

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH.

Registration O.A. No. 70 of 1989 (L)

Akhilesh Kumar Sharma Applicant
and Another

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for issue of a direction to the opposite parties to allot the specified Railway Quarter to applicant No.1 and to release the Death-cum-Retirement Gratuity of applicant No.2 with interest.

2. Applicant No.1 A.K. Sharma is the son of applicant No.2 R.N. Sharma. The disputed Railway Quarter No.E 295-B/Type II of New Engineering Colony Gonda was held by applicant No.2 under allotment while he was working as Head Cashier in the scale of Rs.1400 - 2300. The house belonged to the Pool of the Pay and Cash Department where he was working. Applicant No.1, his son was appointed as Diesel Fitter Grade III and lived since 2.8.86 in the same quarter with applicant No.2; he had a scale of pay of Rs.900 - 1500 and worked in the Diesel Shed of the Mechanical Department.

3. On 12.9.86 the applicant No.1 applied by Annexure-A3 to Senior D.M.E. (Diesel) for permission to share the accommodation with his father, applicant No.2 and offered that he may not be given the House Rent Allowance. On 4.2.87 the Senior D.M.E. (D) passed

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an order Annexure-A4 permitting applicant No.1 to share the quarter with effect from 2.8.86 and directed that the House Rent Allowance drawn by him since 2.8.86 be recovered from his salary from the month of January, 1987 and further half of the rent of the quarter be also deducted from his salary.

4. It will be noticed that while the house belonged to the Pool of Pay and Cash Department in which the applicant No.2 was serving, applicant No.1 did not belong to that Department but belonged to the Mechanical Department under the Senior D.M.E. (D).

5. An application Annexure-A5 was made by applicant No.2 to the Chief Cashier for allotment of quarter to Appl.No: According to the applicants this application is dated 29.1.87, the date on which it was received by the dealing clerk in the office of the Chief Cashier; according to the opposite parties, the application was without date. On 28.2.87 the applicant No.2 retired from service while both the applicants continued to occupy the accommodation beyond that date. Applicant No.2 again applied by Annexure-A16 dated 23.3.87 to the Chief Cashier for allotment of the quarter to applicant No.1. The applicant No.1 himself applied by Annexure-A9 dated 22.7.87 for the first time to the Senior D.M.E. (D) for allotment of the quarter with effect from 1.3.87, informing that he had not been drawing the House Rent Allowance since August, 1986 and that half of the monthly rent was also being deducted from his salary.

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6. It will be noticed that while applicant No.2 had been approaching the Chief Cashier for allotment of the quarter in favour of applicant No.1 since before and also after his retirement, the applicant No.1 never applied to the Chief Cashier for allotment and that the earliest application which he made for allotment is dated 22.7.87 addressed to the Senior D.M.E. (D). Orders of allotment were never passed in respect of the quarter in favour of applicant No.1. On the contrary, the applicant No.2 was treated to be in unauthorised occupation of the quarter after retirement and on that basis the payment of his Death-cum-Retirement Gratuity was held up.

7. On 20.7.87 applicant No.2 applied by Annexure-A7, followed by reminder dated 2.11.1987, Annexure-A8, to the Chief Cashier in continuation of his application Annexure-A6 for issue of allotment order in favour of applicant No.1 so that his D.C.R.G. may be released. The Deputy C.A.O. (T) then issued an order communicated by the impugned letter dated 28.7.88, Annexure-A1 stating that the allotment was illegal and that he should vacate the quarter and that his D.C.R.G. would not be released till he vacated so that the quarter could be allotted to the needy cashier. Applicant No.2 then represented to General Manager by letter dated 17.8.88, Annexure-A11, followed by reminder dated 24.12.88, Annexure-A12, stating that applicant No.1 was eligible for the same type of quarter as was occupied by him and was entitled to its allotment under Railway Board's letter No.E(G)66 Qr 1-11 dated 25.6.66 repeated in Railway

Board's letter No.E(G)78 Qr 1-23 dated 19.12.81, Annexure-A13, but the Deputy C.A.O. (T) had passed the order contained in Annexure-A1. He prayed that regular allotment of the quarter ~~will~~ ^{may} be made in favour of applicant No.1 and that his D.C.R.G. may be released. The General Manager rejected the representation. It was communicated to applicant No.2 by the second impugned letter dated 24.1.89, Annexure-A2 holding that Senior D.M.E. (D) order dated 4.2.87 (Annexure-A4) was illegal, that applicant No.2 was not entitled to retain the quarter which he must vacate and that his D.C.R.G. had been withheld in that connection.

