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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 2819/91

Date of Decision: 03.04.92

Shri Krishan Pal and another .. Applicant(s)

Shri O.P.Gupta .. Counsel for the applicants

Vs

Union of India (General Manager,
Northern Railway and another) .. Respondents

Shri R.L.Dhawan .. Counsel for respondent(s)

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Hon'ble Mr. S.P.Mukerji, Vice Chairman

~~Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

J U D G M E N T

(Delivered by Hon'ble Mr. S.P.Mukerji, Vice Chairman)

In this application dated 22.11.91 filed under Section 19 of the Administrative Tribunals Act, the two applicants who are son and father have challenged the impugned show cause notice dated 25.6.1991 at Annexure-A and the eviction notice dated nil at Annx.B. both addressed to the second applicant, the father of the first applicant ^{They have} ~~and are~~ prayed that the Railway quarter in question allotted and occupied by the second applicant should be regularised in the name of his son ie., the first applicant on normal rent and that the gratuity amount and complementary passes withheld from the second applicant be restored.

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2. The brief facts of the case are as follows. The second applicant retired from the Railway service on 31.7.1987 while he was in occupation of the Railway quarter at Moti Bagh, Delhi. His son the first applicant had already joined as Railway khalasi on 15.12.80 and started ^{living} ~~living~~ with the father in the Railway quarter in question with effect from 20.1.87. He was also entitled to Railway quarter of the same type as occupied by his father. The second applicant ie., the father represented on 20.1.87 for permission to share the Railway quarter with his son but the respondents by the impugned order at Annexure.A dated 25.6.91 directed him to vacate the Railway quarter within 10 days failing which eviction proceedings were to be started and recovery of amount of damage to be effected. He was also served with a notice of eviction and damages by the impugned order at Annexure-B. When the second applicant retired on 31.7.87 his gratuity amount and complementary passes were withheld. The applicants have relied upon the instructions of the Railway Board at Annexure-C and the judgments of the Tribunal at Annexures G, H and I by which the sons and daughters of Railway employes and the dependents of retiring employees can be allotted quarters of their father. The judgment at Annexure-I prohibits non-payment of gratuity amount for unauthorised possession of Government quarter.

3. In the counter affidavit the respondents have referred to the Railway Board's order dated 15.1.90 at Annexure.R.1 which supercedes the orders referred to by the applicants at Annexure-C. According to the instructions at Annexure.R.1 if the employee's dependent is already drawing HRA and ^b ~~stopped~~ drawing the amount six months before the retirement of the employee, the dependent is not eligible for allotment ^{or} ~~of~~ regularisation of the residential quarters. According to the respondents, the first applicant ie., the son of the second applicant had been drawing HRA from 15.12.80 and ^{he} ~~could~~ not produce any document to show that he was residing with his father since

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15.12.80. The father applied for sharing permission only on 20.1.87. They have stated that the gratuity amount will be paid to the second applicant after the government dues recoverable from him are adjusted. According to them the second applicant is not entitled to ^{host-}retire-_{ment} passes. They have stated that in accordance with the extant rules and instructions a son who is employed in Railway service and is residing in the Railway quarter allotted to his father is not eligible for payment of HRA and it is in this context that sharing permission is required to be obtained by him.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with the Railway Board's consolidated instructions dated 15.1.90 at Annexure.R.1 the following conditions must be fulfilled for allotment of residential accommodation of retiring Railway employee to his son or daughter etc.:

"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 atleast six months before the date of retirement or deth and had not claimed any HRA 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." (emphasis added).

The learned counsel for the applicant during the course of the arguments accepted the position that the applicant had been drawing House Rent Allowance right from 15.12.80 to date. This means that even after 20.1.87 he has been drawing HRA. The second applicant i.e., the father sought permission to share the allotted Railway quarter with his son on 20.1.87. In reply to that the Railway authorities asked him vide their letter dated 29.1.87 at Annexure-D to explain why sharing permission was not taken from 15.12.80 and directed him to produce Ration Card. This shows that neither the sharing permission was given nor did the first applicant stop ~~drawing~~ drawing HRA for six months before the date of retirement of his father. The applicants cannot have the double benefit of drawing the HRA and getting the residential accommodation allotted and regularised in favour of the son after the retirement of his father.

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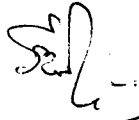
4.

The learned counsel for the applicant stated that the first applicant did not claim the HRA but it was given to him, but no document has been shown by the first applicant to establish that he had asked for stoppage of the HRA or protested against the payment of HRA by the Railway authorities to him. The Ration Card produced at Annexure-E shows that in the Ration Card which was issued on 23.11.1984 the name of the first applicant was subsequently added. Even if it is presumed that the first applicant had been living with his father right from 1984 there is no reason why he should have drawn HRA and why his father i.e., the second applicant ^{did} ~~do~~ not obtain sharing permission from the respondents ^{in 1984.}

5. As regards withholding of gratuity amount and ^{complementary} ~~supplementary~~ passes, the Full Bench of the Tribunal in their Judgment dated 25.10.90 in Wazir Chand Vs. Union of India and others (Annexure-I) ruled as follows:

- "(I) Withholding of entire amount of gratuity of a retired Railway servant so long as he does not vacate the railway quarter is legally impermissible.
- (II) Dis-allowing one set of post retirement passes for every month of unauthorised retention of railway quarter is also unwarranted."

6. In the circumstances I allow this application only in part to the extent of directing that the amount of gratuity due to the applicant after adjusting the amount due as also the complementary passes to which he is entitled after retirement should be released to the second applicant by the respondents within a period of one month from the date of communication of this Judgment. There will be no order as to costs.


3.4.92
(S. P. Mukerji)
Vice Chairman
03.04.1992

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