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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1156 of 1986 198
T.A. No.

DATE OF DECISION 5.2.1988

____ Shri Anil Kumar _____ Petitioner

____ Shri G.D. Bhandari & _____ Advocate for the Petitioner(s)
Shri O.P. Gupta

Versus

____ Union of India _____ Respondent

____ O.N. Moolri _____ Advocate for the Respondent(s)

CORAM :

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 ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *seen*

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Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. O.A. 1156 of 1987 Date of decision 5.2.1988

Shri Anil Kumar Applicant

Vs.

Union of India, Through
its General Manager, Northern
Railway, New Delhi. Respondents

PRESENT

Shri G.D. Bhandari and
Shri O.P. Gupta ... Advocates for the applicant.

Shri O.N. Moolri ... Advocate for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act against impugned orders No. 159/EO/17-243 dated 29.9.1986 passed by the DSE Estate, Northern Railway, New Delhi, rejecting the request for regularisation/allotment of the railway quarter No. 309/3, Railway Colony, Shakur Basti, Delhi, on the retirement of his father Shri Narain Dass.


2. Brief facts of the case are that the applicant joined the Northern Railway as Khallasi as casual labour and on completion of 120 days on 31.3.1978 he acquired the status of temporary Railway servant and was regularised with effect from 31.8.1982. The father of the applicant Shri Narain Dass was also a class IV employee and in that capacity was allotted quarter No. 309/3, Railway Colony, Shakur Basi, Delhi, and the applicant has been living with his father in this quarter and continued therein after his retirement in token of which applicant's House Rent Allowance was also stopped. Thus the house stood regularised in his name by the operation of Railway Rules, copy of which is at Annexure 'C'. The respondents filed an application before the Estate Officer towards the end of 1986 under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction against the father of the applicant but no notice

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as required under Section 4(1) of the Act was given to the applicant or even to his father although the respondents had the knowledge of the fact that the quarter was in possession of the applicant. The proceedings were decided against Shri Narain Dass, the father of the applicant, but they ^{were} not binding ~~on~~ ^{the} applicant as he was not a party to the proceedings. The applicant had moved the General Manager for letting him continue in the house as his mother was a cancer patient and the General Manager wrote to the DSE (Estate) to stay the eviction proceedings for a month, also requesting that the request for allotment of a quarter to the applicant may be reviewed keeping in view that the applicant's mother was a cancer patient.

3. The learned advocate for the applicant filed a copy of the judgment passed by this Tribunal under OA 402 of 1986 in the case of Miss Pinki Rani Vs. Union of India and others where the applicant had been appointed as Office Clerk on 29.5.85 on compassionate grounds while her father had passed away on 14.9.1978 while in service. In that case, the Tribunal held that since the applicant had been given employment on compassionate grounds, the eligibility of the applicant for allotment of house stood established and her application was allowed.

4. The respondents in their reply have stated that the applicant is a trespasser and in unauthorised occupation of the premises. His application is barred by Res judicata. The applicant along with his father had filed a Civil Writ No. 2235 in Delhi High Court in 1983 claiming to retain the quarter and this Civil Writ was dismissed by the High Court on 31.8.84. The High Court had ordered that petitioner and his father should vacate the quarter within a period of three months from the date of the order. As such, he cannot have any claim at this time. The learned advocate for the respondents has argued that when the applicant had filed a writ petition before the High Court in 1983 and had agitated all the points and the writ was rejected, he cannot now come to the Tribunal as no




appeal lies before the Tribunal on any order passed by the High Court. The applicant has suppressed this material fact of rejection of his writ by the High Court. All the pleas now taken by the applicant were available to him when he filed this petition before the High Court. The letter of the General Manager to the Estate office was only recommendatory in view of the applicant's mother suffering from cancer, but there was no order as such. He also said that the case of Miss Pinki Rani is completely on a different footing as she was appointed on compassionate grounds on the death of her father. In the present case, the applicant's father, Shri Narain Das, had retired from service on 31.1.1980 whereas the applicant was appointed in the Railways on 31.1.1982 at Lucknow. The applicant resumed duty in Delhi on 4.7.1983 only and, therefore, could not share quarter with the father or forego ~~the~~ house rent allowance at least for six months prior to the date of retirement of the father with proper permission from the competition authority.

5. The learned advocate for the applicant said that Section 3(7) of the Railway Act defines a railway employee and the applicant's case comes under the category of railway employees and since the house rent allowance was stopped in the case of the applicant, the Railways recognised his position and, therefore, he cannot be evicted from the house without following the formalities prescribed under the law. His case is that since he was not a party to the eviction proceedings and no notice was given to him, he cannot be evicted from the house.

6. After going through the pleadings and arguments at bar, I feel since the question of retention of the house by the applicant and his father has already been decided by the Hon'ble High Court, Delhi, in 1984, this question cannot be taken up once again before the Tribunal. As the High Court had already rejected the petition of the applicant and his father, the case is covered under *Res judicata* and the application cannot, therefore, be entertained by this Tribunal. In view of this it is not necessary to go into the

question whether the competent authorities have followed the prescribed procedure for eviction. That is beyond the scope of this Tribunal. In the circumstances of the case, the application is rejected. There will be no order as to costs.


(B.C. Mathur)
Vice-Chairman 5/2/8