

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

✓ M.P. No. 813/92 in  
O.A. No. 708/92

DATE OF DECISION : 25.09.1992

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Shri Jugal Kishore & Anr. ...Applicants

vs.

Union of India & Ors. ...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants ...Shri H.P. Chakraverty,  
Counsel

For the Respondents ...Shri H.K. Gangwani,  
Counsel

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

JUDGEMENT (ORAL)

Shri Jugal Kishore, applicant No.1 is the son of Shri Mangal, applicant No.2. Applicant No.2 was employed as Motor Driver in the Railway Hospital, Central Railway, Jhansi. During the course of his employment, he was allotted Railway Quarter No.RB 1/712-G Rani Laxmi Bai Nagar, Railway Colony, Jhansi. The applicant No.2 was employed as casual labourer with the respondents on 13.6.1982 and was working with IOW, West Jhansi. He was subsequently screened and regularised as a regular Railway employee and transferred to Carriage and Wagons department, Jhansi w.e.f. 3.9.1989. The father of applicant No.1 retired on superannuation on 31.8.1991. Before his retirement,

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applicant No.1 applied for regularisation of the said Railway quarter allotted to his father in his name on the basis of cut off turn allotment as per Extant Rules. The request of applicant No.1 was turned down by the impugned order dt. 29.8.1991 and the English translation of the same reads as follows :-

"In the above context, it is being informed that the competent authority did not permit necessary permission of sharing and the employee be informed accordingly."

It is against this that the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the prayer that the respondents be directed to allot/regularise the quarter No.RB-1/712 G Rani Laxmi Bai Nagar in favour of applicant No.1 and refund the sum of Rs.27,720 received from him with interest @15% p.a.

2. On this application, notices were issued to the respondents calling upon them to file a reply on 1.5.1992. The notices were served on the respondents and Shri Naresh Sinha, Court Clerk, departmental representative appeared for the respondents on 15.7.1992 and prayed for time to file the reply. On 26.8.1992, the respondents were represented through the counsel Sh.H.K.Gangwani and again the request for filing the reply was granted. The matter was taken up on 23.9.1992 and the reply has not been filed by that date, but since the learned counsel for the applicants

was not present on that date and a written request was made to adjourn the matter, so the matter has come today.

3. The learned counsel for the respondents, Shri H.K.Gangwani again requested for further time for at least the last opportunity to file the reply. In the facts and circumstances of the case and seeing that the applicants of this case are Class-IV employees and that they are posted at Jhansi, it is not therefore, just and proper to give another adjournment to the respondents on a small matter like regularisation of the quarter which is to be done according to the Extant Rules. Thus the request of the learned counsel for the respondents after considering the same has been rejected and the matter has been taken up for hearing/disposal.

4. As per the circular of the Railway Board of 1990 No.E(G)25 of 1991 No.E(G) 90 QRL11 QRI 9 dt.15.1.1990 supplemented by another circular/dt.15.3.1991, a ward of a retiree from the Railway service is entitled to the regularization of the Railway quarter held by the retiree on certain conditions being fulfilled and these are :-

- (i) That such a ward of the retiree should be a regular Railway employee,
- (ii) That he must be sharing the accommodation with the retiree at least six months before his retirement, and
- (iii) That the ward must not have been getting any HRA during this sharing period, i.e., six months prior to the retirement of the retiree.

5. Having gone through the impugned order, it does not disclose any reason and the ambiguity is of such a nature that nothing can be taken out from the language of the impugned order that which of the conditions as laid down by the aforesaid circular of the Railway Board as well as para-2318 of the Indian Railway Establishment Manual has not been fulfilled. In any case, the learned counsel for the respondents has been kind enough to argue the case on the basis of the records available with him. The learned counsel for the respondents pointed out that the applicant No.1 continued to draw HRA till the date of his father's retirement from service on 31.8.1991. Obviously this appears to be a ground for rejection of the permission for regularisation/allotment in favour of applicant No.1.

6. After going through the various annexures filed by the applicant No.1 applicant of the OA, it appears that L has moved an application on 31.8.1990 (Annexure A2) for giving the sharing permission and not to pay him the HRA as he has also not received ~~earlier~~ <sup>the same</sup> when he was posted with IOW, Jhansi for the period from February, 1983 to July, 1989. There is also another document in support of the same, which the applicant has filed as

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Annexure A4 dt. 3.3.1991, a letter addressed by Karya Nirikshak, Jhansi to Mandal Rail Prabandhak Kramik, Jhansi in reply to the letter dt. 3.12.1990 of the Mandal Rail Prabandhak, in which it is written that the employee (Jugal Kishore) has not been paid any HRA for the period from 18.4.1983 to 18.7.1989. Thus the contention raised by the learned counsel for the applicants finds due support that while the applicant was a casual labourer employed with IOW till 2.9.1989, he was not paid any HRA.

7. The learned counsel for the applicants has also referred to the application dt. 31.8.1990 (Annexure A2) in which he has made a request that he should not be paid any HRA. The genuineness of this application is doubted by the learned counsel for the respondents, but there is an endorsement of receipt in the margin of this application and unless the respondents place better documentary evidence that such an application was not received or that it has been procured for the purpose of this case, the contents of this application and its genuineness cannot be doubted.

8. If the only hurdle is that the applicant has overdrawn HRA for a period to which he was not entitled to sharing of the accommodation, seeing to the category to which the applicant

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belongs and being of down trodden class of the society, he was not expected to be so much aware of various Rules and Regulations in force, then the excess amount of HRA/any HRA drawn by such an employee can be ordered to be refunded by him rather than to deprive him the benefit of the circular for out of turn allotment/regularisation of the quarter shared by him with his father.

9. I have considered the matter from another angle also. The Extant Rules which provide regularisation/out of turn allotment are to be interpreted in the light of the facts of each case. When the applicant had applied for sharing the accommodation with his father, the Accounts Section of the respondents should be aware before paying HRA as to where the said employee is residing and if he has already been residing in a Government accommodation, then as per ARA rules, he is not entitled to any payment of HRA. If the respondents continue paying the HRA instead of the known address of the employee in a Government residence, then the respondents are themselves to be blamed for the lapse committed by the applicant in drawing HRA for the period he was residing with his father.

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10. Taking all these facts into account, the impugned order which is cryptic and does not disclose any reasons is quashed and set aside and the respondents are directed to regularise the quarter in favour of the applicant, Shri Jugal Kishore w.e.f. the date his father has retired or four months after his retirement and in every case, the respondents shall realise only the normal licence fee of the said quarter. Excess of rent or damages, if any, recovered from the applicant in respect of the quarter shall be returned to him within a period of three months from the date of receipt of a copy of this judgement. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. This order is subject to the condition that applicant No.1 deposits within one month from the date of receipt of the copy of this order all the amount of HRA which he has drawn while he was sharing the premises with his father, i.e., w.e.f. 3.9.1989. Costs easy.

*J. P. Sharma*  
(J. P. SHARMA)  
MEMBER (J)