8. On these facts, the two applicants filed this application for the relief sought. The applicants' case is that applicant No.1 was entitled to an allotment of the quarter in view of Railway Board's letter dated 25.6.1966 repeated in R.B. letter No.E(G)78 Qr 1-23 dated 19.12.81, Annexure-A13 and that only for technicalities of procedure allotment was being refused and consequently the D.C.R.G. of applicant No.2 was wrongly withheld.

9. The opposite parties' case is that the Railway quarters have been pooled up and placed under the control of the respective Heads of the Department and the house of one pool can neither be allotted by the Head of the Department of another Department nor to the staff of another Department; and since the disputed quarter was in the pool of Pay and Cash Department, it could neither be allotted by Sr. D.M.E.(D) nor to applicant No.1. For that reason, it is urged, the Senior D.M.E.(D) order dated 4.2.87, Annexure-A4 permitting the sharing of the quarter was invalid and therefore the

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Deputy C.A.O. as well as the General Manager had held accordingly and directed the applicant No.2 to vacate the quarter and till then the payment of his D.C.R.G. to be withheld in view of Railway Board's letter dated 24.4.82, Annexure-R3 reaffirmed in Railway Board's letter dated 20.3.88, Annexure-R4. It was further said that applicant No.1 was not entitled to reside in the quarter of applicant No.2 in view of the Railway Board's letter No.E(G)71 Qr.1-4 dated 27.2.71, Annexure-R1 followed by letter dated 11.2.82, Annexure-R2. The opposite parties have also filed Railway Board's letter No.E(G)85 Qr-1-14 dated 18.8.86 on the subject of allotment of quarters to sons etc of a retired railway employee.

10. The applicants' rejoinder is that since the allotment ~~order~~ application of the applicant No.1 was pending, applicant No.2 was also entitled to continue to live in the quarter in post-retirement period with his son. It was further urged that since applicant No.1 was employed as Diesel Fitter Grade III, the Sr.D.M.E.(D) was competent to permit the sharing of the accommodation by order dated 4.2.87, Annexure-A4 under the Railway Board's letter dated 19.12.81, Annexure-A13. Reliance was placed upon Sr. D.M.E.(D) letter dated 26.6.87 to opposite party No.3 explaining that he had passed the quarter-sharing order under Railway Board's letter dated 14.2.78. The applicant also placed before this Tribunal the correspondence which passed between the Sr.D.M.E.(D) and the Chief Cashier, opposite party No.3

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to indicate that the only obligation of the former was to pass on some other quarter to the latter's Pool in lieu of the disputed quarter.

11. Arguments of Shri R.C. Saxena for the applicant and Shri Anil Srivastava for the opposite parties have been heard at length on the basis of counter, rejoinder, supplementary counter and supplementary rejoinder and various letters and circulars of the Railway Board placed on the record.

12. A preliminary objection of the learned counsel for the opposite parties is that the two applicants cannot make this application jointly because their claims related to distinct subjects, i.e. allotment of quarter in favour of applicant No.1 and release of D.C.R.G. in favour of applicant No.2. The contention is not fit to be accepted because both the reliefs are linked to a common factor, namely continued occupation of the quarter by both after retirement of applicant No.2 while the allotment application of applicant No.1 was still pending.

13. Certain features of the case are undisputed. The quarter belonged to the Pool of Pay & Cash Department and could be allotted by opposite party No.3 while the applications for allotment were made by the applicants to Senior D.M.E.(D) and not to opposite party No.3. The applicant No.1 was eligible for the same class of accommodation as applicant No.2 and therefore the rule of entitlement was not a hurdle in an allotment in favour of applicant No.1.

