

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

M.A. 326 of 1996

O.A. 429 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

1. Amrendra Thakur, s/o Sri Bhagawan Thakur, residing at Railway Quarter No.E/13/B, Railway Colony, P.C. Ranchi, Dist.Ranchi, employed as Gangman(Group-D) in the office of Permanent Way Inspector, S.E. Rly., Ranchi, P.C. & Distt. Ranchi ;
2. Bhagawan Thakur, s/o Late Chuha Thakur, employed as Office Superintendent(Retired), S.E. Rly., P.C. & Distt. Ranchi, residing in the same address as above.

..... Applicants

-Versus-

1. Union of India, service through the General Manager, S.E. Rly., Garden Reach, Calcutta-43 ;
2. The Divisional Railway Manager, S.E. Rly., Adra, P.C. Adra, Distt. Purulia ;
3. Sr.Divisional Engineer, S.E. Rly., Adra, P.C. Adra, Distt. Purulia ;
4. The Divisional Personnel Officer, S.E. Rly., Adra, P.O. Adra, Distt. Purulia ;
5. The Assistant Engineer and Chairman Quarter Committee, S.E. Rly., P.C. & Distt. Ranchi ;
6. The Chief Permanent Way Inspector/Permanent Way Inspector, S.E. Railway, P.O. & Distt.Ranchi.

..... Respondents

Counsel for the applicants : Mr. B.R. Das
Mr. B.P. Manna

Counsel for the respondents : Mr. P.Chatterjee

Heard on : 16/4/1997

Order on : 15/5/1997
8+5+1997

O R D E R

A.K. Chatterjee, VC

The petitioner No.1 was appointed as Gangman in South Eastern Railway and posted at Ranchi in April, 1992. His father,

✓

.....2

the petitioner No.2 was an Office Superintendent in the service of the same Railway also posted at Ranchi and retired on attaining the age of superannuation on 31.1.93. He was in occupation of a Railway Quarter allotted to him and the petitioner No.2 had always shared the same quarter living with his father. After the appointment of petitioner No.1 as a Gangman, he made an application on 6.10.92 for allotment of the same quarter under father and son rule and an order of allotment was made on 28.10.92/2.11.92 and he took occupation of the quarter from his father on 5.11.92. On 15.1.93, however, the allotment of the quarter was cancelled on the ground that the petitioner No.1, who was a Group-D staff was not entitled to the quarter in question. Orders were also issued for getting the quarter vacated and for levying penal rent. The petitioners, therefore, have come up to this Tribunal to quash the order cancelling allotment and ^{other} ~~further~~ appropriate relief, inter alia, on the ground that the type of the quarter, which has correctly mentioned in the allotment order could not be upgraded by the respondents without the approval of the Railway Board.

2. The respondents in their counter contend that the petitioner No.2, who was the Office Superintendent had dealt with the file regarding allotment of quarter to his son and made ~~wrong~~ ^{strong} notation regarding type of quarter, which had misled the Quarter Committee with the result that the petitioner No.1, a Group-D staff was allotted with the quarter to which he was not entitled and formally allotted to his father, who was a Group-C staff. The Vigilance Department had also investigated the case in detail and made recommendation including stoppage of post-retirement passes of the petitioner No.2 pending finalisation of the post-retirement DA proceeding.

3. At the time of filing the application, an interim order was made to the effect that the petitioner No.1 could make an application for allotment of a quarter to the Chairman of the Quarter

Committee and till any alternative quarter was allotted or till further order of the Tribunal, whichever was earlier, the impugned order regarding recovery of penal rent and eviction shall remain stayed. Pursuant to this order, the petitioner No.1 made an application for allotment of alternative accommodation and an order was made on 15.7.96 allotting in his favour another quarter which was being vacated by one Sri Habu Chowdhury on retirement in December, 1996!

4. The petitioners have filed a Misc.Application being M.A. No.326 of 1996, wherein it is stated that the quarter allotted by the order dt.15.7.96 had only one room, which was wholly insufficient for him in view of his family members and a prayer was made for cancellation of the said order of allotment and to allow the petitioners to continue to occupy the present quarter on payment of normal licence fee. In reply to this Misc.Application, the respondents have stated that there was no rule which required that the petitioner No.1 should have been allotted a quarter of two rooms and in fact, no better quarter at Ranchi was vacant at the moment which could be allotted to the petitioner No.1.

