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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
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Date of Decision: September 10, 1992.

OA 707/92

MANISH KUMAR MALIK & ANR.

... APPLICANTS.

vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicants

... SHRI R.K. RELAN.

For the Respondents

... SHRI R.L. DHAWAN.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporters or not? *yes*

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant No.1 is the son of the deceased Rly. employee Late Shri Nand Lal Malik and the applicant No.2 is the widow of deceased Railway Employee. Late Shri Nand Lal was last employed as ACOS, Northern Railway, Tughlakabad, New Delhi and he died in harness on 16.1.88. The deceased employee was allotted a Railway quarter No.4/7, Lodhi Colony, Lodhi Road, New Delhi. The applicant No.2, after the death of her husband made a representation in August, 1988 for enlisting the name of her son i.e. applicant No.1 for employment on compassionate ground as at that time he was

minor. The date of birth of applicant No.1 is 23.6.72 and he would have attained majority on 23.6.90. The applicant No.2 again applied on 6.7.90 and he was appointed by the order dated 20.6.91 in a Class-III post of Stores Clerk. The applicant No.2 made a representation on 16.7.91 to regularise the allotment in the name of her son on his appointment on compassionate ground. She made another representation to the same effect on 3.7.91. However, before the regularisation of the said quarter or the decision on the representation of the applicant, the respondent No.3 had initiated eviction proceedings on 17.5.91 against the applicant No.2, the said notice is annexed as Annexure A-1, which is impugned in this case. The representation of the applicant No.2 for regularisation of Railway quarter was rejected by the order dated 13.1.92. However, in the said letter dated 13.1.92 the name of applicant No.1 has been registered for out of turn allotment of quarter in the compassionate category. The applicant has challenged both the orders in the present Original Application and he has claimed the relief for regularisation of the quarter No.4/7, Lodhi Colony, Lodhi Road, New Delhi in favour of the applicant No.1 after quashing the impugned order dated 13.1.92. It is also prayed that the impugned order dated 17.5.91 issuing notice to start proceedings for eviction be also quashed. Further, it has also prayed that that the normal rent/licence fee be adjusted from the death-cum-retirement gratuity amount of the deceased Railway employee for the period of

retention of the accommodation till appointment of the applicant No.1 on compassionate ground and release the balance amount with market rate of interest.

2. The respondents contested the application and stated that the eviction proceedings had already been started against the applicant No.2 because she has been in unauthorised occupation of the said quarter six months after the death of the deceased Railway employee Shri Nand Lal Malik, who died on 16.1.88. The respondents have referred to the Railway Board's letter dated 12.2.88 (Annexure R-1) where it is laid down that the regularisation of quarters in favour of the compassionate appointee should be considered by the Railway Administration, only in cases where the compassionate appointments have been made within the prescribed period of 12 months and no special cases should be made out. As regards the non payment of DCRG, the respondents have referred to orders of Ministry of Railways, which lays down that in order to discourage unauthorised retention of Railway quarters the amount of DCRG should be withheld till the vacation of the Railway quarter. Regarding the appointment of a ward of Railway employee, who dies in harness, there is a provision of relaxation of upper age limit but not lower age limit. Thus, about 1½ years after when the applicant No.1 attained majority, the applicant No.2 applied for his compassionate appointment and he ^{has} since

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been provided on 23.6.91. There is a time lag of more than three years so the quarter in possession of the deceased could not be allotted or regularised in view of the extant Circular of the Railway Board. However, the name of the applicant has been registered for out of turn allotment of quarter in the list. The allotment/regularisation of the quarter was desired by Applicant No.2 by the representation dated 3.7.91 and Manish Kumar, applicant No.1 did not apply for the regularisation of the Railway quarter, it was only his widow mother who did so.

3. I have heard the learned counsel for the parties at length and have gone through the records of the case. The learned counsel for the applicant firstly argued that it was necessary for rehabilitation of the deceased family that the quarter should have been regularised. Alongwith the rejoinder, the learned counsel has given a list of certain persons in whose cases the respondents have regularised the quarter even after a period of one year. This is Annexure-AA 1/1. The learned counsel has also placed reliance on the case of Ms. Pinki Rani Vs. UOI (1987 (4) SLJ 357). In this reported case also the father of the applicant Pinki Rani died when she was minor. The mother was, of course, given a short appointment but she was found medically unfit so Pinki Rani, when she attained the age of 18 years, was given appointment by the order

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dated 27.9.85. In that case, the father has died on 14.9.78, at that time she has prayed for regularisation of the quarter, which was refused. In that case, the Bench considered letter of Railway Board dated 22.12.79 and certain instructions were issued on that basis. Those instructions were ^{not} issued by the Railway Board. The letter of the Railway Board dated 22.12.79 only extends the scope of cases for allotment and in no way restricted what has been laid down in the two instructions, which has been referred in the above judgement. The present case, however, ^{is} different. The Circular of the Railway Board has been issued on 12.2.88. It is for regularisation/out of turn allotment of the Railway servants, who retires on medical invalidation or dies while in service. It refers to the Railway Board's letter dated 22.12.79 and also, ^{and} in order to clear certain doubts, para 3 of that Circular is important, which is reproduced below :-

"It is clarified that requests for regularisation of quarters in favour of the compassionate appointees should be considered by the Railway Administration only in cases where the compassionate appointments have been made within the prescribed period of 12 months and no special cases should be made out. In case, the compassionate appointee had remained in occupation of the Railway accommodation unauthorisedly beyond the permitted period, that in itself would not confer any right in favour of the compassionate appointee in the matter of regularisation of the Railway accommodation in his/her name. Further, the Railway Administration should also initiate eviction proceedings soon after the prescribed period for retention of accommodation is over."

