

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.3098/92

Date of decision:

Shri Prem Ballabh and anr. ...

Applicants

14.5.93

versus

Union of India through
General Manager,
Northern Railway
New Delhi & anr.

...

Respondents

CORAM:THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicants ... Sh.O.P.Gupta, Counsel.

For the Respondents .. Sh.R.L.Dhawan, Counsel

JUDGEMENT

Applicant No.1(Sh.Prem Ballabh) is a Bungalow Khalasi and his father Sh.Shantiram (Applicant No.2) was also a Railway employee, who retired as Head Trolleyman on superannuation on 31.8.92. During the course of his employment, applicant No.2 was allotted Railway Quarter No.165/1 Thomson Road, new Delhi. Both the applicants jointly filed this OA being aggrieved by the order dated 16.11.92 by which the request for regularisation of the Railway Quarter in favour of applicant No.1 was disallowed on the ground that applicant No.2 is not a regular and screened Railway employee and they were asked to vacate the Railway Quarater immediately, otherwise eviction proceedings would be intiated against them. Applicant No.2 has also prayed for release of the gratuity amount and post retirement complimentary passes.

2. The applicants have claimed the relief that the order dated 16.11.92 be declared as illegal as also the action of the respondents in not releasing the amount of gratuity to applicant No.2 and withholding of post retirement passes allowable to a retired Railway servant

under the Rules. Further, it is prayed that Quarter No.165/1 Thomson Road, New Delhi be regularised in favour of applicant No.2.

3. I have heard the learned counsel for the parties. Misc.Petition for joining together in one OA is allowed. The challenge to the order is on the ground that since the son (applicant No.1) is sharing accommodation with his father and also not accepting the House Rent Allowance(HRA) after 1.4.90. It is argued that applicant No.1 is entitled to regularisation of the quarter by the operation of the Railway Rules of 1966. 1971 and 1978 which are annexed to the OA.(Annexures C1,C2 & C3). However, these instructions have been superseded by the Railway Board's instructions dated 15.1.90 attached to the counter(Annexure R-3) and further modified by the instructions of the Railway Board dated 15.3.91(Annexure R-4). The instructions of the Railway Board issued on 15.1.90(Annexure R-3) in para 2 lay down that when a Railway employee who has been allotted Railway accommodation retires from the 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 death and had not claimed any H.R.A. during the period. However, it has been clarified in the instructions dated 15.3.91(Annexure R-4) where the query

is whether casual labour/substitutes with or without temporary status are still not entitled to such benefits and the reply given is in the affirmative. Both the circulars of the Railway Board go to show that a Railway employee should be regular and screened if he wants to get the benefit of out of turn allotment on being a ward of a retiree Railway servant. The contention of the learned counsel for the applicants is that these circulars have no sanctity of law. He further argued that the service conditions of the applicant /are governed by Rule 2511 of the Establishment Manual and thus he is entitled to the regularisation/allotment of the Railway Quarter. It is further argued that any amendment sought to be introduced, needs, the processing under Section 143 of the Railway Act, 1890. The emphasise of the learned counsel for the applicants is that these circulars came to be issued in 1990-91 and the applicant has already been in service since September 1988 and as such the rights which have been once confirmed on the applicants cannot be taken away without the process of law.

4. I have given careful thought to the rival contentions of the parties and am of the opinion that an unscreened Railway employee is only working on a casual basis and applicant No.1 in this OA, who is a Bungalow Khalasi cannot claim the benefit of out of turn allotment of the Railway Quarter. There is a scarcity of Railway accommodation even for the regular employees and the casual labour is engaged only for a temporary period when the necessity

arises of his engagement to cope with the work. Bungalow Peon/Khalasi is attached to a particular officer for a particular period and may continue to work on casual basis. He has to be absorbed as and when there is a vacancy available and that too after screening and getting through the same. If the casual labours are preferred then the regular employee who are waiting in turn and giving out of turn allotment will be not only unjust but discriminatory also. The benefit of out of turn allotment can be claimed only by such of the wards of the retiree employees who ^{are} on the regular rolls of the Railways. The Circulars of the Railway Board of January 1990 and March 1991 have not been challenged and they have ^{got} ~~no~~ statutory force.

5. The learned counsel for the applicant has laid more stress on the judgement of the Supreme Court in the case of **Ram Kumar & ors. Vs.U.O.I & Ors. (Writ Petition Nos.15863-15506 of 1984 decided on 2.12.87)**. The Hon'ble Supreme Court has referred to Para 2511 of the Indian Railway Establishment Manual which pertains to ^{service} ~~certain~~ conditions of casual labour. In Para (c) of the said para it is laid down that "it is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scales of pay, increment etc.. Service prior to the absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for pensionary benefits." Thus with the acquisition of the temporary status the casual labours are entitled to Railway accommodation and recovery of rent. This cannot

be read to mean that they can be given out of turn allotment if they happened to be the wards of a retiree railway servant. There is no denying to the fact that the casual labours with temporary status are entitled to allotment of Railway accommodation in their own turn. Thus the judgement in the case of Ram Kumar does not help the applicants.

