

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1852/90

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DATE OF DECISION

3.4.91

Shri Suresh & Another	<del>Petitioner</del> Applicants
Shri B.S. Mainee	Advocate for the <del>Petitioner(s)</del> Applicants
Versus	
Union of India & Others	Respondents
Shri P.S. Mahendru	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. P.C. Jain, Administrative Member

The Hon'ble Mr. J.P. Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? <sup>yes</sup>
2. To be referred to the Reporter or not? <sup>yes</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>yes</sup>
4. Whether it needs to be circulated to other Benches of the Tribunal? <sup>No</sup>

**JUDGEMENT**(DELIVERED BY HON'BLE MR. J.P. SHARMA, MEMBER (J))

The applicant no.1 alongwith his father applicant no.2 assailed the order dated 31.8.1989 passed by the Divisional Superintending Engineer (Estate) and order dated 10.7.90 passed by D.S.E. (Estate) in not regularising the Railway quarter No.109/3147, Loco Railway Colony, Kashmere Gate, Delhi in the name of the applicant no.1. The applicants in the application under Section 19 of the Administrative Tribunal Act, 1985, <sup>alia</sup>inter/ claimed the following reliefs :-

That this Hon'ble Tribunal may be pleased to direct the respondents to regularise the quarter No.109/3147, Loco Railway Colony, Kashmere Gate, Delhi in favour of applicant No.1.

2. Shri Vishnu Rao (applicant No.2) retired as Fitter Grade II on 30.6.88 from the Railway Service under Respondent No.2. The applicant No.1, was appointed as a Casual Labourer on 1-11-1983 and has been working under P.W.I., Delhi. On 19.8.1986, he was disengaged for want of work (Annexure-A 2). As he had worked for more than 120 days, so under paras 2501 to 2511 of the I.R.E.M., he acquired temporary status in accordance with the Railway Rules. He was again appointed as a substitute vide order dated 14-3-1988 (Annexure-A 3). He has already been screened on 24-1-1989 (Annexure-A 4, A 4A). His father (applicant No.2) had been allotted a Railway quarter mentioned above and he had been living with his father from the beginning. He was allowed sharing permission with his father vide letter of the respondents dated 25-5-1988 (Annexure-A 5). The applicant No.1 had also not been drawing H.R.A. for the entire period of his service.

3. The applicant No.1 submitted an application on 8.4.1988 to the respondents for regularisation of the quarter allotted to his father in his name (Annexure-A 7). However, his request was turned down by respondent No.2 vide letter dated 31-8-1989 (Annexure-A 1). The respondents contested the application and stated that the applicant No.1 has no right to allotment of the Railway quarter in question which was allotted to his father. Merely his screening does not entitle him to the allotment of the Railway quarter in question. It is further stated by the respondents that the casual labourer and substitutes with temporary status are not eligible

for regularisation of the Railway quarter which had originally been allotted to the father/guardian of such persons. It is further stated by the respondents that the applicants have not come with clean hands as after retirement of applicant No.2 on 30th June, 1988, a permission was obtained to retain the Railway quarter for four months which was granted. Again a permission was sought by applicant No.2 to retain the quarter till February, 1989 on the ground of the sickness of the wife which was not granted and the applicant No.2 has not vacated the quarter in spite of several letters written to him (R I to R III).

4. We have heard the learned counsel for the parties at length and have gone through the record of the case. The simple point involved in this case is whether a casual labourer and a substitute with temporary status is eligible for allotment of a Railway quarter and in this connection in the impugned letter dated 31-8-1989 there is a reference to letter No.E(G)35/Quarters-2 dated 3rd February, 1989. By the earlier circulars of Railway Board No.E(G)66/Qr-1-11 of 25-6-1966 and E(G)69/Qr-2 of 20-1-1969, the residence may be regularised in the name of a relation of the retiring Railway servant, if such a person is eligible for a residence of that type or a higher type. In the present case, the permission of sharing had already been granted and it is not disputed that the applicant No.1 has been residing since birth with his father, a retired Railway servant, who was the allottee of the aforesaid Railway Quarter, and as such the conditions are fulfilled on the point of eligibility. It is also averred in the application that the applicant No.1 is not receiving any HRA. However, the main question is whether a casual labourer or a <sup>substitute</sup> with temporary status is eligible

for allotment of the quarter or not. The learned counsel for the applicants, has also filed an affidavit after serving a copy on the respondent's counsel, Shri P.S. Mahendru and in this affidavit, it is categorically stated that the Railway Board's circular dated 3.2.1989 stands superseded by a subsequent circular dated 15.1.1990. The circular of the Railway Board dated 3.2.1989 is reproduced below :-

"SUB : Regularisation of Railway quarters in the name of wards after retirement of employees.

Reference your letter No.290-W/16/IK(W.Qrs.) dated 22/12/1988 on the subject noted above.

The matter has been examined in consultation with the legal Adviser in the Ministry of Railways. It is clarified that orders contained in this Ministry's letter of even number dated 29/8/1986 do not prevent Casual Labour and substitutes with temporary status from allotment of Railway quarters under normal rules in their own turn. They only exclude them from the purview of instructions relating to out of turn allotment of quarters to regular employees who are eligible wards of retired or deceased railway employees. These orders, therefore, are not affected by the judgement of the Supreme Court in W.P. Nos.15863-15006 of 1984 referred to by you and may continue to be followed."

