

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DEHLI.

OA No.1638/91

Date of decision: 15.5.92

B.Mukherjee & Anr. ... Applicants
versus
Union of India & Ors. ... Respondents
CORAM:THE HON'BLE MR.T.S.OBEROI, MEMBER(J)
For the Applicants ... Sh.Anis Suhrawardy,
Counsel.
For the Respondents ... Sh.P.S.Mahendru,
Counsel.

1. Whether local reporters may be allowed to see the Judgement?
2. To be referred to the reporter or not?

JUDGEMENT

The facts of the case briefly are that applicant No.1, Shri B.Mukherjee retired from service on 30.11.90, after attaining the age of superannuation. He was allotted Government accommodation, during the course of his service. Applicant No.2 joined as casual Khalasi with effect from 14.3.86, and after completing 360 days of service, ~~acquired~~ temporary status, as per rules. He was also appointed as Gestetner Operator ^{next higher} in the grade of Rs.950-1500 with effect from 16.11.90, on ad hoc basis. There is no dispute that applicant no.2 had fulfilled other necessary conditions for allotment or being allowed to remain in the same accommodation, as earlier allotted to applicant No.1, such as applicant No.2 was sharing accommodation with applicant No.1 for a minimum period of six months before retirement of the latter and that he was not drawing House Rent Allowance for a period of six months before the date of retirement of applicant No.1. The only point of variance

is that applicant No.2 was not a regular employee of the respondents, at the time of retirement of applicant No.1, as such, was not entitled to remain in occupation of the same accommodation or to the allotment of the same type of accommodation, on out of turn basis, though he was otherwise eligible for allotment of such accommodation, after having acquired temporary status as a Railway servant, after putting in the requisite days of service with the Railways. Precisely, this is the objection taken up by the respondents, in their counter filed by them, opposing applicants' claim, while in the rejoinder filed, the applicants have reiterated their claim for retention/allotment of the same accommodation, as earlier asserted in the OA.

2. I have also heard the learned counsel for the parties and have perused the material on record.

3. The applicants' case, in simple terms, is that applicant No.2 having become eligible for various benefits, including the allotment of accommodation, after having acquired temporary status, as held by the Hon'ble Supreme Court in **Ram Kumar Vs.U.O.I decided on 2.12.87** (copy enclosed as Annexure P-2 to the OA); his /for allotment of accommodation becomes further reinforced by being the son of a retiring Railway servant, i.e., applicant No.1, he having fulfilled other necessary conditions for the purpose. In other words, being eligible for allotment of accommodation, after acquiring temporary status, he should be allotted the same accommodation to which he is otherwise entitled, by being the son of retiring Railway servant. The other points urged by applicant No.2,

for allotment of the same accommodation to him, are that not only he has acquired temporary status in the post of Khalasi to which he was initially appointed on 14.3.86, he was also promoted as Gestetner Operator with effect from 16.11.90 and that his mother is also a heart patient with complication of Gall Bladder Stone, requiring medical care and attention, which factors also deserve consideration by the respondents, in the allotment of the same or equivalent other accommodation to him.

4. Reliance was placed on behalf of the applicants upon Rule 516 of the Railway Pension and Benefits Rules, extracted below:-

" A Railway servant who retires, is in occupation of railway quarter, the same can be allotted to his serving ward provided he/she is eligible for that type of allotment and the employee prior to his retirement would have taken permission at least 6 months prior to his retirement, to allow his ward to keep him in railway accommodation. An application for such allotment of accommodation must be made by the employee. The married daughter and daughter-in-law of retiring/deceased employee are not entitled for out of turn allotment,"

The learned counsel for the applicants pleaded that the real purpose of making such rule, and also issuing various other directives on the subject, by the respondents, is to avoid embarrassment to the retiring railway servant, to be without shelter over his head, after putting in, almost a life time, in service, and that too, when he has a son or ward, eligible for allotment of accommodation, in his own right. Eligible applicant No.2 would otherwise be, in his own right, by having acquired temporary status as a Railway

servant, what then is the value attached to his being the son of a retired Railway servant, remains to be seen, the learned counsel further contended.

5. The learned counsel for the respondents in reply to the above arguments, by referring to Railway Board's circular on the subject, opposed the claim of applicant No.2, primarily on the ground that he having not been appointed on regular basis, is not entitled to the allotment of the same or similar accommodation, as was earlier allotted to his father, applicant No.1.

6. I have carefully considered the rival contentions, as briefly discussed above. There is no denying the fact that applicant No.2 has become eligible for allotment of accommodation, as held by the Supreme Court in **Ram Kumar & Ors. Vs. Union of India & Ors.** supra. The learned counsel for the applicants has also mentioned two other factors such as his promotion to the post of Gestetner Operator, in the next higher grade, and his mother being a patient of some heart ailment, coupled with complication of Gall Bladder Stone. These factors, to my mind, require being looked into and given due value, by the respondents. In view of the same, the following directions are given in this case:-

- (i) The applicant No.2 shall submit a self-contained representation to the respondents listing various grounds for allotment of accommodation to him, on out of turn basis, within one month from today;
- (ii) The respondents shall, within a period of two months, after receipt of the representation from applicant No.2,

take a decision thereon for the allotment or otherwise of the same or similar accommodation, as was earlier in occupation of applicant No.1, after giving due consideration to the various factors to be submitted by applicant No.2 in his representation;

(iii) The applicant No.2 shall not be dispossessed from the accommodation presently occupied by him till the expiry of one month from the communication of the decision of the respondents, as mentioned at item(ii) above; and

(iv) The respondents shall release the amount of gratuity withheld by them to applicant No.1, forthwith, after deducting a sum of Rs.1000/- or 10% of the amount of gratuity whichever is less, together with an undertaking, in writing, to be furnished by applicant No.2, for paying excess charges towards rent/licence fee, as may be eventually required to be paid.

The OA is disposed of on the above terms with no order as to costs.

Seal
(T.S.OBEROI)
MEMBER(J)

15.5.52