14. In his letter dated 26.6.87 (Annexure-R2 to rejoinder) the Sr.D.M.E.(D) drew his authority to permit

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the applicant No.1 to share the quarter with applicant No.2 from Railway Board's letter No.E.575/2/Bhag 5(4) dated 14.2.78. No Railway Boards letter dated 14.2.78 has been filed before this Tribunal. It may be mentioned that applicant No.2 in his representations Annexure-A11 dated 17.8.88 and Annexure-A12 dated 24.12.88 had mentioned that permission to share the accommodation had been given by Sr.D.M.E.(D) under Railway Board's letter No.E(G)78 Qr.1-53 dated 4.11.78. Prima facie these two letters are different; even the letter dated 4.11.78 had not been filed. It is the persistent stand of the opposite parties that Sr.D.M.E.(D) was not competent to permit sharing of the accommodation, which also stands to reason because the quarter belonged to Pay & Cash Department Pool and not the Mechanical Department Pool. The basis of the order permitting sharing of the quarter by applicant No.1 with applicant No.2 thus fails. In any case, the sharing of accommodation automatically came to an end when applicant No.2 retired; there is no question of sharing with ^a ~~the~~ retired employee.

15. The stand of the opposite parties that the quarter sharing order had been passed by suppressing the fact that the applicant No.1 was drawing House Rent Allowance, is rather misconceived because in his application dated 12.9.86, Annexure-A3, the applicant No.1 had specifically mentioned that he may not be given House Rent Allowance. If inspite of this request, House Rent Allowance was paid to him (which is not quite clear) the applicant No.1 cannot be said to have made a suppression of that fact specially in view of the direction of Sr.D.M.E.(D) in Annexure-A4 dated 4.2.87 that the House Rent Allowance drawn from 2.8.86 be recovered from his salary.

The provision in the Railway Board's letter dated 11.2.82, Annexure-R2 that there is no question of recovery of House Rent Allowance which had been received by suppressing the fact of sharing and that the employee should be treated to be eligible for allotment cannot apply to a case, like this, where a request had been made by the employee at the earliest that he may ^{not} be given House Rent Allowance.

16. The main question relates to the rights of the son of a Railway employee living in the quarter of the latter, being himself a railway employee. Both parties rely upon Railway Board's circular dated 19.2.81, Annexure-A13 which has reiterated R.B. earlier circular dated 25.6.66. These papers lay down that on retirement of a Railway employee, allotment out of turn may be made to his son etc. subject to the condition that (i) the son had been living at least for six months before retirement, and (ii) if the son is entitled to the same or higher type, then the same quarter may be regularised in his favour; the only condition, set out in the circular of 19.2.81 is that the retired employee or any member of his family should have no house of his own at the place of his posting. Applicants 1 & 2 clearly satisfy the requirements of these circulars.

17. How this policy of the Railway Board is affected by the Scheme of Pooling of quarters, is dealt with in the Railway Board's circular No.E(G)/85 QR 1-14 dated 18.8.86. The Board considered the cases where a quarter belonging to the Pool of one Department is allotted to an employee of that Department but on the retirement of such railway employee it is allotted on out of turn basis to

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his son employed in another department. It was "decided that if in any case, a quarter belonging to any particular pool, is allotted to the employee who may be working in a different department 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." It is clear from these circulars that the power of allotment of a quarter in a Pool reserved for one Department to an employee of another Department on out of turn basis is well recognised; and such allotment may be made in respect of a house held by a retired employee of one Department in favour of his son employed in another Department. The problem of making good the shortfall in the pool of the former department by making over some other quarter from the pool of the latter department is essentially an inter-departmental problem. While there may be a power to refuse allotment in such cases, it can only be done for proper reasons. In this situation allotment of the quarter to Applicant No.1 could not be refused merely because it belonged to the Pay & Cash Department's Pool, and that the resultant allotment would cause a shortfall in that pool. It could also not be refused because it was required for the "needy cashier" as stated in Annexure-A1 dated 28.7.88 having regard to the Policy adopted by the Railway Board as indicated in the above mentioned circular; otherwise, it would render the provision of transferring quarters from one pool to another nugatory.

