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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.612/93

Date of decision:4.5.93.

Shri Iqbal Singh & anr. ... Petitioner
versus

Union of India through
General Manager,
Northern Railway,
New Delhi & ors. ... Respondents
Coram:

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman (J)

The Hon'ble Mr. S.R. Adige, Member (A)

For the Petitioners ... Sh. S.K. Sawhney, Counsel.

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

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

Two petitioners before us are the father and the son. Petitioner No.1 is the father. He was employed in the Northern Railway as Inspector of Works. As a part of his service conditions, he was allotted Government accommodation (Quarter No.5/1, Railway Colony, Lodhi Colony, New Delhi). On 31.7.91, he retired from service.

Petitioner No.2 i.e. the son from 10.12.90 onwards started living with the father in the said accommodation and thus commenced sharing the accommodation with his father. From that day he was not given House Rent Allowance.

On 14.12.92, the father made an application praying that the occupation of the said accommodation

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may be regularised in favour of his son. Vide order dated 2.2.93, Divisional Superintending Engineer/Estate, Northern Railway, New Delhi, rejected the said application. This order is being impugned in the present OA.

Reply has been filed on behalf of the respondents. Counsel for the parties have been heard.

In the impugned order two reasons have been given for rejecting the application.

- (i) petitioner No.1 did not obtain the permission of the competent authority for sharing the accommodation.
- (ii) necessary papers were not filed before the competent authority within a period of three months after the date of retirement.

Annexure A-7 to the application contains a circular issued on 15.1.90 by the Railway Board. The counsel for the parties agree that the relevant rules for allotment of the quarter are contained in the said circular. Para 2 of the circular provides, inter alia, that 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

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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.

It is not in dispute that on the relevant date, petitioner No.2 was employed as Machineman in the Northern Railway. It is also not in dispute that the son, in his own right was entitled to the same type of accommodation which was allotted to his father. We have already indicated that it is an admitted position that petitioner No.2 with effect from 10.12.90 started living with his father and thus sharing the accommodation. We also emphasise that with effect from ✓ the said date ~~when~~ the son stopped receiving the H.R.A and the respondents stopped him paying the H.R..A. ✓ The period from 10.12.90 to 31.7.91 is a period beyond six months. Therefore, there can be no hesitation in ✓ taking the view that the requirements of para 2 of the circular has been complied with by the petitioners.

We have gone through the circular more than once and have not been able to lay our a finger on any condition of limitation. Learned counsel for the respondents has also not been able to point out any such condition. Therefore, the view taken by the ✓ officer concerned that the petitioners have not submitted necessary papers for allotment within a period of three months after the date of retirement is based on an extraneous consideration.

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The counsel for the respondents has placed reliance on Note (viii) of the circular which reads inter alia that if an employee's dependent is already drawing HRA and stops drawing the amount six months before the retirement of the employee concerned, the dependent is not eligible for allotment/regularisation of quarter. This note appears to be a wholesome one. The period of six months has been prescribed to prevent clandestine allotment/regularisation. In the instant case, we have already indicated that the son (petitioner No.2) stopped receiving H.R.A and did not draw the same from 10.12.90 when the father retired. This note does not come in the way of the petitioners.

The learned counsel for the respondents has tried to supplement the impugned order. He has tried to impress that on others grounds, the OA is liable to be rejected. We are not inclined to look into the contents of the affidavits filed by the respondents. The impugned order has to be viewed objectively and the limited question to be examined by us is whether the order is based on relevant or irrelevant considerations. We are satisfied that the impugned order, as it reads, is based on extraneous considerations. With the result, the order cannot be sustained.

The OA is allowed. The impugned order is quashed. The authority concerned shall pass a fresh order in the light of the above observations and in

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accordance with law. Till fresh order is passed, the petitioners shall not be dispossessed from the accommodation.

We refrain from expressing any opinion on the other reliefs prayed for by the petitioners. The petitioner No.1 will be at liberty to agitate the the question of payment of DCRG etc. after fresh order has been passed, as directed above.

With these observations, the OA is disposed of finally ^{but} with no order as to costs.

S.R. Adige
(S.R. Adige)
Member(A)

S.K. Dhaon
(S.K. Dhaon)
Vice-Chairman(J)

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