

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 461/89  
T.A. No.

198

DATE OF DECISION 25.6.92

Shri R.K. Purve

Petitioner

Shri V.R. Purve

Shri D.V. Gangal

Advocate for the Petitioner(s)

Versus

Union of India &amp; ors.

Respondent

Shri Subodh Joshi

Advocate for the Respondent(s)

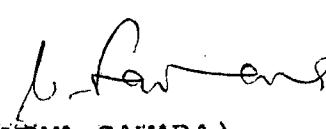
## CORAM :

The Hon'ble Mr. Ms. USHA SAVARA, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

  
(USHA SAVARA)  
MEMBER (A)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 461/89

Shri R.K. Purve

Shri V.R. Purve.

.... Applicants.

Vs

Union of India & Ors.

... Respondents.

CORAM: : Hon'ble Member (A) Ms USHA SAVARA.

Appearance:

Mr. D.V. Gangal for  
the applicants.

Mr. Subodh Joshi for  
the respondents.

JUDGEMENT:

Dated: 25.6.92

¶ Per Ms. Usha Savara Member (A) ¶

This application has been filed by Shri R.K. Purve, retired X-Ray Attendant, Central Railway Hospital, Igatpuri and his son Shri V.R. Purve, Safaiwala, under Health Inspector, Central Railway, Igatpuri, with the prayer that the respondents be directed to transfer quarter No. MA -366 A, Igatpuri which was allotted to applicant No.1 in favour of applicant No.2 with effect from 1.2.89. It is also prayed that the respondents be directed to recover HRA paid from 1.2.88 to applicant No.2 in easy instalments and stop <sup>further</sup> payment of HRA to him; it is also prayed that normal rent be recovered from applicant No.2 from 1.2.89, and not from applicant No.1, who should be paid all retirement dues so far withheld with 18% interest.

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The facts of the case are that applicant No.1 was appointed as Safaiwala in 1950, was allotted quarter No. MA 366A in 1953 and was promoted as X-Ray attendant in 1960. Applicant No.2 was appointed as Safaiwala in Thane on 10.7.81. According to the applicants, the applicant No.2 was transferred to Igatpuri in 1985, but the respondents have contested this, and stated that he was transferred to Igatpuri in 1983, which fact has not been contraverted in the rejoinder. It is the case of the applicants that an application for sharing accommodation was made by them on 17.4.85 (Anx.B) in the prescribed proforma which was forwarded by the D.M.O. but the respondents did not give any reply to the applicants. A reminder was sent on 10.10.85 by applicant No.2 followed by another reminder on 23.7.86 and again on 4.9.87 requesting for permission to share accommodation. (Anx.C,D,E) On 2.12.88, the applicant No.1 wrote to the D.M.C. Igatpuri, [redacted] informed him that he was due to retire on 31.1.89, and requesting that the quarter be allotted to his son, who had already applied for railway quarter, and whose name was already registered (Anx F). The applicant No. 2 addressed a letter to M.S. Igatpuri on 28.3.89 in which he mentioned that he had been in receipt of HRA and gave his consent for recovering the same in suitable instalments from his wages. He also referred to the application dated 17.4.85, and requested for allotment of the quarter in his name. This was forwarded by the M.S. Central Railway Hospital alongwith a copy of the application for sharing of accommodation, who also mentioned that the applicant had been in receipt of HRA since 1.1.86, but was willing to refund it, as it might come in the way of allotment of quarter on out of turn basis.

Mr. D.V. Gangal, learned Counsel for the applicants, submitted that the applicants had applied for sharing of accommodation on 17.4.85 and followed this request with reminders to the respondents, who had not bothered to reply to the applicant's request. His claim was based on the Railway Board's letter dated 15.1.90, which clarifies how regularisation of allotment of Railway quarters to eligible dependents of deceased/retired Railway Officers and staff, who were sharing accommodation with the deceased employee or who are appointed on compassionate grounds or eligible dependents of retired railway employees, who were sharing accommodation is to be done.

Para 2 reads as below:

"When a Railway employee who has been allotted railway accommodation retires from service or dies while 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 was a railway employee eligible for railway accommodation and had been sharing accommodation with the retiring/deceased railway employee for at least 6 months before the date of retirement or death and had not claimed any HRA during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases a residence of entitled type or type next below is to be allotted."

Shri Gangal submitted that the applicant No. 2's case is fully covered under this and he is entitled to out of turn allotment of a quarter. So far as payment of H.R.A. is concerned, it is argued by the learned counsel that the applicant No. 2 never asked for H.R.A., but the Railway administration, to whom application for sharing was sent, should not have paid H.R.A. to him.   
 Since the applicant fulfills all other conditions, the respondents are duty bound to transfer the quarter to applicant No. 2 on father to son basis.

