

Reserved

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated This the 29th day of September 1999.

Present:- Hon'ble Mr. Rafiuddin, J.M.

Original Application No. 765 of 1996

Prashidh Narain Tripathi,
son of Sri Vishwanath Tripathi
Resident of 292-B Station
Colony, N.E. Rly. Gorakhpur.

... Applicant.

(Through Sri Bashisht Tiwari, Adv.)

Versus

1. Union of India through the General Manager,
N.E. Rly. Gorakhpur.

2. Chief Works Manager Workshop, N.E. Rly,
Gorakhpur.

3. Chief Security Commissioner, N.E. Rly.
Gorakhpur.

... Respondents.

(Through Sri Prashant Mathur, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiuddin, Member (J.)

The applicant Prashidh Narain Tripathi has sought regularization of Railway Quarter No. 292-B, Station Colony, N.E. Railway, Gorakhpur in his name by means of this O.A.

2. The applicant at present is working as Khalasi in C.T.S. Workshop, Northern Eastern Railway Gorakhpur. He was appointed as Khalasi on 15.1.1983 and his father Vishwanath Tripathi

was also posted as Head Constable in Railway Protection Force (R.P.F.) Gorakhpur. The applicant was living with his father in Railway Quarter No. 292-B Station Colony, N.E.R. Gorakhpur with effect from 1.7.1994 on the basis of share accommodation granted by respondent No.3. Since is the quarter in question of R.P.F. pool, respondent No.2 (Chief Works Manager, Workshop) Gorakhpur had also informed the respondent No.3 that the said quarter should be transferred to the Mechanical Workshop pool and suitable Quarter will also be transferred to the respondent No.3 (Chief Security Commissioner) vide his letter dated 23.2.1995 (Annexure A-3). Exxx The Chief Works Manager, N.E. Railway Gorakhpur vide his letter dated 30.1.1996 (Annexure A-4) also transferred Quarter No. 511 N. Bichhiya Colony Gorakhpur to the Security Commissioner pool and also requested to allot the aforesaid quarter to any person in R.P.F. However, now, the Chief Works Manager had cancelled his aforesaid order dated 30.1.1996 (Annexure A-5). The respondent No.3 vide his letter dated 11.4.1996 (Annexure A.6) requested the Chief Works Manager (Respondent No.2) to transfer the Quarter in question to the Mechanical Workshop pool and also a suitable quarter be transferred to the Security Commissioner pool (Annexure A-3). The applicant had also represented vide his representation dated 10.2.1995 and requested for the regularisation of the quarter in question in his name (Annexure A-8). The grievance of the applicant is that instead of regularization of the quarter in his name the respondents are threatening the applicant to vacate the quarter in question through R.P.F.

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hence this application.

3. The case of the applicant is that the Railway Board vide Circular dated 19.12.1981 provides that if the son, daughter, wife, husband and father is living on the basis of share accommodation for more than six months from the date of retirement of original allottee such accommodation is liable to be regularized in favour of such dependants of the original allottee. The applicant fulfills all the conditions of the aforesaid Circular of the Railway Board hence he is entitled for the allotment of quarter in question in his favour.

4. It has also been stated on behalf of the applicant that quarters belonging to R.P.F. pool have been allotted on the basis of share accommodation to the employees of other departments. Hence the applicant can not be denied this right merely on the basis of the claim of the respondent No. 3 that the quarter in question is required to the R.P.F. employee in essential duties.

5. The application has been contested on behalf of the respondents mainly on the ground that the applicant does not fulfill all the conditions mentioned in the Railway Board's Circular dated 19.12.1981 as much as the applicant has admitted in his application dated 24.6.94 submitted for regularization of the quarter in question that he had been residing in the quarter in question from the year 1980 whereas he has requested for stopping the payment of H.R.A. from the month of July 1997 and onwards. Since the applicant himself has not complied with the relevant instructions and rules issued by the Railway Board for

sharing of the accommodation hence he is/entitled for not any consideration. It is also the case of the respondents that the quarter in question is of R.P.F. pool hence it belongs to an essential category and the same can not be transferred to the Mechanical Workshop in which the applicant is employed. Consequently the request of the applicant for regularization of the quarter in question has been rejected, by the respondent No.2. It is also clarified that under these circumstances the respondent No.2 has cancelled his earlier order dated 30.1.1996 by which the Railway Quarter No. 511 was transferred to the Pool of R.P.F. in lieu of the quarter in question.

6. I have heard the arguments of the learned counsel for the applicant and the respondents and perused the record.

7. The facts of the present case indicate that the ~~claim~~ of the application for regularization of the quarter in question is based on the Railway Board's Circular on the subject as amended from time to time. A copy of the relevant Board's letter dated 15.1.1990 is available on the record which has been filed as Annexure C.A.VI. Para 2 of the Circular which is relevant for the ~~RXXXXXX~~ allotment of the quarter is as under:-

" 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

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accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least 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 the entitled type or type next below is to be allotted. "

A perusal of the above para 2 clearly indicates that there are four conditions necessary which entitles a railway employee for allotment of the railway quarter on out of turn basis. Firstly the applicant should be son, daughter, wife, husband or father of the original allottee of the railway accommodation. Secondly the said relation is entitled a railway employee/for railway accommodation.

