

(17)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 984 of 2005

_____ day, this the 24th day of **September** 2007

Hon'ble Mr. K.S. Menon, Member (A)

1. Vishwaner Kumar Dwivedi S/o Shri G.N. Dwivedi, aged about 26 years, Resident of Railway Quarter No.65 YZ, 7th Avenue, Nawab Yusuf Road, Allahabad.
2. Gokaran Nath Dwivedi S/o Late R.C. Dwivedi, aged about 61 years, Resident of Railway Quarter No.65 YZ, 7th Avenue, Nawab Yusuf Road, Allahabad.

Applicants

By Advocate Shri S.S. Sharma

Versus

1. Union of India through The General Manager, North Central Railway, Headquarters Office, ALLAHABAD.
2. The Chief Commercial Manager, North Central Railway, Headquarters Office, ALLAHABAD.
3. The Divisional Railway Manager, North Central Railway, DRM Office, ALLAHABAD.
4. The Divisional Safety Officer, North Central Railway, DRM Office, ALLAHABAD.

Respondents

By Advocate Sri A.K. Sinha

ORDER

By K.S. Menon, Member (A)

The present O.A. has been filed against the impugned order dated 23.06.2005 issue by the Sr. Divisional Safety Officer, North Central Railway, Allahabad rejecting request of applicant No.1 for allotment of Railway Quarter No. 65 YZ, Traffic Colony, 7th Avenue, Allahabad, which is under possession of his father Shri G.N. Dwivedi-Applciant No.2 who has retired as a Guard from

K.S. Menon

(13)

Railway Service from the Office of Senior Divisional Operating Manager, N.C. Railway, Allahabad on 31.12.2004.

2. The brief facts of the case are that applicant No.2 Shri G.N. Dwivedi-father of the applicant No.1 retired from Railway service on 31.12.2004 as a Guard from the Office of the Senior Divisional Operating Manager, North Central Railway. Applicant No.2 was allowed as per rules to retain the quarter No. 65 YZ, Traffic Colony, 7th Avenue, Allahabad for a period of eight months after retirement i.e. up to 31.08.2005. Besides applicant No.2 and his wife, the applicant No.1 and his wife, unmarried sister, a mentally retarded brother and elder brother's widow and their daughter are residing in the same quarter.

3. Applicant No.1 was initially appointed as Commercial Inspector under South Western Railway at Mysore on 30.02.2001. Since he was the only competent male member to look after his ailing parents and other family members, he sought and got a transfer to N.C. Railway, Allahabad as a Commercial Inspector under N.C. Railway, Headquarters Office, Allahabad on 03.12.2004. The applicant states he was compelled to seek the transfer because of the family situation at the cost of loss of four years seniority (bottom seniority) and at his own expense. The applicant No.1 then applied on 30.01.2005 to C.C.M., N.C. Railway Allahabad for allotment of his father's quarter after his father's retirement on grounds of his family circumstances and as per Railway Board's Orders vide their letter dated 29.08.1986, 12.02.1988, 15.03.1991, 26.03.1991 and 01.07.1991, which basically stipulates as extracted below: -

"4 (i) 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 at least six months before the date of retirement or death and had not claimed H.R.A. during that period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for

(14)
a residence of that type or higher type. In other cases a residence of the entitled type or a type next below is to be allotted."

.....
Notes: (i) Orders regarding non-drawal of house rent allowance are applicable only in cases where the dependent is employed in the station where the Railway employee has been allotted Railway accommodation.

11. Subject: Allotment of Quarters.

It has been brought to the notice of this Department that sometimes the quarter belonging to one pool are allotted to employees of other pool (s) in cases where sons/wards of retired/deceased Railway employees are allotted quarters on out-of-turn basis on retirement/death of the employee who was having a quarter of some other pool but the son or ward had been appointed in the Department other than the one in which the retired/deceased employee was working and that this creates an imbalance.

2. The matter has been carefully considered by the Department of Railways and they have decided that if in any case a quarter belonging to any particular pool is allotted to the employee who may be working in a Department different from the Department in which the retired/deceased employee was working, the deficiency in the pool of quarters belonging to the Department wherein the retired/deceased employee was working should be made good at the next opportunity in order that the balance is restored at the earliest."

4. The applicant No.1 submits that vide his representation dated 14.02.2005 he had requested that H.R.A. in his case be stopped. The CCM, N.C. Railway vide his letter dated 15.02.2005 sought the applicants comments on

{i} sharing of accommodation for six months prior to his father's retirement and;

{ii} non-claiming of H.R.A.

