommodation with his daughter and the said permission was granted by the competent authority vide their letter dated 18.2.1988. The request for regularisation of the quarter in favour of applicant No.2 was made in May, 1988 and subsequent thereto also, but the request has been rejected. The main ground for challenge is that the impugned orders are discriminatory and mala-fide. On the plea of discrimination, four cases have been cited where accommodation was regularised in the names of married daughters / daughters-in-law.

3. The respondents have contended that the application is bad for misjoinder of parties inasmuch as that applicant No.1 has no right or interest in the subject-matter of the application and is not a necessary or a proper party. On this point, M.P. No. 2284/1989 was also filed on behalf of the respondents on 23.8.89, which was directed to be taken up at the time of final hearing. They have denied that the applicant No.2 had taken the permission to share the accommodation with her father in December, 1987. It has also been pleaded that there was no formal order for recovery of any

house rent allowance from the pay of applicant No.2. The case of the respondents is that the applicant No.2 is not entitled to regularisation of the quarter allotted to her father during his service in her favour in accordance with the rules on the subject.

4. I have carefully gone through the pleadings of the case and have also heard the learned counsel for the parties.

5. Both parties have relied on Rule 9 of the Rules in regard to Railway Quarters (published on pages 403-404 of Railway Establishment Rules & Labour Laws 1989-90 Edition by Shri B.S. Maine). This rule is reproduced below: -

"(9) Allotment of quarter on retirement or death:- On retirement or death of a Railway servant his/her quarter may be allotted to his/her serving son/daughter/husband/father out of turn, provided the said relation is eligible for Rly. accommodation and had been sharing the accommodation with the retiring/deceased Railway servant for at least six months before the date of retirement or death. The same residence may be regularised in the name of the relation if he/she is eligible for a residence of that type or a higher type. In other cases the said relation may be allotted a residence of his/her entitled type or a type next below. (R.B's No.E (G) 66 Q.R.-1-11 of 25-6-66 & E(G) 69 Q.R-2 of 20-1-69).

NOTE:- In cases where the retiring employee or a member of his family owns a house in the place of his/her posting, the specified relative will not be eligible for allotment of railway quarters on "out of turn" basis as above. (R.B's No. E(G)78 Q.R-23 dated 19-12-81).

In case of employees who have been allotted Railway accommodation and die in service and whose son/daughter/wife/husband/father/mother is given employment on compassionate grounds, allotment of quarters to such person may be made on ad-hoc (out of turn) basis if otherwise eligible in terms of the above. (R.B.'s No. E(G) 75 Q.R.-1-23 of 29-11-77).

The married daughter and daughter-in-law of retiring/deceased employee is not eligible for ad-hoc out of turn allotment. (R.B's No.E(G) 82 Q.R.-1-23 Dt. 27.12.82). If the specified relative had been sharing H.R.A. suppressing the fact of sharing the accommodation with

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his/her relative, there is no question of accepting refund of H.R.A. to make him eligible for quarter allotment. He may also be taken up under D&A Rules. (R.B's No. E(G)78 Qr.1/225 dated 1.2.82)."

A perusal of the above rule would show that a married daughter and daughter-in-law of retiring/deceased employee is not eligible for ad-hoc out of turn allotment, and that where the daughter is eligible for Railway accommodation, it must be shown that she has been sharing the accommodation with the retiring Railway servant for at least six months before the date of retirement. The learned counsel for the applicant argued at the bar that the applicant No.2 has been sharing accommodation with the applicant No.1 since December, 1987 inasmuch as she was living with him since that time. On the other hand, the learned counsel for the respondents argued at the bar that mere residence is not enough and that permission for sharing accommodation to be granted by the competent authority is essential. Under Rule 12, subletting of Railway quarter without the approval of Head of Office is an offence and the staff concerned is required to be dealt with suitably.

6. It is not in dispute that applicant No.1 retired on superannuation on 30.6.88. It is stated in para 4.7 of the application that applicant No.1 made an application for sharing the Railway accommodation No.127/11, DCM Railway Colony, Delhi with his daughter Smt. Gurmeet Kaur and the said permission was granted by the competent authority vide their letter dated 18.2.1988. From this averment, two things are clear, namely, that a sharing permission was required and that the sharing permission was granted vide letter dated 18.2.1988. Thus, it can be clearly stated that the applicant No.2 could not have shared the Railway accommodation with the applicant No.1 for a period of at least six months before the retirement of the applicant No.1 on 30.6.1988. Thus, this prescribed condition is not fulfilled in this case.

7. The applicant No.2 is a married daughter of the applicant No.1 and she is not eligible for 'ad-hoc out-of-turn allotment in accordance with the rules quoted above. However, in the application, two cases have been cited where quarters in favour of married daughters had been regularised after the retirement of their fathers. These were not disputed by the learned counsel for the respondents, but he asserted that the prescribed condition of recovery of rent and sharing of accommodation for a minimum period of six months must have been fulfilled in those cases. There is nothing on the record to show that in those two cases, the facts were similar to the facts of the case before me. In the absence of necessary details, the plea of discrimination cannot be accepted.

8. The applicants have also taken the ground of mala-fide. No particulars of alleged mala-fide have, however, been given; nor is there anything on the record to substantiate the alleged plea of mala-fide.

9. Neither party has shown to me definition of the term 'share' or 'sharing' in the Railway Rules. However, in the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, 'sub-letting' includes sharing of accommodation by an allottee with another person with or without payment of licence fee by such other person. In the explanation, it is mentioned that any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting. Married daughter is not treated as a close relation for this purpose (Note below sub-clause (e) under 'Definition' on page 654 of Chapter 69 of Swamy's Complete Manual on Establishment and Administration for Central Govt. Offices (Second Edition). The daughter after marriage is no more a member of the family of her father as she would not ordinarily be residing with and dependent on her father. Moreover, the term 'sharing' definitely connotes something more than merely residing with. In any case, as per rule 12 quoted above, a specific permission is required for sharing

accommodation, which in this case was applied for on 11.2.88 and granted vide letter dated 18.2.88 as per averment of the applicants in para 4.7 of the application.

10. In view of the above discussion, the application is devoid of merit~~s~~ and is accordingly dismissed. With the dismissal of this C.A., any interim order passed in this case stands vacated. The parties shall bear their own costs.

(P.C. JAIN)
MEMBER