6. The learned counsel for the respondents has also relied on the decision of the Division Bench of the Central Administrative Tribunal in OA No.88/92 (**Surinder Kumar Vs.U.O.I**) decided on 18.9.92. In this elaborate judgement the Bench considered almost all the points which have been raised in this case. I am in full agreement with the view expressed by the Hon'ble Members in the aforesaid judgement. The learned counsel for the applicants has also referred to the decision of the Single Member Bench of the Central Administrative Tribunal in the case of OA No.1836/93(**Sh.Pradeep Kumar Vs.U.O.I.**) decided on 18.11.92. But in that case the circulars of the Railway Board of January 1990 and March, 1991 have not been considered. The fact still remains that in that case ex post facto sharing permission was granted with effect from 26.9.86. The judgement of the Division Bench in the case of **Surinder Kumar**(supra) on all fours applies to the present case. In view of the above facts, applicant No.1 has no case for regularisation jof the quarter.

7. As regards payment of DCRG, the learned counsel for the respondents has referred to the circular of the Railway Board dated 31.12.90

on account of unauthorised retention of Railway quarters by the Railway Officers and Staff, it has been laid down that the amount of DCRG for non-vacation of the Railway Quarter can be withheld. In the present case, applicant No.2 retired from service on 31.8.92 and he could retain in normal course as per extant rules, the said quarter for a period of 4 months subject to further permission by the competent authority of another two weeks. Applicant No.2 however, continued to retain the Railway Quarter probably in the hope that the said quarter may be regularised in the name of his son. However, if the rejection of the request by the impugned order dated 16.11.92, applicant No.2 had no right to retain the Railway quarter and his possession shall be authorised only for four months after his retirement. Applicant No.2 is bound by the various circulars issued by the Railway Board and the service conditions under which indicated to serve the Railways. He would draw all the benefits and privileges only upto the time he remained in service and not beyond that. The respondents have withheld the amount of DCRG not because of any administrative lapse but because of non-vacation of the Railway quarter.

8. In the Full Bench decision in **Wazir Chand Vs.U.O.I & Ors decided on 25.10.90(FULL BENCH JUDGEMENTS OF CAT 1989-91 VOL.II page 287)**, it has been held that withholding of the entire amount of DCRG of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible. The Hon'ble Supreme Court in SLP No.7688-91/88(**RAJ PAL WAHI & ORS.VS.U.O.I.&ORS.**) has held as under:-

...In such circumstances we are unable to hold that the petitioners are entitled to get interest on the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said Circular of the Railway Board and not on account of administrative lapse. Therefore, we are unable to accept this submission advanced on behalf of the petitioners and so we reject the same. The Special Leave Petition thus disposed of. The respondents, however, will issue the passes prospectively from the date of this order."

9. In view of the law declared by the Hon'ble Supreme Court as above, the respondents should release the DCRG of applicant No.2 after recovering penal rent as distinct from the damages from the amount of DCRG i.e. amount of DCRG less amount of penal rent for the period of unauthorised occupation of the accommodation.

10. In the case of **Wazir Chand Vs. U.O.I**(supra) it has also been held that " a direction to pay normal rent for the railway quarter retained by the railway servant in a case where DCRG has not been paid to him would not be legally in order." It has also been held in the aforesaid judgement that " the quantum of rent/licence fee including a penal rent, damages is to be regulated and assessed as per the applicable law, rules, instructions etc. without linking the same with the retention/non-vacation of a railway quarter by a retired railway servant. The question of interest on delay ⁱⁿ payment of DCRG is to be decided in accordance with law without linking the same to the non-vacation of railway quarter by a retired railway servant."

11. In view of the above discussion, the present OA is partly allowed with the following directions:-

(a) the impugned order dated 16.11.92

is upheld and the relief claimed by the applicants for regularisation of Quarter No.165/1 Thomson Road, New Delhi is disallowed.

(b) Applicant No.2 shall be paid the amount of DCRG after recovering the amount of penal rent as distinct from damages on the vacation of the railway quarter as early as possible.

(c) the respondents shall however, restore the issue of post retirement complimentary passes to applicant No.2 prospectively from the date the railway quarter is vacated by the applicants.

(d) relief regarding payment of interest on the withheld amount of DCRG is disallowed in view of the ratio of **Raj Pal Wahi & ors. Vs. U.O.I.** (supra).

12. In the circumstances, the parties are left to bear their own costs. Respondents to comply with the direction preferably within three months from the date of receipt of the copy of the order. *formalise.*

(J.P.SHARMA)
MEMBER(J)

SNS

14.5/9>