Thus, the aforesaid authority relied by the learned counsel for the applicant does not apply to the present case.

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4. The learned counsel for the applicant also argued that in certain cases, the list appended to the rejoinder, the regularisation has been done of the Railway quarters by the order dated 26.4.91. The learned counsel for the respondents, ^{with a copy to the other counsel} however, filed a note during the course of the arguments that the regularisation in all these cases have been done because there was a delay in compassionate appointment on administrative account. Two of the cases here cited up, Dwarka Prashad and Motroo Ram, in which cases the regularisation has not been done. In case of Dwarka Prashad, the incomplete papers were submitted by the employee, and in the case of Motroo Ram, Shri Ram Prakash was under age and the case was finalised in August, 1986 and finally appointed on 26.2.87. Thus, in the case of Motroo Ram, Shri Ram Prakash was minor at the time of the death of the father and was not considered for allotment of the quarter as he was under age. The applicants therefore, on that account cannot say that they have been discriminated.

5. There is another ground also at the time when Shri Nand Lal Malik died in January, 1988, Smt. Ishwari Devi did not apply for compassionate appointment. The Ration Card she has filed, shows the head of the family but the Ration Card when Shri Nand Lal was head of the family, had not been filed. There was a elder daughter Kamlesh in the family also, who was major. Moreover,

when she applied for compassionate appointment in August, 1988 she only requested that the name of his son be enlisted for appointment on compassionate ground. Thus, in the present case, it cannot be said that there was any administrative lapse on the part of the respondents in giving compassionate appointment to the deceased employee.

6. The respondents have already listed the name of the applicant for out of turn allotment on the basis of priority and in case he is allowed to have a march over other such persons who have been appointed on compassionate ground then it shall be discriminatory to choose him ^{out of turn} among them. His Sl. No. is 113. It was for the applicant No.2 herself to also inform the respondents earlier for regularisation of the quarter but she had not done so and that was done for the first time in July, 1991. So, she cannot be allowed to have a march over other similarly situated persons for out of turn allotment. Besides being discriminatory, that will also be unfair to other such persons who have been listed for out of turn allotment earlier to the applicant ^{No.1}. When once applicant No.2 herself applied on 6.7.90 for compassionate appointment of her son she cannot get the same preference which similarly situated wards of deceased/otherwise medical invalidated retiree of the Govt. servant had applied earlier for the same. If the applicant No.1 was minor at that time that will not give a special treatment to the family on priority

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for other similarly situated persons for immediate allotment/regularisation. Mere retention of the Railway quarter in an authorised manner will not legalise an act of retention of the quarter.

7. The respondents have rightly raised an objection that even applicant No.1 after appointment has not himself applied for any regularisation/allotment of the quarter and the respondents in bonafide manner have considered the application moved by applicant No.2 for the allotment/regularisation of the quarter in the name of the ^{applicant No.1} . The allotment on compassionate ground is not a matter of right, it is only to rehabilitate a family immediately after the death of the deceased employee. The family of the deceased employee continued to sustain itself till the appointment of applicant No.1 on compassionate ground. Now for more than four years have passed and the necessity of the family by passage of time has necessarily diminished in comparison to other such families where the eligible ward of other deceased employee aspires within a fixed period of 12 months for regularisation/allotment of the quarter. If the proposition set out by the learned counsel for the applicant is accepted then an appointment is made years after, say an employee dying leaving minor child of two years, then upto his attaining age of majority after ^{such ward} 16 years can even claim allotment out of turn on compassionate ground and that shall be unfair to other wards

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of the Railway employee who died in harness or have been medically de-categorised or retired. Thus, the impugned order dated 13.1.92 needs no interference.

8. The second issue is about the eviction from the quarter ^{under due} i.e. ~~the~~ process according to law being adopted by the respondents under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and admittedly the applicant No.2 is an unauthorised occupant of the said quarter, six months after the death on 16.1.88 of the deceased employee Shri Nand Lal Malik. The case of the applicant No.1 cannot be considered on the ground that he was sharing accommodation with the deceased as at that time he was not in the service of the respondents. There is a difference between the word living and sharing ^{the} accommodation. Thus, the impugned notice dated 17.5.91 issued under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 cannot be said to be illegal and requires no interference.

9. The applicants have also claimed an amount of DCRG. The respondents have not denied the payment and the applicants have also demanded the balance amount left after adjustment of the rent from the said outstanding amount of DCRG of the deceased. The respondents are under duty to pay the amount of DCRG to the applicant less the amount of rent due to that occupation of the

premises till the date of vacation. However, in the circumstances of the case, the DCRG was not paid to the applicants because of the various circulars of the Railway Board and not due to any administrative lapse. The Hon'ble Supreme Court has considered the matter in the case of Raj Pal Wahi Vs. UOI (Writ Petition No.7688-91, decided on 27.11.89) in such circumstances ~~the interest~~ the interest was disallowed on the amount of DCRG. In view of the above circumstances, the interest cannot be allowed on DCRG to the applicants.

10. In view of the above circumstances, the present application is partly allowed and the relief claimed for regularisation of the quarter or allotment is disallowed and the impugned orders dated 17.5.91 and 13.1.92 need no interference. However, the respondents are directed to pay the amount of DCRG to the applicants less the amount of rent due against the applicants. However will have the right of the respondents realising damages/market rate of rent under the provisions of Public Premises (Eviction of unauthorised Occupants) Act, 1971, for which the proceedings are pending. (Wazir Chand Vs. UOI, Full Bench Judgement of CAT 1989-91 Vol.II Page 287). Stay order granted earlier is vacated.

In the circumstances, parties are left to bear their own costs.

J. P. Sharma
10/9/92
(J.P. SHARMA)
MEMBER (J)