

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 513 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

1. Smt. Ram Bai, w/o late Pratap Singh, r/o Rly. Qr.No. L/M-2, Unit No.2, Mitra 'A' Type, P.O. Nimpura, Kharagpur.
2. Amar Singh, s/o late Pratap Singh working as Commercial Clerk at Kharagpur Rly. Station under the D.R.M., S.E. Rly., Kharagpur R/o Rly. Qr. No. L/M-2, Unit No. 2, Mitra 'A' Type, P.O. Nimpura, Kharagpur.

... Applicants.

- v e r s u s -

1. Union of India through the Chairman, Railway Board & Ex. Officio Principal Secretary to the Government of India, Ministry of Railways, Rail Bhawan, New Delhi-110 001.
2. The General Manager, S.E. Rly., Garden Reach, Calcutta-700 043.
3. The Divisional Railway Manager, S.E. Rly., Kharagpur, Dist. Midnapore.
4. The Estate Officer, S.E. Rly., Kharagpur, Distt. Midnapore.

... Respondents.

For the applicant : Mr. P.B. Misra, counsel.

For the respondents : Ms. B. Ray, counsel.

Heard on 18.6.98

Order on 6.7.98

O R D E R

D. Purkayastha, JM

The applicant Smt. Ram Bai being widow and applicant No.2 Sri Amar Singh being ^{1/2} son of the deceased employee, Pratap Singh who was working as TTE under DRM, Kharagpur died in harness on 15.1.91. During his life time Rly. Qr. No. L/M-2, Unit 2 at Nimpura, Kharagpur was allotted to him by the respondents. After the death of the father the

applicant No.2 was appointed on compassionate ground in the Department. The applicant No.2, widow of the deceased employee was permitted to retain the quarter in question for six months on normal rent with effect from 15.1.91 to 14.7.91. After expiry of the said period, she did not vacate the quarter and she overstayed in the said quarter. Accordingly eviction case was initiated against her under the provision of Public Premises (Unauthorised Occupant) Act, 1971. Applicant No.2, Sri Amazr Singh after the death of his father had submitted representation for regularisation of the father's railway quarter in his favour on out of turn basis under the father and son rule, since he has not drawn any H.R.A. from the date of compassionate appointment w.e.f. 15.5.92 and sharing accommodation with his mother before the date of death of the father. But inspite of repeated representations to the authorities, the respondents did not regularise the allotment of the quarter as prayed for. It is also alleged by the applicants that the respondents regularised the allotment of the quarter in respect of similarly situated persons but the applicants were denied. Thereby action of the respondents is violative of Articles 14 and 16 of the Constitution. Since the applicant did not get any relief on the representations for the purpose of regularisation of the quarter, the applicant had approached this Tribunal for getting appropriate relief for directing the respondents to regularise the allotment of the quarter in favour of the applicant No.2 under the father and son rule and to release the D.C.R.G. money payable to late Pratap Singh after recovery of the normal rent and also to pay interest at the rate of Rs.18% on the amount payable to the respondents.

2. The case is resisted by the respondents by filing a written statement. They denied the claim of the applicants, stating inter-alia that before the death of Pratap Singh who was working working at CTI (Incharge) Kharagpur Dist. No.3 under Administrative control of Sr. Divisional Commercial Manager, Kharagpur was allotted a quarter and he died in harness on 15.1.91. On the basis of the appeal filed by the applicant No.1 widow of the deceased Pratap Singh was allowed to retain the quarter w.e.f. 15.1.91 to 14.7.91 on payment of normal rent. But after expiry of the said period as per Railway rules, the applicant did not vacate the quarter and they have become unauthorised occupant and

accordingly eviction proceeding was initiated as per provision of Public Premise (Unauthorised Occupant) Act 1971. The applicant No.2 was appointed on compassionate ground on 15.10.92 and he made representation to the authorities requesting for regularisation of the quarter in his favour on out of turn basis since he has been sharing accommodation with his mother. In the eviction proceedings, show cause notice for eviction was issued to the applicants and accordingly applicant No.2 attended before the Estate Officer on 14.11.95 and 12.12.95 and after hearing eviction order was passed as per Annexure-R/3. As per Railway circular the case of out of turn allotment of quarter under father and son rule where compassionate appointment have been made beyond 12 months from the date of occurrence of medical invalidation or death should not be made a routine nature. Since the applicant's case does not come within the purview of the Board's order their case were not considered. The applicant No.2 was not appointed within six months on compassionate ground from the date of death of the father so he is not entitled to get benefit of the scheme. It is also stated that since the applicants are unauthorised occupants of the Railway quarter for a long period and are not entitled to regularisation of the quarter, the recovery of normal rent does not arise. It is also stated that on vacation of the quarter, D.C.R.G. will be paid to the applicants after deducting the dues of the quarter rent etc.