The applicant clarified this on 18.02.2005 stating that non drawl of H.R.A. is applicable only in the case of dependents employed in the same station where the retired Railway employee has been allotted accommodation and since he was posted to North Central Railway, Allahabad barely a month before his father's retirement, the question of sharing the accommodation for six months did not arise. Besides, he had already applied for stoppage of his H.R.A. on 14.02.2005. The learned counsel for the applicant has relied on [1990] 13 Administrative Tribunals Cases, 887, Harinder Singh Vs. U.O.I. and others dated

[Signature]

07.12.1989 wherein it had been held that Railway Board Circular could not be interpreted narrowly to mean that the applicant should have shared accommodation with his father for six months as government servant.....Applicant's father was in legal possession of accommodation up to 28-2-1990Prescribed period of six months was completed within this duration - No specific permission for sharing of accommodation in this case was required because when house rent allowance was denied to the applicant, permission was presumed to have been granted - Hence, government accommodation ordered to be regularised in the name of the applicant.

5. The Chief Commercial Manager, North Central Railway then forwarded the application to Divisional Railway Manager, North Central Railway who in turn forwarded the case to the Senior Divisional Safety Officer, North Central Railway, Allahabad who is the Officer controlling the pool accommodation. There was no response from the Senior Divisional Safety Officer so the applicant
2/4 Sent / several reminders. In response to one such representation dated 26.04.2005, the C.C.M., N.C. Railway vide his letter dated 27.04.2005 (Annexure A-10) asked the Senior Divisional Safety Manager, N.C. Railway, Allahabad to allot the said quarter in favour of the applicant specifically stating that the first available quarter of the specified type of the Commercial department would be handed over to Traffic pool in lieu of the Quarter so allotted to the applicant. Respondent No.4, despite CCM, N.C. Railway, Allahabad letter dated 27.04.2005 and Railway Boards Order on the subject rejected the applicants' petition vide letter dated 23.06.2005 on the ground that the applicant was posted in N.C. Railway Headquarters Office and hence as per rules, the said Railway Quarter cannot be allotted to him (annexure A-1).

6. Applicant No.1, then sent a representation dated 11.07.2005 drawing the attention of respondent No.4 to CCM, N.C. Railway, Allahabad vide letter dated 27.04.2005 in which the first available quarter in the Commercial Pool would be handed over to the Traffic Pool in lieu of the said quarter occupied by the

applicant No.1. The respondent No.4 subsequently sent a letter dated 03.08.2005 intimating no extension would be allowed beyond 31.08.2005. Aggrieved by the said order which the applicant claims is violative of the Railway Board's orders and Article 14 of the Constitution of India and since the applicant does not have any accommodation in Allahabad to cope with the critical family conditions, the applicants filed this O.A. seeking the quashing of the impugned order dated 23.06.2005 and direction of this Tribunal to the respondents to allot the said Quarter in favour of applicant No.1. Keeping in view the facts and circumstances of the case, this Tribunal vide its order dated 25.08.2005 granted an interim stay on the impugned order dated 23.06.2005, which was subsequently continued till disposal of this O.A. vide Order dated 10.10.2005.

7. The learned counsel for the respondents Shri A.K. Sinha rebutting the points put forward by the applicants submits that the applicant No.2 (father of applicant No.1) a Guard coming essential category himself was allotted the Quarter on out of turn basis after he was given compassionate appointment after the death of his uncle, a Railway Guard. Applicant No.2 after his retirement is now trying to get an out of turn allotment in the name of his son before expiry of 31.08.2005 for which he is not eligible. He further submits that the applicant No.2 is now using his son applicant No.1 to apply for the said Quarter on out of turn basis by getting himself transferred from Mysore to Allahabad and that too 28 days prior to the date of superannuation of his father.

8. The applicant who joined Headquarters only on 03.12.2004 has not applied for allocation of any railway accommodation and hence his name does not appear on the priority list. He therefore, cannot be allotted any railway accommodation in absence of this application as per rules. Besides this, he says the applicant No.1 has also not applied for to sharing the said Quarter with his father and continued to draw HRA with his salary which is in violation of sub para (viii) of para 4 of the Master Circular No.49 (Annexure A-2). Shri Gaur contends that the applicant vide interim order is



(17)

continuing to live in the said Quarter even after the expiry date of 31.08.2005. Moreover, the applicant does not fall under essential category hence is not eligible for out of turn allotment. Despite this applicants are continuing to stay in the Quarter beyond 31.08.2005 by virtue of interim order and besides being liable to pay penal/damage rent they are depriving other legitimate claimants who are in the priority list for allotment of this Quarter which is in violation of paragraph 4 (1) of Master Circular No.49, which stipulated in paragraph 8 of short counter as follows: -

"Para. 4(i) 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 at least six months before the date of retirement or death and had not claimed House rent allowance during that period. The same residence maybe 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 a type next below is to be allotted."

In view of this, the respondents are of the view that the applicant is not entitled for any interim relief nor do they have a prima facie case. Hence, the interim order is liable to be vacated otherwise great injustice could be caused to those railway employees who are applicants and have their names on the priority register for allotment of such accommodation.

9. This Tribunal has confirmed the interim order dated 25.08.2005, directing the respondents not to take any coercive steps to evict the applicants from the Railway Quarter in dispute.

