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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.189/86.

Shri R.S.Desai,
No.K-2/39,
Gunpowder Road,
Dockyard Road,
Bombay.400 010.

... Applicant.

V/s.

1. The Union of India, New Delhi.
2. The Estate Officer, Central
Railway, General Manager's Office,
Bombay V.T.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar...

Appearances:

Shri P.N.Godge, advocate
for the applicant and
Shri R.K.Shetty, advocate
for the respondents.

Oral Judgment:

{Per Shri M.B.Mujumdar, Member(J)} Dt. 18.7.1988.

The applicant Shri R.S.Desai has filed this application under sec.19 of the Administrative Tribunals Act requesting that the respondents may be directed to allot ^{to him} the quarter in which he is staying since prior to the death of his father.

2. The relevant facts for the purpose of this judgment are these. One Shri Shyama Desa had joined service with Railways as 'Safaiwala' more than 30 years back. He was allotted Railway Quarter No.K-2/39, Gunpowder Road, Dockyard Road, Bombay more than 20 years prior to his death.

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Unfortunately, he died on 17.12.1983 while still in service leaving behind a widow Smt.Kidibai, one son Shri Ratilal (the applicant) and two married daughters Smt.Shantha and Geetha, aged 22 and 20.

3. In 1979 the applicant Shri Ratilal was appointed as Safaiwala on daily wages basis. He was made permanent in March, 1982. Since he was made permanent he was getting House Rent Allowance (HRA) of about Rs.47.50. However, on 26.9.1983 he informed the railway authorities that he was sharing the Railway Quarter which was in the occupation of his father and hence the HRA which was being given to him may be stopped from September, 1983 on-wards. Accordingly, the railway authorities stopped paying HRA to him since September, 1983.

4. Some time after the death of Shri Shyama Desa, the Estate Officer (Respondent No.2) started eviction proceedings against the applicant's mother Smt.Kidibai. She stated before the Estate Officer that her son Shri Ratilal (the applicant) who was working with the Railway authorities as a Safaiwala and he was made permanent 4 years back and the quarter should be regularised in his name. However, the railway authorities objected to this saying that the son was getting HRA till September, 1983 and it was stopped only after September, 1983 and hence the quarter cannot be regularised in his name on out of turn basis. After considering the rival contentions, the Estate Officer passed an order on 18.11.1985 directing that the applicant's mother

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Smt.Kidibai should be evicted from the quarter under section 5(1) of the Public Premises Act, 1971. Smt.Kidibai had preferred Miscellaneous Appeal No.238/85 against that order in the City Civil Court, Bombay, but the learned Principal City Civil Court Judge dismissed that appeal on 20.1.1986, but continued the stay which was granted earlier against the eviction order upto 5.12.1985. On 30.6.1986 the applicant had filed Writ Petition No.1585/86 in the Bombay High Court. But on 2.7.1986 the applicant was permitted to withdraw that petition, but stay was continued for one week more in order to enable the applicant to move this Tribunal. Accordingly, the applicant has filed the present application No.189/86. By an order passed on 8.7.1986 this Tribunal stayed the execution of the eviction order upto 5.12.1985. By a subsequent order the stay is continued till the decision of this application.

5. The applicant has requested in this application that the respondents may be directed to allot the railway quarter No.K-2/39 on the Gunpowder Road, Dockyard Road, Bombay.10 to him, on-out-of-turn basis.

6. The respondents have resisted the above request for relying on some Circulars. Their main grievance is that though the applicant was made permanent in March, 1982 he was drawing HRA, till August, 1983 by suppressing the fact that he was staying with his father. According to the respondents as the applicant was not sharing accommodation with his father for more than 6 months before the death of his father, he is not entitled to allotment of the quarter on out-of-turn basis.

7. The respondents have referred to some Circulars issued by the Railway Board regarding allotment of quarter on out-of-turn-basis. At Ex.'A' they have produced a copy of the Railway Board's letter dt. 27.2.1971 it reads as under:

" BOARD'S LETTER

In accordance with the orders contained in their letter referred to above, in the case of a railway servant who having been allotted railway accommodation, retires from service or dies in service, his/her son, daughter, wife, husband or father may be allotted railway accommodation on out-of-turn basis provided that the said relation is a railway servant eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway servant for at least six months before the date of retirement or death.

Attention, in this connection, is invited to para 4(c) of Board's letter No.PC-66/HRA-1/21 dated the 26th July, 1967, whereby the said relation who has been sharing accommodation with the retiring or deceased employees are not eligible for house rent allowance. It should be ensured not out of turn allotment of accommodation is made to any such persons if they have been drawing house rent allowance suppressing the fact that they were sharing the accommodation allotted to their father/son/husband/wife."

Along with the above letter the Railway Board's letter dt. 25.6.1966 was attached and the respondents have also produced a copy of that letter at page.7 of their written statement.

8. At Ex.'B' the respondents have produced a copy of Railway Board's letter dt. 19.12.1981. In that letter the provisions in the previous letter of the Railway Board dt. 25.6.1966 are reiterated, but it is further mentioned that the Ministry of Railways have decided that the concession

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of out-of-turn allotment of quarter should not be given in case where the retiring officer or the member of his family owns house in the place of office or his posting. That proviso is not applicable in this case because neither the applicant nor his father is owning any house in Bombay.

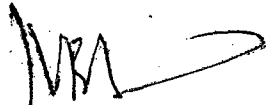
9. It was not disputed before me that the applicant was made permanent in March, 1982. It was also not disputed that the applicant was staying with his father since beginning. However, Mr. Shetty, the learned advocate for the respondents, submitted that as the applicant had suppressed the fact that he was staying with his father and drawn HRA till August, 1983, the applicant will not be entitled to allotment of the quarter in question in view of the second para of the Railway Board's letter dt. 27.2.1971 quoted above. The respondents showed me the original application of the applicant dt. 26.9.1985, by which he informed the respondents that he was staying with his father and the HRA which was being paid to him be stopped from September, 1983 onwards. It is in view of this intimation that the Railway Authorities stopped paying HRA to the applicant since September, 1983. In fact, the applicant's father died on 17.12.1983 i.e. within 3 months of the intimation given by the applicant. But in my opinion, in such cases provision should not be construed so harshly and strictly. The applicant is working as a Safaiwala. His father was also working as a Safaiwala, with the Railways for about 30 years. If the applicant had made an application on 26.9.1983, 3 or 4 months earlier the

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respondents would not have objected to allot the quarter to him on out-of-turn basis, because in that case he would have shared the accommodation with his father for more than 6 months prior to the death of his father without drawing HRA. The applicant has shown his willingness to refund the entire HRA which was given to him since he was made permanent. Hence I pass the following order in view of the peculiar facts and circumstances of this case:

O R D E R

1. The respondents are directed to allot the quarter in question, viz. K-2/39, Gunpowder Road, Dockyard Road, Bombay to the applicant on out-of-turn basis with effect from 18.12.1983.
2. The respondents shall not execute the order passed in case No.385, by the Estate Officer i.e.K-2/39 on 18.11.1983. In other words, the respondents shall not evict the applicant and his mother in pursuance to that order.
3. The respondents are entitled to recover the entire HRA which was paid to the applicant upto August, 1983.
4. Parties to bear their own costs.


(M.B. MUJUMDAR)
MEMBER (J).