3. Mr. P.B. Misra, Id. counsel for the applicants strenuously argued before me that the applicant is entitled to get the allotment of the quarter under father and son rule and they retained quarter till date since the applicant applied for allotment of the quarter under father and son rule. Though the respondents were requested to regularise the said quarter by a series of representation including his representation dated 23.12.92 containing the recommendation, Annexure-A/2 to the application yet no order has been passed by the authority in this regard. Morevoer, D.C.R.G. money was withheld by the authority for the last seven years. It is also submitted by Mr. Misra, Id. counsel for the applicant that the respondents acted arbitrarily denying the claim of the applicant on regularisation of the quarter under the father and son

rule though similar case was considered by the authority and granted relief by regularisation of quarter under father and son rule and thereby actions of the respondents are discriminatory and suffer from arbitrariness. It is stated that eviction order passed by the Estate Officer is vague as it does not contain the period, ^{within} in which applicants were to vacate the quarter. Ms. Ray, Id. counsel for the respondents submits that the respondents unauthorisedly occupied the quarter after expiry of the permissible limit granted to her and accordingly eviction proceeding was initiated against the applicant by serving notice upon them, as per Annexure-A/4 to the application. Sri Pratap Singh expired on 15.1.91 and his son Sri Amar Singh made representation for regularisation of father's Railway quarter in his name on out of turn basis from 15.10.92 and sharing accommodation with his mother. As per Sl. No. 238/87 the applicants are not entitled to get the benefit of the scheme relating to allotment of the quarter on compassionate ground since he applied for quarter after one year from the date of the death of his father. Since the applicant did not vacate the quarter after expiry of the grace period allowed to her, eviction proceeding was rightly proceeded against them and eviction order was passed on 15.12.95 in accordance with law. The applicants also suppressed those facts in their application and thereby he is not entitled to get any benefit in this case.

4. I have considered the submission of the Id. counsel for both the parties and I have considered the records placed before me. As per scheme of regularisation of the Railway quarter under father and son rule published on 21.8.87 Annexure-R/2 to the reply. It is found that when a Railway servant, who is in occupation of Railway quarters, retires from service or dies in harness, his/her son, daughter, wife, husband or father may be allotted Railway quarters on out of turn basis provided that the said relation is a regular railway employee eligible for Railway accommodation and had been sharing accommodation with the retired or deceased railway servant for at least 6 months as regular employee before the date of retirement or death. So admittedly, the applicant No.2 was not a Govt. servant on regular basis on the date of the death of his father, Late Pratap Singh, who died on 15.1.91. Applicant got appointment on compassionate ground on 15.10.92 and he had also been

sharing accomodation as Govt. servant with his father before the death of the father. Admittedly, the applicant applied for allotment of the quarter after being appointed on compassionate ground by a letter dated 23.12.92 Annexure-A/2 to the application and that has been forwarded to the competent authority with a recommendation of allotment of quarter in favour of the applicant. But the respondents neither rejected the prayer nor disposed of the representation as prayed for. So it is found that Pratap Singh is an occupant of Railway quarter on the date of death and the applicants also have been residing with Sri Pratap Singh before appointment on compassionate ground on 15.11.92. Since the applicant was not holding the status of the Govt. servant on the date of death or even before the death of Sri Pratap Singh, it cannot be said that the applicant No.2, Sri Amar Singh was entitled to get allotment of quarter on the death of his father. So right of allotment of quarter accrues to the applicant only from being appointed as Railway employee w.e.f. 15.1.92 on appointment on compassionate ground.

5. But facts remain that the applicants did not vacate the quarter after expiry of the grace period allowed to them, despite issue of several notices. In view of the judgment of the Hon'ble Apex Court reported in 1997 SCC (L&S) 698 (Amitabh Kumar and Anr. Vs. Director of Estates and Anr.) the question of retention of the quarter in anticipation of regularisation of quarter under father and son rule is no longer res-integra. As per said judgment, a person applied for regularisation of the quarter has no right to retain the quarter on expiry of the permissible limit granted to the employee. On expiry of the permissible limit Govt. servant shall be deemed to be an unauthorised occupant of the railway quarter and consequently ~~the~~ respondents are authorised to charge damage rent. In the instant case, eviction order has already been passed against the applicants. But Mr. P.B. Misra, Id. counsel for the applicant has drawn my attention to the eviction notice and submits that no specific period/date has been fixed for vacating the quarter occupied by them, thereby notice of vacation is vague one and cannot be enforced. In view of the aforesaid circumstances, however, I find no ~~any~~ impediment on the part of the respondents to issue a fresh notice specifying the period/date & time for vacating the quarter and to proceed further