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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
— AHMEDABAD BENCH
~~XXXXXXXXXXXXXX~~

O.A. No. 306 & 307 OF 1988.
~~TA No.~~

DATE OF DECISION 9.2.1990

KIRIT C. DAS & CHITARANJAN DAS, Petitioner s .

MR. K.K. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s .

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

- Yes* 1. Whether Reporters of local papers may be allowed to see the Judgement?
Yes 2. To be referred to the Reporter or not?
No 3. Whether their Lordships wish to see the fair copy of the Judgement?
No 4. Whether it needs to be circulated to other Benches of the Tribunal?

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O.A.No. 306/1988

Shri Kirit C. Das,
Cleaner, Carriage Foreman(B.G.),
Western Railway,
Ahmedabad.

..... Petitioner.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India,
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divl. Railway Manager,
Western Railway,
Pratapnagar, Baroda.
3. Asstt. Mechanical Engineer,
(Chairman, Housing Committee)
Ahmedabad Railway Station,
Western Railway, Ahmedabad. Respondents.

(Advocate: Mr. N.S. Shevde)

O.A.No. 307/1988

Shri Chitaranjan Das,
Retired Senior Clerk,
residing at Railway Quarter
No. 486/326, Type-I,
Maninagar, Ahmedabad.

..... Applicant.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India,
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divl. Railway Manager,
Pratapnagar,
Western Railway, Baroda.
3. Asstt. Mechanical Engr.,
(Chairman, Housing Committee),
Ahmedabad Railway Station,
Ahmedabad. Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 306/1988

&

O.A.No. 307/1988

Date: 9-2-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

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In O.A.No. 307/88, applicant Chitaranjan Das who retired from Railway service from 31.10.1984 in the post of Senior Clerk has challenged respondent Railway administration for not paying him retirement benefits like gratuity and set of railway passes. Kirit C. Das, his son, a Railway casual labour who shared, with prior permission of authority, the railway quarter allotted to his father on the retirement of whom the quarter was not regularised in his name, filed O.A.No. 306/88 challenging such decision of the respondents.

2. Both these applications filed under section 19 of the Administrative Tribunals Act have common advocates for the parties. The two applications being so connected with each other that the legalities in one will have consequence on the legalities in the other, the two have been heard together and are disposed of by a common judgment.

3. Briefly stating the facts of O.A.No. 306/88 first, the applicants who joined on 4.6.1980 as substitute Khalasi, was called for his screening in 1983 but the provisional panels consequent to the screening came to be notified on 31.7.1984 & 6.9.1984. However, before the applicant could be absorbed as a regular employee, his father, Chitaranjan Das, the applicant of O.A.No. 307/88, retired on 31.10.1984. As the applicant's application dated 1.2.1983 for sharing his father's railway quarter was sanctioned by the Sr. D.M.E. vide his letter dated 26.9.1983, the applicant relies on Railway Board's circular No. E(G)66 QR 1-11 dated 25.6.1966 for his claim to the regular allotment to him the Railway quarter he, with prior permission, started sharing with his father. The respondents, instead of making such allotment, increased the rent his father was paying for the quarter from Rs. 15/-

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first to Rs. 60/- and thereafter to Rs.160/-. His grievance against not allotting of the quarter was vainly taken up at the P.N.M. meeting. He therefore resorted to hunger strike which evoked telegram dated 6.5.1987 from the respondents who informed him that his request for allotment of the quarter was under active consideration and he was advised to give up hunger strike. The applicant has also alleged that in the past in similar cases the Railway administration had made allotment of quarters. He has cited names of some such persons to whom the quarters were so allotted. His case was again referred to P.N.M. meeting held on 11.3.1988 when all representatives except one, namely, Western Railway Mazdoor Sangh's Mr. Burnala, agreed to allot the quarter to the applicant and only because Burnala objected, the quarter was not allotted.

4. The facts of O.A.No. 307/88 filed by the retired Chitaranjan Das, can be pared down to the above but with a different challenge, namely, challenge, to the respondents' action to withhold gratuity and other retirement benefits and railway passes as he, on retirement, did not hand over the vacant possession of his Railway residential quarter which his son had started sharing with him with prior permission of authority.