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The applicants <sup>have</sup> / assailed the order (Annexure A 1) in which the D.R.M. office informed the applicant <sup>No. 1</sup> / that in terms of the Railway Board's circular dated 3.2.1989 (quoted above), the casual labour and substitutes with temporary status are not eligible for regularisation of Railway quarter. The learned counsel for the applicants referred to Rule-2511 of IREM which lays down that casual labour attaining temporary status are entitled to all the rights and privileges of temporary Railway servants as mentioned in chapter 23 of IREM. Rule 2314 of IREM provides that the temporary Railway servants are also entitled to allotment of the quarters. The learned counsel for the applicant argued that the provisions of IREM do not distinguish in turn allotment of quarters and out of turn allotment of the quarters. It is also averred in the additional affidavit of the applicant <sup>No. 1</sup> / that "Nowhere it is provided in the IREM that the provisions of the allotment of quarter to the casual labour attaining temporary status are not applicable in case of regularisation of the quarter as per Railway Board's circular of 1969." It is further said that the Railway Board's circular of 1969 provides that sons/daughters of the

retired Railway employee may be allotted railway accommodation on out of turn basis provided that the said relation was a Railway employee eligible for Railway accommodation and had been sharing the accommodation with the retiring employee for at least 6 months before the date of retirement. Herein applicant No.2 retired from the Railway service on 30th June, 1988. The applicant No.1 has filed the record of his service (Annexure -A 2) showing that he has been in employment of the respondents from 1.11.1983 with certain breaks and till August, 1986, he has completed about 783 days of service with the respondents. It is said that he has also attended the screening on 24th January, 1989, but the result had not <sup>been</sup> declared till then. He, however, applied for regularisation of the quarter on 8th April, 1988 by Annexure A-7. He has also been ordered by the Memo dated 16.12.1988 (Annexure-8) to fill up the necessary papers. Till December, 1988, he had already completed 6 months' period. He was again asked by the letter dated 11.7.1989 (Annexure-A 9) to complete the necessary papers for regularisation of the quarter, in his name. He submitted all the papers on 25th August, 1989. In this letter of August, 1989 (Annexure-A 10), he has clearly

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stated that his father retired on 30th June, 1989. He also said that his H.R.A. has been deducted since March, 1988, i.e., since the date of his joining on 17.3.1988. In view of this, he has requested that the quarter be allotted in his name. The learned counsel for the applicant has also relied on the judgement of the Hon'ble Supreme Court in the case of Ram Kumar and Others Vs. Union of India, Writ Petition No. 15863-15906/84 decided on 2nd December, 1987. In this judgement, the Hon'ble Supreme Court observed that on the acquisition of temporary status, the casual labourers are entitled to :-

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.
- (6) Provident Fund and terminal gratuity.
- (7) Allotment of Railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorised by the Ministry of Railways.

The main reliance has been placed by the learned counsel on the circular of Railway Board dated 15.1.1990 and referred to paragraph '2' thereof. The said

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paragraph is reproduced below :-

"When a railway employee who has been allotted railway accommodation retires from service or dies while 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 was a railway employee eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death and had not claimed any H.R.A. during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases, a residence of the entitled type or type next below is to be allotted."

No.1

5. In the present case, the applicant <sup>No.1</sup> after a break in 1986 again got an appointment with the respondent Railways in March, 1988. The father of the applicant, No.1, allottee of the Railway quarter, retired from the Railway service sometime in June, 1988. The H.R.A. of the applicant was stopped from 17th March, 1988 retrospectively by the letter dated 25th May, 1988 (Annexure A-5). Thus the date of appointment of the applicant <sup>No.1</sup> after the break since 1986 is 17th March, 1988 and there is also a certificate dated 22.3.1990 (Annexure A-4A) filed by the applicant. When the father of the applicant retired in June, 1988, the applicant was not even screened for regularisation in the Railway service as upto that time, he

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was working on ad-hoc basis as a substitute Khallasi.

The screening test in the case of the applicant No.1 for regularisation took place much after on 24th January, 1989 and the result of the same was out sometimes after 22nd March, 1990. The recovery of the H.R.A. was effected from the applicant from March, 1988 till August, 1989 as is evident by the Memo filed by the applicant dated 21st August 1989 (Annexure A-6). In order to get an out of turn allotment of the Railway accommodation, it was necessary for the applicant that he was sharing the accommodation with his retiring father and that too for a period not less than six months. Para '2' of the above noted Railway circular dated 15th January, 1989 relied upon by the applicant is specific on this period and also that the applicant should not have claimed H.R.A. during this period.

6. In this case on the basis of the record filed by the applicant himself, the Railway accommodation which stood allotted in the name of the father of applicant No.1 could not be out of turn allotted to him because of the fact that he did not share the accommodation for a full period of six months before the date of retirement of his father.

7. In view of the above facts, the application is devoid of merit and is accordingly dismissed, leaving the parties to bear their own costs.

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER (J)

3/4/91

*P.C. Jain*  
(P.C. JAIN)  
MEMBER (A)

3/4/1991