5. We have heard the d.Counsel for both the parties and perused the records before us. The principal dispute between the parties relates to the type of quarter which was in occupation of the petitioner No.2 and later allotted to the petitioner No.1 under father and son rule. It is an admitted position that previously, quarters are classified into Types A, B, C etc. and such nomenclature was subsequently changed and the quarters are categorised as Types - I, II, III etc. There was no dispute that even ^{within} ~~than~~ Type A, there were three different categories depending on slab range. We also have it on the record that a Group-D staff like the petitioner is entitled only to a quarter of Type-I, while

Group-C staff, which includes Office Superintendent are entitled to quarter of Types - II, III or IV depending on the pay scale. Now according to the order of allotment in favour of the petitioner No.1, the quarter was described as ^{A/II} ~~A/3~~ and the case of the respondents is that in fact, it was a Type-II quarter with a pooled rent of Rs.34/- per month, which was allotted to the petitioner No.2, who was a Group-C staff. The petitioners have not come up with any rejoinder to controvert the case of the respondents that the quarter was one of Type-II or a Standard Type-B with a pool rent of Rs.34/- per month. The maximum pool rent for quarter of Type-A corresponding to Type-I is only Rs.39/- per month and according to the petitioners, the rent at this rate was recovered from the salary of the petitioner No.1 up to the month of January, 1993 ever since allotment was made in his favour. Since the allotment has been made describing the quarter as one of Type-A/III, obviously the rent could not be recovered at higher rate, but the application is significantly silent regarding the amount at which the rent was recovered from the salary of the petitioner No.2 till the quarter was allotted in favour of his son. This could conclusively decide the type of the quarter which is in dispute. While the petitioners have made elaborate statement regarding the standard plinth area, the slab range and the rent chargeable for different types of quarters, they have stopped short of stating the standard plinth area or the slab range of the particular quarter in question. In such situation, it must be held in view of the pleadings that the quarter, which was allotted to petitioner No.2, a Group-C staff was of Type-B or Type-II, which cannot be allotted to a Group-D staff like the petitioner No.1, who is only entitled to a quarter of Type-A or Type-I. In view of this finding, it must also be held that the type of the quarter was

wrongly stated in the order of allotment in favour of the petitioner No.1 and thus no question of any upgradation of this quarter can possibly arise.

6. The respondents have also urged that the allotment of quarter on out of turn basis under father and son rule could not be made by the Chairman of the Quarter Committee as done in this case, but could be made only by the concerned DRM/ADRM. This was said to be another irregularity in the order of allotment in favour of the petitioner No.1 to which hardly any satisfactory answer was given by the petitioners.

7. The respondents have also stated that the petitioner No.1 having drawn HRA up to June, 1992 was not eligible for allotment of the quarter under father and son rule. This, however, does not appear to be a substantial contention because under R.B. 12/93 (Master Circular No.49) as reproduced in Bahri's Railway Board's Orders on Establishment, 1993 - Vol.I at page 8, particularly at page-10, allottee under father and son rule must be sharing accommodation with the retiring employee for atleast six months before the retirement and must not have drawn HRA during such period. Therefore, it is only drawal of HRA during the last six months of ~~his~~ ^{the} service of the retiring employee which is a disqualification for allotment under father and son rule. In the instant case, the petitioner No.2 retired in January, 1993, while his son, petitioner No.1 was said to have drawn HRA only up to June, 1992. Thus, he did not draw any HRA during the last six months of service of his father and therefore, drawal of HRA by him up to June, 1992 does not make him ineligible for allotment under father and son rule. However, for reasons stated in the preceding paragraph, allotment in favour of petitioner No.1 must be held to be irregular because he was not entitled to the type of the quarter in question and also

because the order of allotment was made by the Chairman of the Quarter Committee, who was not competent to make any allotment under father and son rule. Therefore, the impugned order of cancellation of allotment cannot be disturbed.

8. The Ld. Counsel for the petitioners has argued much that the petitioners were willing to move out to a quarter of the type to which the petitioner No.1 was entitled but the quarter, which has been allotted to him after the interim order was passed had barely one room which was totally inadequate to accommodate the petitioners and other family members and that a quarter with a minimum of two rooms should have been allotted. The Ld. Counsel for the petitioners even went to the extent of saying that allotment of a quarter with one room violates the human rights. We are unable to appreciate this contention and suffice it to say that no employee can claim allotment as a matter of right much less allotment of a quarter with desired number of rooms. Therefore, we are in no doubt that there cannot be any quashing of the order allotting in favour of the petitioner No.1 the quarter in occupation of Habu Chowdhury, which was being vacated by him on his retirement in December, 1996.

9. We might have favourably considered the prayer of the petitioner not to levy penal rent for the quarter in question ever since the date it was allotted to the petitioner No.1 if such allotment was made due to any bona fide error on the part of the respondents. However, the record reveals that the petitioner No.2 while he was in service as Office Superintendent made false representation regarding the type of the quarter which led to its allotment by the Chairman of the Quarter Committee in favour of the petitioner No.1, a Group-D staff, though he was not entitled to

occupy such a quarter. Thus, when the allotment was induced by one of the petitioners by making mis-representation, no sympathy or any equitable consideration should arise to quash the recovery of rent as may be levied on an unauthorised occupant.

10. We are not also disposed to give any relief regarding protection from eviction not only because the allotment in favour of the petitioner No.1 has been rightly cancelled but also because he has been allotted some other quarter where he was supposed to shift in terms of the interim order as soon as it was vacated by Habu Chowdhury.

11. For reasons indicated above, both the O.A. and M.A. are rejected. No order is made as to costs.

MS Mukherjee
8/5/97
(M.S. Mukherjee)

Member (A)

A.C. Chatterjee
8/5/97
(A.K. Chatterjee)
Vice-Chairman