5. The basic facts stated by the two applicants are accepted by the respondents in their separate replies to the two applications. However, the non-allotment of retired father's quarter to his son has been justified on the ground that Railway Board's circular dated 25.6.66, supra, does not cover the case of the son who is yet to be absorbed in regular service though had been sharing, with prior permission, Railway quarter allotted to his father for more than six months before his father retired. The son came to be regularised against a regular vacancy

with effect from 23.2.1985. However, in respondent's letter No. EC/58/6/12(C) dated 5.7.1985 it was advised that :-

"However, if housing committee unanimously recommended the case of Shri Kirit Kumar C. Das cleaner the same may be processed further as per the extent instructions in vogue."

As one of the members of the housing committee, the Western Railway Mazdoor Sangh representative, did not agree, the ^{out of turn} allotment of the quarter to the son could not be made. The respondents' reply to O.A.No. 307/88 is to the fact that the father not having vacated the railway quarter within the prescribed time after his retirement, the gratuity and other retirement benefits have been correctly withheld and that rent at penal rate is therefore recoverable.

6. At the final hearing Mr. K.K.Shah for the applicants, besides reiterating the pleading, claimed that the panels dated 31.7.84 & 6.9.84 will lead to absorption against the regular vacancies with retrospective effect i.e. the date from which the regular vacancy against which the son was absorbed was available. He also urged that the respondents can start regular eviction proceedings instead of withholding the D.C.R.G. and other retirement benefits of the father. He alleged that one Thakkar, an office bearer of a Union, was given larger ^{out of turn} benefit in regard to allotment of quarter than being requested by the father and the son. He relied on Union of India and Anrs. V/s. Wing Commander, R.R. Hingorani, A.I.R. 1987 S.C. 808 and on Central Administrative Tribunal, New Bombay Bench unreported judgment in Vittalrao Arjun Kale & Anrs. V/s. Union of India, delivered on 26.11.87 in O.A.No. 271/86. Mr. Shevde for the respondents urged

that vacation of allotted quarter on retirement was compulsory and as the same was not vacated, retirement benefits are withheld and that the father having retired before the son was regularly absorbed, the father's quarter could not be allotted to the son for the simple reason that substitutes are not eligible for Government accommodation. He said that the P.N.M. meeting did not produce a unanimous decision which ^{was} ~~the~~ hands of the respondents thereby implying that the quarter would have been allotted if the P.N.M. meeting had taken a unanimous decision. He clarified the circumstances under which a quarter was allotted out of turn to one Thakkar. He relied upon unreported judgment of Ahmedabad Bench of the Tribunal in O.A.No. 495/87, Tarachand Navaji & Anrs. V/s. Union of India & Ors. dated 1.12.1989. He further argued that the father cannot be paid retirement benefits unless he vacates the quarter and the contention of the son for allotment of the father's quarter out of turn has to be rejected as the same is not in accordance with rules.

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7. The first question is whether the son, a substitute temporary Railway servant on 31.10.1984, the date of retirement of his father, is eligible for allotment of quarter. Under para 2318 of Indian Railway Establishment Manual (I.R.E.M. for short) substitutes are afforded all rights and privileges admissible to temporary railway servants on completion of six months continuous service. Under para 2312 of I.R.E.M., temporary railway servants are eligible for allotment of residence subject to recovery of rent and availability of accommodation. Temporary railway servant is defined in rule 2301 of I.R.E.M. to mean "a railway servant without a lien on a permanent post" and the rule specifically excludes only casual labour, a contract or part time employee or an apprentice.

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This implies that casual labour as well as substitutes who have acquired temporary status are temporary railway servants as defined in the Rule 2301 of I.R.E.M. As temporary railway servants, they also become entitled, under Clause (a) of para 2511 of I.R.E.M. " to all the rights and privileges admissible to ^{temporary} railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual" which include, under para 2312, as stated above, eligibility for allotment to railway quarter also subject to the fulfilment of requisite conditions of availability of accommodation and recovery of rent. Thus the son was, on 31.10.1984, eligible for allotment of Railway quarter.

8. The next question is whether the son, a substitute temporary railway servant on 31.10.1984, the date of retirement of his father, was eligible for allotment of quarter out of turn. The provisions in the I.R.E.M. with regard to allotment of quarters and their regular occupancy do not, under para 1731, become available to such railway servants as may come to occupy railway quarters without a proper or initial allotment. In the instant case the son had shared the accommodation with the father with prior permission of the authorities. That being the case, the occupation of the quarter by the son though of the nature of sharing of the quarter with his father and not an allotment has to be treated as initially proper and regular and the case for out of turn ^{regular allotment} to such a sharer the quarter he shared is liable to be examined in the light of the provisions in the I.R.E.M. and other instructions, if any, on the subject.