10. Heard, the counsels for both parties and perused the pleadings on record.

11. The respondents' basic contention is that the applicants case is not covered by the Railway Board's letters annexed at A-2 to this O.A. for the following reasons: -

- {i} The applicant No.1 has not co-shared the accommodation of the retiring employee for six months prior to retirement for being eligible for out of turn allotment.
- {ii} Should not have drawn H.R.A.

- {iii} Applicant No.1 does not fall into the Essential Staff Category to be eligible for out of turn allotment.

Admittedly, the applicant has not co-shared the accommodation with his father for six months. This is because of the fact that the applicant was posted at Mysore under South Western Railway as a Commercial Inspector w.e.f. 30.03.2001. The applicant No.1, it appears tried his best for a transfer to N.C. Railway, Headquarters, Allahabad on option as per Railway Board orders but the same was not forwarded in time. Because of the critical family situation, he was compelled to seek the transfer on request basis which was ultimately allowed and he joined N.C. Railway Headquarters on 03.12.2004. It was only after coming to Allahabad that he applied on 31.01.2005 for co-sharing the accommodation with his father immediately after his father's retirement on 31.12.2004.

12. The Central Administrative Tribunal, Principal Bench, New Delhi in [1990] A.T.C. 887, Harinder Singh Vs. Union of India and others has held that "Applicant's father was in legal possession of accommodation up to 28.02.1990 - Prescribed period of six months was completed within this duration." In the present case also the applicant No.2 was allowed to retain the Quarter as per rules up to 31.08.2005 and the applicant No.1 has not co shared the Quarter with applicant No.2, six months prior to retirement. However, as per Rules, the applicant No.1 co shared with applicant No.2 for 6 months during the period of extension. This is a factor which the respondents need to give weightage to as the six months period also falls within this date. The applicant is entitled for allotment of Railway accommodation as per his entitlement which would be higher if not the same as his father. The point of sharing for six months would perhaps get covered by the above Central Administrative Tribunal's Judgment. The contention of the applicant is therefore conceded.

13. On the issue of non-drawal of H.R.A., the Railway Boards orders stipulate that this non-drawal certificate is applicable if the dependent of the retiring employee is posted in the same station.

(19)

In this case the applicant No.2 was posted in Mysore and on his posting to Allahabad under respondent No.2, he applied to the Competent Authority to stop his H.R.A. vide his letter dated 14.02.2005. The onus was, therefore, on the respondents to stop his H.R.A. If the H.R.A. has not been stopped the responsibilities is that of the respondents. In any case, they are at liberty to recover the H.R.A. paid to the applicant No.1 after he had joined in North Central Railway, Allahabad. Thus applicants' stand in view of the above, does merit consideration.

14. The C.C.M., N.C. Railway, Allahabad had asked the applicant No.1 clarification the above two points of the co sharing and non-drawal of H.R.A. and after clarifications were given, the CCM, North Central Railway forwarded the case to the respondent No.4 (Competent Authority) for regularisation of the existing Quarter. C.C.M. had also assured of making available the first Quarter that becomes available under Commercial category to the Traffic Pool in lieu of the said Quarter.

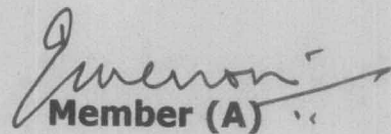
15. The applicant and the respondents counsel are both relying on the same Railway Board orders in support of their respective contentions. The question is now regarding the interpretation of the above order with reference to the circumstances of the case. In order to ascertain this it is necessary to refer to an extract of the relevant paragraph No.4 (i) of the Railway Boards Master Circular No.49, mentioned in paragraph No.3 above. A simple reading of the Circular cited above indicates that the applicant in the present case is eligible for an out of turn allotment by virtue of the provisions of the said Circular. The stipulations of the Railway Board circular have been examined in paragraphs mentioned above and it must be admitted that the circumstances in this case are unique. The nature of the applicants' family conditions with 8 members including he and his wife with different medical histories is quite serious. He is eligible for out of turn allotment fulfilling the terms of the Railway Board Circular within the circumstances in which he is placed, the respondents should regularise the said Quarter in applicant No. 1's name as prayed

(20)

for, especially as an alternate, Quarter under Commercial Wing would be made available to the Traffic Pool to restore the balance. The respondents argument that the applicant does not come under Essential Category for grant of out of turn accommodation is admitted, it however lacks merit as the grounds for out of turn allotment in this case are different and flows from the applicants' requirement of having to look after his parents, other family members by co sharing the Quarter in question.

16. In view of the above, the impugned order dated 23.06.2005 issued by respondent No.4 is set aside. The respondent No.4 is directed to regularise the Quarter No.65 YZ, Traffic Colony, 7th Avenue, Allahabad in favour of applicant No.1 w.e.f. 01.09.2005. Respondent No. 2 is directed to transfer the first available vacancy of a similar type Quarter under the Commercial Pool to the Traffic Pool expeditiously in lieu of the Quarter now to be regularised. This exercise should be carried out within a period of two months from receipt of certified copy of the Order.

17. The O.A. is allowed with the above directions. No order as to costs.


Member (A)

/M.M./