

Central Administrative Tribunal
New Bombay Bench
New Bombay

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Regn. No. OA 271 of 86 Date of decision: 26.11.1987

1. Shri Vithalrao Arjun Kale }
2. Shri Sunildatt V. Kale } ... Applicants

Vs.

1. Union of India through
The General Manager,
Central Railway, Bombay. Respondents
2. The Divisional Railway Manager,
Central Railway, Bombay.

Shri L. M. Nerlekar ... Advocate for the applicants.

Mrs. P.R. Shetty and
Mr. R.K. Shetty ... Advocates for the respondents

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned orders No. BB/P/606/Q/F to S dated 10.4.1986 and No. BB/P/606/Q/Evict-5 dated 10.12.84 passed by the Divisional Personnel Officer.

12/2/87
The applicant has been a railway employee who was allotted a railway quarter No. MITRA/971/A at Kalyan. He retired from the railway service on 31.5.82. His son, Sunildutt, was employed as casual labour Khalasi with effect from 4.7.79 under Electrical Foreman and was taken on a monthly rate from 4.12.80. The applicant has stated that his son was sharing the quarter with him from the date of employment with the Railways and the son was not paid any house rent allowance. The applicant No. 1 was allowed permission by the respondents to share the quarter with his son.

On his retirement, he submitted an application to DRM to transfer the quarter in the name of his son, but the same was not granted on the ground that the applicant had requested for permission for sharing of accommodation with his son from 16.12.81 to 31.5.82. It has been further said that in order to pressurise him to vacate the house, the respondents have been withholding his railway passes and have also withheld his gratuity. He has prayed that the respondents be directed to pay the amount of gratuity with 18% interest and the quarter which he is sharing should be regularised in the name of his son (Applicant No.2) and that the respondents should issue passes to him.

3. The case of the applicant is based on Railway Board's Circular No. E(G)78 CRI-23 dated 19.12.81 which deals with the regularisation of allotment of railway quarters in the name of dependents of a railway servant who retires from service. This circular states that when a railway servant who has been allotted railway accommodation retires from service, his son may be allotted railway accommodation on out of turn basis provided that he was a railway servant eligible for railway accommodation and had been sharing accommodation with the retiring railway servant for at least six months before the date of retirement. The circular also speaks ^{of} ~~that~~ allotment of a type next below the entitled type.

4. As the railway servant had got the status of a temporary railway employee and had been sharing the house with his father for more than six months, before his retirement, and had actually foregone the

house rent allowance for that period, he becomes entitle to regularisation of the allotment of the railway quarter. In support of his argument, the learned advocate for the applicants has ^{filed} ~~cited~~ the Bombay High Court judgment in Writ Petition No. 128 of 1981 wherein it was held that a railway servant who has become eligible to be a temporary railway employee will be eligible for allotment of a railway quarter and will get all the privileges applicable to a railway employee. Under Rule 2511 of the Indian Railway Establishment Manual, casual labourer, treated as temporary servant, is entitled to all rights and privileges admissible to temporary railway servant as laid down in Chapter XXIII of the Indian Railway Establishment Manual. Under Rule 2511 all rights and privileges admissible to railway servants would thus be applicable in the case of the applicant. He also cited the Supreme Court Case No. 1987 LAB I.C. 627 (AIR 1987 Supreme Court 808) where it has been held that Government has no authority or power to unilaterally deduct any amount from the commuted pension or gratuity.

5. The learned counsel for the respondents mentioned that the applicant was not entitled to the regularisation of the railway quarter on out of turn basis as he was not a regular employee. According to Railway Board's circular dated 29.8.1986, it has been clarified that orders contained in the Board's letter dated 19.12.81 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. The circular clarifies that the casual labour and the substitutes with or without temporary status are excluded from

their purview. As the applicant was a casual labourer who has got a temporary status, he was excluded from the advantage of the circular of 19.12.81.

6. In this case the applicant retired from railway service on 31.5.1982 and the clarification issued in 1986 may not be applicable. In any case, when the Railway Establishment Manual lays down that employees like the applicant will be eligible to all facilities available to railway servants, it is difficult to exclude the applicant from the benefits available to temporary railway servants.

6. According to the Railway Establishment Manual passes can be stopped only when there is a misconduct on the part of the railway employee. Rule 1562 of the Indian Railway Establishment Manual mentions about what would be considered ^a~~the~~_n misuse or fraudulent use of passes, *Non-vacation* of a quarter cannot be treated as a misconduct under which the Railway can stop passes of retired railway servants. The law regarding stopping of pension and gratuity is quite well-established now and the Railways were definitely wrong in stopping the gratuity of the applicant because he had not vacated the house.

7. Considering all aspects of the case, I feel that there is a good case to allow the application and the following orders are passed:

(i) The Railway should restart issuing passes to the applicant with immediate effect.

(ii) All gratuity or any other pensionary benefit which have been stopped should be repaid within four months from today. The applicant should also be entitled to a 7% interest on the amount of gratuity held after a period of three months when it became due, and *all it is*

from paid

(iii) The Applicant No.2 should be allotted a house of a category to which he is entitled. Till such a house is allotted, he may be allowed to continue in the present quarter which he has been sharing with his father on payment of normal rent applicable to such quarters.

There will be no orders as to costs.



(B.C. Mathur)
Vice-Chairman