

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1781/90
T.A. No.

199

DATE OF DECISION February 22, 1991

<u>Shri Anil Bhalke</u>	Petitioner Applicant
<u>Shri Umash Mishra</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India & anr.</u>	Respondents
<u>Shri P.S. Mahandru,</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman(J)

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

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. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. P.C.JAIN, MEMBER)

Aggrieved by the refusal of the respondents to regularise Quarter No.167/7 Kishan Ganj, Railway Colony, Delhi, which had been allotted to his father while the latter was in service, in his name, the applicant in this application under Section 19 of the Administrative Tribunals Act, 1985 has prayed for a direction to the respondents to allot the aforesaid quarter in his name.

2. The relevant facts, in brief are that the applicant was appointed, on compassionate grounds, as Clerk-M.Clerk on 12.1.1990 after his father, who was working as Office Superintendent-II was retired on medical grounds on 24.5.1989. Quarter No:167/7, Kishan Ganj, Railway Colony, Delhi was allotted to his father while he was in service. The applicant

applied vide his application dated 27.1.1990 for regularisation of the aforesaid quarter in his name (Annexure C). The request for regularisation was rejected vide letter dated 25.5.1990 as the father of the applicant had his own house in Delhi area (Annexure D). These facts are not disputed.

3. The applicant's case is that he was residing with his father in the aforesaid Railway quarter since his birth and was not claiming any House Rent Allowance from the date of his appointment. As such he claims that he is entitled under the rules for regularisation of the aforesaid quarter in his name. While it is admitted that his father owned a house in Delhi, the contention of the applicant is that the said house is constructed on a plot measuring 130 Sq.yds and has three rooms of which two rooms have been let out and one is being used for keeping building material etc. as a store. In spite of the request of his father, he has not been able to get the same vacated from the tenants and the legal steps to be taken will take years. In the alternative, it is submitted that the family of the father consists of himself, his wife, three daughters, aged 28 years, 25½ years and 24 years and two sons, the applicant and another son Ajay Kumar aged about 20 years. As such, the entire house cannot accommodate the whole family. It is also contended that the applicant is due to be married but he does not want to live in the joint family. It is also stated that the respondents have been allotting the Railway accommodation to the wards of the Railway employees, who were retired on medical grounds and one such allotment was made in favour of Shri. Bhuvan Chand, who was allotted Quarter No.886/18 Pahar Ganj, New Delhi even though he has joined the service after the retirement of his father.

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4. The case of the respondents, in brief, is that under the relevant rules, the applicant cannot be given out of turn allotment of the Railway accommodation or the benefit of regularisation of the quarter which had been allotted to his father, in his name as the father owns a house in Delhi area. The allegation that in similar facts and circumstances, the Railway employees are allotted Railway accommodation on out of turn basis, has been denied. It is also stated that the applicant is not entitled to the relief prayed for as he was not in the employment of the respondents on the date of retirement of his father from Railway service.

5. We have carefully perused the material on record and also heard the learned counsel for the parties. The Ministry of Railways (Railway Board) issued on 15.1.1990 consolidated instructions, in supersession of the instructions issued on 25.6.1966, on 29.1.1973, on 29.11.1977, on 22.12.1979, December 1981 etc., on the subject of regularisation of allotment of Railway quarters in the name of eligible dependant of a Railway employee who retires from or dies while in service (Annexure E). According to these instructions, his son may be allotted Railway accommodation on out of turn basis provided:-

- (i) he was a Railway employee eligible for Railway accommodation;
- (ii) he had been sharing accommodation with the retiring or deceased Railway employee for at least six months before the date of retirement or death; and
- (iii) he had not claimed any House Rent Allowance during the period.

This is subject to the provision^{ed} that in case where the retiring employees including those who take voluntary retirement or the member of his family owns 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. It is also specifically provided that the concession of ad hoc allotment would not be available in the case of a dependent who secures employment in the Railway after the date of retirement of parent or during the period of re-employment.

6. In the case before us, the father of the applicant admittedly owns a house at the place of posting of the applicant. There is nothing on record to show that the accommodation in the owned house is less than the accommodation available in the Railway quarter. The contention about the unauthorised construction of the house or to the effect that the applicant does not wish to live in the joint family are not relevant in view of the clear instructions on the subject.

7. It may be stated that in his application for regularisation of the aforesaid quarter in his name (Annexure C), some of the information given by the applicant does not appear to be correct, for example, he has mentioned therein 9/12-9-1989 as his date of appointment and that he has put in 7 months and 15 days on the job. The application is dated 27.1.1990. As he was admittedly appointed on 12.1.1990, the above information is obviously incorrect.

8. The learned counsel for the applicant urged at the Bar that as the applicant had been appointed before the revised instructions were issued by the Railway Board on 15.1.1990, these instructions were not applicable to him. We are not able to uphold this contention. Before the consolidated instructions were issued on

15.1.1990, the applicant had neither applied for regularisation of the aforesaid quarter in his name nor any order for regularisation had been passed in his favour. Para 4 of the Railway Board's letter dated 15.1.1990 (Annexure E) clearly states that the cases pending with the allotment authorities on the Railways may be decided according to the consolidated instructions set-forth above. However, the cases already decided/allotments already made need not be reopened. Even if these instructions are taken to be relating to the terms of service, these can be altered unilaterally by Government. It was held by a Five Judge Bench of the Supreme Court in Roshan Lal Tandon Vs. Union of India & others (AIR 1967 SC 1889) that the terms of service can be altered unilaterally by Government and the Government servant has no vested contractual right in this regard. It was further held that the legal position of a Government servant is more one of status than of contract and the hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties. ^{G.} The other conditions prescribed in the Railway Board's letter dated 15.1.1990 are also not fulfilled in the case before us. Firstly, the applicant had not been appointed in the Railways before the date of retirement of his father. Secondly, he had not been sharing the accommodation with his father for a period of at least 6 months before the date of retirement. The learned counsel for the applicant urged that the applicant was residing with his father for more than 6 months before the latter's retirement. The term 'residing' is not synonymous with the term 'sharing'. Sharing implies ^a to the positive act of
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permission for sharing the accommodation allotted to another Railway servant. The learned counsel for the applicant relied upon a judgement of the Single Member Bench of the Tribunal in the case of Harinder Singh Vs. U.O.I & ors. in OA No.1554 of 1989 decided on 7.12.1989 and reported in 1(1990) ATLT(CAT) 141. The facts of that case are materially different from the facts of the case before us. In the cited case, the father retired on 20.6.1988 and his son had joined the Railways on 16.4.1988, i.e. before the retirement of the father and the contention was that such accommodation was not shared by the son for at least 6 months as a Railway servant. Further, the Railway Board instructions dated 15.1.1990 had not been issued by that time and the vires of these instructions has not been challenged in the case before us. It is, however, true that the condition of sharing the accommodation at least for a period of six months before the demise or retirement of a Railway servant also came up for discussion in that case and on this point it was held that " 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." The learned counsel for the applicant, therefore, urged that as the applicant was residing with his father, he should be deemed to have shared the accommodation with his father for the minimum prescribed period of six months. We do not consider it necessary to examine this point further for the purposes of this case as we are of the view that the applicant is not

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entitled to the relief prayed for on the other grounds as discussed above.

9. In view of the foregoing discussion, we are of the view that the application is devoid of merit and the same is accordingly dismissed with costs on the parties.

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(P.C.JAIN)
MEMBER(A)

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(RAM PAL SINGH)
VICE CHAIRMAN(J)