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18. But at the same time, the applicant No.1 should have applied for permission to share the quarter with applicant No.2 to the Head of the Pay & Cash Department; it was not enough to apply to the Sr. D.M.E. (D). The fact remains that applicant No.1 never made any such application. The making of such application by applicant No.2 was wholly irrelevant. The contention of the learned counsel for the applicant that the Sr.D.M.E. (D) should have forwarded the application of Applicant No.1 to opposite party No.3 is wholly misconceived because there is nothing to show that the Sr.D.M.E. (D) was under any legal obligation to forward it to opposite party No.3 while it was the duty of applicant No.1 ^{if necessary,} to have applied to opposite party No.3 ^{through} Sr.D.M.E. (D) according to office routine. Further, while the grant of permission by Sr.D.M.E. (D) to share the quarter lacked competence and for that reason was illegal, the opposite parties would be estopped from challenging the permission because the applicant No.1 had been deprived of H.R.A. and was paying half the rent during the sharing - period.

19. But as soon as the sharing-period ~~came~~ to an end on 28.2.87, when applicant No.2 retired, the permission automatically expired with his retirement. Since then both the applicants became unauthorised occupants except for such period, if any, for which applicant No.2 may have been entitled to retain the quarter under the rules after retirement.

20. For such unauthorised occupation, both the applicants were liable to be evicted and for other consequences according to Rules, including that

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applicant No.2 was liable to have a reasonable portion of his D.C.R.G. to be held up in accordance with Railway Board's letter dated 24.4.82, Annexure-R3 reaffirmed in Railway Board's letter dated 20.3.88, Annexure-R5. It must be noticed that these letters authorise withholding of only "an appropriate amount" of the D.C.R.G., and not the whole of the D.C.R.G., for rent recoveries as permissible under the rules.

21. The matter is now almost 3 years old. In the meantime misunderstandings must have arisen between the Pay & Cash Department and Mechanical Department, and occasions might have arisen when some other persons of the Mechanical Department could have retired or transferred out of station and the quarter occupied by such person could be transferred to Pay & Cash Department to make good the shortfall and to provide accommodation to the "needy cashier". The blame for this situation could be laid on the applicant No.1 who chose not to apply to the competent authority, viz opposite party No.3 for allotment, and for the erroneous assumption by both the applicants that they could continue to occupy the quarter beyond the retirement of applicant No.2 because his irrelevant application to opposite party No.3 for allotment in favour of his son, applicant No.1, was pending. It is for the applicant No.1 to apply to opposite party No.3 for allotment and for opposite party No.3 to pass appropriate orders thereon.

22. The problem of residence is a human problem as contradistinguished from pecuniary liabilities in terms of rent etc. due for the period of unauthorised

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occupation; and since it is permissible to allot the quarter to applicant No.1, it would be too harsh to sustain the order of eviction. It would also be too harsh to deprive the applicant No.2 of the entire gratuity; it has to be limited to an "appropriate amount" under Railway Board's letter dated 24.4.82, Annexure-R3.

23. In view of the above findings, the application is partly allowed. The applicant No.1 may apply to opposite party No.3 within 2 weeks from today for allotment of the disputed quarter in his favour; opposite party No.3 or other appropriate authority of the Pay & Cash Department shall consider and decide such application within a period of six weeks from the date of its presentation bearing in mind the observations contained in the body of this judgement. The opposite parties are directed to release the D.C.R.G. of applicant No.2 within six weeks after withholding a sum of Rs.5000/- to meet such pecuniary liability under the rules as applicant No.2 may be found to have incurred for unauthorised retention of the quarter after his retirement. The applicant No.1 shall not be evicted from the quarter till the disposal of his allotment application.

24. Parties shall bear their costs of this case.

25. A copy of this judgement be delivered to the applicants, ^{if possible,} within twentyfour hours to enable the applicant No.1 to apply for allotment.

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Vice Chairman

Dated the 5 th January, 1990.

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