Mr. Subodh Joshi, learned counsel for the respondents contested the application vehemently, and denied categorically the receipt of the application dated 17.4.85 in the D.R.M's office. Not only the initial application, even the reminders sent by the applicant no 2 were never received in the office of the DRM. It is explained by Shri Joshi that for an out of turn allotment an employee has to apply for sanction to share accommodation at least 6 months before the retirement. In case, he applies 2 or 3 years earlier, he should renew the application every six months. The moment he decides to share accommodation, he has to give up his H.R.A. as he becomes disentitled to H.R.A. from the time he shares accommodation. Knowing the rules fully well, the applicant No.2 has drawn H.R.A. according to his own statement, from 1.1.86, thought he claims to have made his application for sanction of sharing since April '85. He has also not renewed his application 6 monthly, otherwise the administration would have been able to allot some quarter to him as per his entitlement. It is also argued that the quarter in question is class III accommodation, and the applicant No.2 is only a class IV employee, and therefore, not entitled to it. Since, the applicant No.2 has been drawing H.R.A. for the last many years and has only offered to refund the amount from 1.7.88 on ~~22.3.88~~<sup>1.2.89</sup>, i.e. after the retirement of applicant No.1, clearly he has committed fraud, and for this reason also, the application should be dismissed.

I have heard both the learned counsel at length. I have also perused the annexures filed by them. Shri Joshi produced the outward register from Igatpuri for the relevant period to prove that the letter dated 17.4.'85 had never been forwarded to the D.R.M. Mr. Gangal was given an opportunity to examine the same, but he refused

to do so on various grounds. However, in view of the order I propose to make the receipt or non-receipt of the letter dated 17.4.85 <sup>as</sup> is irrelevant.

The main plank of Shri Gangal's argument is Railway Board's letter dated 15.1.90. Para 2 of the letter has been quoted earlier, but there are 8 sub-paras in the form of 'notes' which are of considerable importance. Note No. (i) & (viii) have a direct bearing on the facts of this case. Note No. (i) & (viii) run as below:

- (i) Orders regarding non-drawal of HRA are applicable only in cases where the dependent is employed in the station where the railway employee has been allotted railway accommodation.
- (viii) If an employee's dependent is already drawing HRA and stops drawing the amount 6 months before the retirement of this employee concerned, the dependent is not eligible for allotment/regularisation of quarter.

The applicant No.2 was appointed in Thane, but was transferred to Igatpuri in 1983, according to the respondents, which fact has not been denied in the rejoinder by the applicants. Even according to their own statement, the applicants made an application for sharing only in April '85, at which time, it is not denied, the applicant No.2 was in receipt of HRA.

It was argued at length by the learned counsel for the applicants that the administration having received the application dated 17.4.85 should have stopped the payment of H.R.A. to the applicant, knowing that he was sharing accommodation. Non-acceptance of H.R.A. would have been misconduct therefore the applicant No.2 had

- no choice but to quietly submit, and accept HRA. Though, according to the applicant No.2 he sent three reminders after making the application on 17.4.85, there is not a word about stopping of H.R.A. in any of them. The applicant, admittedly, never made <sup>any</sup> serious effort to inform the authorities concerned, i.e. the D.D.O. Igatpuri

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that he was sharing accommodation with his father, and therefore, he was not entitled to draw H.R.A.

The Railway Board's Circular dated 15.1.'90 cannot be read piece-meal to suit the convenience of the applicants. Since non-drawal of H.R.A. is a condition precedent, the applicant is not covered by the circular, as he has knowingly and deliberately been drawing H.R.A. right from the day he arrived at Igatpuri and started living with his father. The judgement cited by the learned counsel for the applicants in the case of Shri Gangaram M. Gupta and anr. Vs. U.O.I. and others decided on 3.9.'91 does not apply to the facts of this case, as there was not drawal of H.R.A. on the part of the applicants in that case. It is based only on the fact of delay on the part of the respondents in dealing with the application for sharing. It was nobody's case that even otherwise the applicant was ineligible. In the instant case, the applicant no.2 was not eligible for allotment of quarter on father to son basis as he had been drawing H.R.A. continuously since 1985, though he was sharing accommodation with his father.

The applicant no.1 has asked for release of retiral benefits with 18% interest. The retiral benefits were withheld as per board circular dated 24.4.82 as he had not vacated the quarter. In a recent decision, the Supreme Court has held that the delay that occurred is <sup>by account</sup> on of "withholding" of the gratuity on the basis of the aforesaid circular. In such circumstances, the petitioners are not entitled to get interest as the delay occurred due to the order passed on the basis of the said circular of Railway board, and not on account of administrative lapse- RajPal Wahi and ors Vs. U.O.I. and ors.

SLP No.7688-91 of 1989 decided on 27.11.89. Following the above judgement, I hold that the applicant is not entitled to get interest on the delayed payment.

The original allottee of the quarter is applicant No.2, and he is liable to pay the rent till the date he vacates the quarter in accordance with rules. As per rules, he is entitled to retain the quarter for a period of 4 months on payment of normal rent. The applicant will vacate the quarter on or before 31.7.92 and the respondents will pay the retiral benefits after setting off the rent payable by him as per prevalant rules within one month of receipt of a copy of this order. The application is disposed of accordingly.

*Usha Savara*  
(USHA SAVARA) 25.6.92  
MEMBER (A)

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