Thirdly he or shee had been sharing accommodation with the retiring or deceased employee for at least six months before the date of retirement or death and lastly he or she had not claimed any H.R.A. during the period.

8. I find in the present case that there is no dispute that the applicant is the son of a retired railway employee namely Vishwanath Tripathi who was the original allottee of the quarter in question. It has also not been disputed on behalf of the respondents that the applicant is a railway employee eligible for railway accommodation and the type of quarter in question. The respondents have also not denied the claim of the applicant that he had been sharing the quarter in question at least six months before the retirement of his father. The applicant is, therefore, on all accounts appear to be eligible for regularization of the quarter in question on the basis of instruc-

tions issued by the Railway Board.

9. However, the learned counsel for the respondent has urged that since the quarter in question is of R.P.F. pool and the R.P.F. being an essential service of the railways, it would not be possible to transfer quarter in question to the pool of Mechanical Workshop. However, I do not find any force in this argument because there is no material to show that there are provisions in which the accommodation of R.P.F. can not be transferred to any department of the Railway if the necessity arises. On the other hand it has been specifically mentioned on behalf of the applicant that the quarter belonging to R.P.F. pool have also been allotted on the basis of share accommodation in some cases. It has been specifically mentioned that the railway quarter bearing No. 479-B which belongs to R.P.F. has been allotted to one Birendra Kumar on the basis of share accommodation whereas said Virendra Kumar belongs to Audit department. Similarly Quarter No. 295-B has also been allotted to one Ram Ratan Gupta who is working in the office of Chief Works Manager Workshop N.E.Railway. These facts have not been controverted or denied on behalf of the respondents. Therefore, the applicant can not be discriminated on these grounds and refused regularization of the quarter in question on the plea that since the quarter belongs to R.P.F. pool, the same can not be transferred to other department.

10. It has however been rightly pointed out on behalf of the respondents that in the present case applicant has not come with clean hands before this court. The application dated 24.6.94 submitted

by the applicant on prescribed proforma for regularization of the quarter in question on the basis of share accommodation (Annexure C.A.-7) shows that the applicant has been living in the quarter in question from the year 1980. He has joined the railway service on 15.1.1983 and has shared accommodation in question with his father since then. It is, however, admitted to the applicant that he has requested the respondents to stop payment of H.R.A. to him from the month of July 1997 and onwards only. In other words he has been receiving the H.R.A. despite sharing the accommodation with his father. Obviously he does not fulfill one of the conditions necessary for his claim for allotment out of turn of the quarter in question.

11. It is pertinent to mention here that in the Board's Circular quoted above, it has been specifically provided that the accommodation will be allotted provided the relation of the railway employee and the original allottee of the accommodation has not claimed any H.R.A. during the period he or she had shared accommodation. The word period is not referred to only for six months because the sharing of the accommodation for six months is minimum period and the word period relates to the entire period during which the relation has shared accommodation with the original allottee. Thus in the present case the applicant has been receiving H.R.A. during the period he shared accommodation with his father. The claim of the applicant for allotment of the quarter in question on the basis of share accommodation may

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be rejected on this ground. The applicant has also specifically admitted in para 9 of his replication dated 17.5.99 that:-

"Contention of the Railway Administration that the applicant had filed application for share accommodation in which he has stated that he is living in the said quarter since 1980 is natural and not incorrect however for this purpose only living presumption can be taken with effect from 15.1.1993 and house rent allowance can be recovered from the applicant."

It is, however, not made clear as to why it should be presumed that the applicant has been sharing accommodation only with effect from 15.1.1993. But the applicant has no objection if the H.R.A. drawn by him is recovered from him by the respondents.

12. Considering the facts and circumstances of the case it is clear that the applicant has been sharing the accommodation in question with his father the original allottee since he joined the railway service. He has also been receiving H.R.A. However, I do not find it desireable that the claim of the applicant for regularisation of the accommodation in question should be rejected merely because he has been receiving H.R.A. as he has shared the accommodation for such a long time with his father. But the applicant has also no moral or legal right to receive the H.R.A. during this period. Accordingly he is bound to refund the amount of H.R.A. received by him, during the aforesaid Period.

13. In view of what has been stated above, the D.A. is liable to be allowed on condition that the

applicant would refund the entire amount received by him as H.R.A. from the date of his joining the service with the respondents.

14. The D.A. is allowed and the respondents are directed to regularise quarter No. 292-B, Station Colony, N.E. Railway Gorakhpur in the name of the applicant within three months from the date of communication of this order. The applicant is also directed to refund the amount of H.R.A. received by him from the date of joining the railway service to the respondents failing which it would be open to the respondents to recover the same in reasonable easy instalments as per rules. The D.A. is disposed of accordingly. There shall be no order as to costs.

Rafiquddin
Member (Judl.).

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