9. The relevant provision in Railway Board's circular of 25.6.1966 reads as follows:

" Allotment of quarter on death or retirement of

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an employee. In such an event the quarter may be allotted to his/her serving son/daughter/husband/father out of turn, provided the said relation is entitled to railway accommodation and has been sharing the accommodation with the deceased/retired railway servant for atleast 6 months prior to his/her death/retirement."

A simple reading of the above provision in the light of provision in the I.R.E.M. analysed above clearly lead to the only conclusion that the applicant son is entitled to out of turn allotment of his retired father's quarter right from the date the father retired on 31.10.1984 from the railway service. The son's sharing the Railway quarter allotted to his father was permitted vide order dated 26.9.1983 which is above of a year before the father's retirement on 31.10.1984. The son is undoubtedly serving the Railways and also, as analysed above threadbare, entitled to Railway accommodation.

10. In view of the above clear findings, it is really not necessary to discuss the case law relied upon by the parties. However, a discussion, of some aspects is necessary for academic reasons. New Bombay Bench judgment dated 26.11.87 in O.A.No. 271,87 relied upon by the applicant herein was about an applicant who retired from railway service on 31.5.82 and was, with proper sanction, sharing accommodation with his son who was employed as casual labour khallasi with effect from 4.7.79. The applicant had based his case on Railway Board's circular No. E(G) 78 CRI-23 dated 19.12.1981 which, to quote from the judgment, "deals with the regularisation of allotment of railway quarters in the name of dependents of a railway servant who retires from service." This circular of 19.12.1981 has not been relied upon in the case before me and has been relied upon the circular dated 25.6.1966, supra. However, perusal of the New Bombay Bench order reveals that the provisions of circular dated 25.6.1966 and 19.12.1981 are identical. In the New Bombay Bench case, the respondent railway

administration relying on Railway Board's circular dated 29.8.86 which clarified that orders in circular dated 19.12.1981 are a special dispensation in favour of the eligible wards of retired employees and their scope is to be confined only to such of the wards as are regular employees, contested the claim. The respondents failed on the grounds that circular of 1986, in so far as it clarified that casual labour and substitutes with or without temporary status are excluded from the purview of circular of 19-12-1981, could not apply from before the date of its issue and as the applicant had retired from railway service on 31.5.1982 the clarification issued in 1986 was not applicable to his case. In the case before me, the respondents did not rely upon the clarification in Railway Board's circular dated 29.8.86. In any case, in the case before me, the claim to allotment is from 31.10.1984 and cannot be validly rejected by the provisions of any circular dated 29.8.1986 by which the earlier instructions came to be amended or clarified. The New Bombay Bench judgment also questioned railway not issuing passes and held that para 1562 of I.R.E.M. provided for stopping the passes only when there is a misconduct on the part of the railway employees and non-vacation of a quarter was not treated as misconduct under rule 1562 of I.R.E.M. which could validate stoppage of issue of passes. The respondents relied on Ahmedabad Bench judgment in O.A.No. 495/87, where the claim for out of turn allotment was found untenable as conditions for allotment out of turn were not satisfied and the facts were different.

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11. In view of the above analysis, the applicant son is entitled to regular allotment of quarter No. 486/326 Type-I with effect from the date of retirement of his father, namely 31.10.1984. As a corollary to this

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finding, the applicant father also succeeds. The two applications are therefore finally disposed of with the following orders :-

O.A.No.306/88: The respondents are directed to regularise quarter No. 486/326 Type-I in the name of the applicant with effect from 31.10.1984 within one month of the date of the issue of this order. The parties to bear their own costs.

O.A.No. 307/88: The respondents are directed to comply with the following directions within three months of this order:-

- (i) Pay due gratuity and all other due retirement benefits to the applicant with 12% simple interest per annum from the date of his retirement, namely, 31.10.1984.
- (ii) Pay back to the applicant amount of rent above the normal rate of rent at outsider or market or penal rate recovered from the applicant with 12% simple interest counted from the date of each of such recovery.
- (iii) Issue to the applicant all due railway passes not issued as if their issue was postponed.
- (iv) Pay Rs. 500/- to the applicant as costs of the suit.

M. M. Singh
(M.M. SINGH) 9/2
Administrative Member