

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(A)

OA NO.621/92

DATE OF DECISION: 08.05.1992.

SHRI SUNIL KUMAR & ANOTHER

...APPLICANTS

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL.

FOR THE RESPONDENTS

SHRI P.S. MAHENDRU, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
((I.K. RASGOTRA)

MEMBER(A)

P.K. Kartha
(P.K. KARTHA)

VICE-CHAIRMAN

May 8, 1992.

(8)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The principal issue raised by the applicants in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 for adjudication is whether the son of a retired Railway servant who is unscreened Casual Labourer but has attained the temporary status is eligible for allotment of accommodation on out of turn basis, which was allotted to his father when he was in service.

2. The facts of the case briefly are that the applicant No.1, i.e. son of the retired Railway employee was appointed as Khallasi-cum-cleaner under Carriage and Wagon Inspector (CWI). His services were dispensed with on 18.8.1988 but he was taken back in service w.e.f. 19.9.1990 consequent to a decision of the Central Administrative Tribunal. Thereafter he acquired temporary status in accordance with the Rules. The applicant No.2 who is the father of the applicant NO.1 was working

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as a Yard Master, Tughlakabad when he was allotted Railway quarter No.30-A, Type-I in the Railway Colony Tughlakabad. He retired from service on 30.11.1990. The applicant No.1 contends that he has been living with applicant No.2 ever since his birth and that his father viz. applicant No.2 had applied for sharing accommodation with his son, applicant No.1. Further applicant No.1 had not been drawing any House Rent Allowance. The applicants placed reliance for regularisation of the quarter in favour of applicant No.1 on the Railway Board's instructions vide consolidated Circular No.E(G)/66/QR-1-2 dated 25.6.1966, the relevant part of which is reproduced below:-

"2. 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 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."

According to the above the applicant No.1 has to meet the following pre-requisites for allotment of Railway accommodation on out of turn basis:-

- a) the applicant is a Railway employee, eligible for Railway accommodation;

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- b) the applicant had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death; and
- c) had not claimed any H.R.A. during the period.

If the above conditions are met, the same residence as occupied by the retiring/deceased Railway employee can be regularised in the name of the eligible dependant of the retiring Railway employee.

3. The facts of the case are not disputed by the respondents. They, however, point out that applicant No.2 had made an application to respondent No.3 for permission to retain the aforesaid quarter for a period of four months from 1.12.1990 to 31.3.1991. The said request was duly granted by the respondents. He again applied for retention of the quarter for additional period of four months from 1.4.91 to 31.7.91 on the ground that he was under the treatment of D.M.O, Central Hospital, New Delhi and as such could not make alternative arrangement. The said request too was granted. Thereafter the applicant was called upon to vacate the quarter in question and he was declared unauthorised occupant w.e.f. 1.8.1991. The respondents deny that the applicants ever applied for any sharing permission and submit that the averment made in paragraph 4.11 of the O.A. are vague and non specific. They further urge that since applicant No.1 is only an unscreened substitute Khallasi and is not a regular employee, he is not entitled for the regularisation of the quarter in question, as a casual employee with temporary status remains a casual employee till he is regularised and does not become a railway servant and consequently is not entitled to out of turn allotment. This position has been amply clarified by the Railway Board in its circular dated

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29.8.1986 and 3.2.1989. They admit that applicant No. 2 had applied for the regularisation of the quarter in question in favour of the applicant No.1, which request was declined by the respondents vide Annexure A-1, duly giving the reasons and contest the argument that the provisions made in Indian Railway Establishment Manual vide paragraph 2511 include casual labourers for the purpose of out of turn allotment of Railway quarter.

4. The learned counsel for the applicant Shri B.S. Mainee, buttressed the contention of the applicant by citing the decision of the Hon'ble Supreme Court in **Writ Petition Nos.15863-15506 of 1984 Ram Kumar & Ors. Vs. UOI & Ors.**, a copy of which was filed by the learned counsel.

5. We have perused the judgement and find that their Lordships in the Supreme Court have not dealt with the issue of law and of fact before us in this Application.

6. The next case relied upon by the learned counsel for the applicant is **Man Mohan Singh Vs. UOI OA 1015/87 decided on 10.1.1992.**

We have also carefully perused the case of **Man Mohan Singh** (supra) and find that the facts of the case are materially different from the case before us inasmuch as that the applicant therein had been screened on 22.7.1985 and accorded temporary status w.e.f. 15.1.1984. It was the applicant, i.e. the serving employee who had applied for the regularisation of the quarter. Further the applicant had been in regular service of respondents for a little over four months before the father of the applicant retired from service on 31.5.1984. The **Man Mohan Singh** (supra) judgement, therefore, does not help the applicant herein, being distinguishable on facts.

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A feeble attempt has been made by the applicants in regard to their being subjected to discrimination vide paragraph 5.6 of the O.A. in which it has been stated that "in a number of cases the respondents have already regularised allotment of accommodation in similar circumstances in favour of son/daughter who were temporary status holders and not regular railway employees." However, no particulars of such cases have been furnished to enable us to see if such cases are on all four with the situation in which the applicants are. Since the applicants have not given any particular, the respondents also in their counter-affidavit have denied that the applicants "are being discriminated, as alleged."

The learned counsel for the applicants further filed a clipping from the Men's Union Rail Patrika which has given the version of the judgement delivered by the New Bombay Bench in TA 271/86 in support of his case. Since, the full facts of the case are not before us, it is not possible to take cognizance of this clipping.

We further observe that it was not the applicant who applied for sharing accommodation with his father after being taken in the Railway service. It was the applicant No.2, i.e., the retiring employee who applied for sharing accommodation with his son. In fact it should have been the other way round. Further the applicant No.2 retired from service on 30.11.1990 whereas the applicant No.1 was re-engaged as a unscreened casual labourer only on 19.9.1990 in accordance with the orders of the Tribunal. His service was last terminated on 18.8.1988 while working as unscreened casual labourer.

7. In the facts and circumstances of the case, we are of the opinion that the applicant does not meet the eligibility conditions for allotment of Railway

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quarter, as prescribed in Railway Board's consolidated instructions dated 15.1.1990, as discussed in the preceding paragraphs and, therefore, has no case for out of turn allotment of the quarter No.30-A, Railway Colony Tughlakabad. The O.A. is accordingly dismissed.

Vide order dated 10.3.1992 an ex-parte interim order was granted in favour of the applicants directing the respondents not to evict the applicants from the said quarter. This interim order was continued from time to time. We have earlier observed that applicant No.2 had availed of the facility of retaining the said quarter for a period of 8 months on normal/concessional rate of licence fee applicable in the case of the retired Railway servants.

However, a reasonable time would require to be given to the applicants to enable them to vacate the Railway accommodation. Accordingly the interim order earlier granted is modified to the extent that the respondents shall allow the applicants to stay in the said quarter for a reasonable period of time from the date of communication of this order, which, however, shall not extend beyond 31.7.1992, subject to payment of licence fee, in accordance with the Rules.

Before parting with this case we observe that this case involves the subject matter and issues which are ordinarily according to the procedure laid down adjudicated by a Single Member Bench. In fact the matter was heard by the Single-Member Bench on 10.3.92 when an interim order was passed in favour of the applicants. It is, therefore, obvious that both parties had expressed their agreement to the matter being heard by the Single-Member Bench, as no objection by either party was raised. However, when the matter came up

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on 16.4.1992 the learned counsel for the applicants expressed his desire to opt out from the Single-Member Bench and to have the matter heard by a Division Bench. In accordance with the procedure established in the Tribunal vide order No.1/32/87-JA dated 18.12.1991, once having made a choice to be heard by a Single-Member Bench the parties are estopped from taking the plea that the matter should be heard by a Division Bench. However, to avoid further delay in the disposal of the case and keeping in view the interest of justice, we have heard the matter and disposed of the O.A., as above.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 8/5/1992

P.K. Karthi
(P.K. KARTHA) 8/5/92
VICE-CHAIRMAN(J)

May 8, 1992.