

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 901/92

Transfer Application No: -- --

DATE OF DECISION: 31-5-94

1. Paras Ram Singh

2. Ashok Singh Chouhan

Petitioners

Mr. G. S. Walia

Advocate for the Petitioners

Versus

Union of India & two ors.

Respondent

Mr. J. G. Savant

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M. R. Kolhatkar, Member(A)

The Hon'ble Shri -

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1. To be referred to the Reporter or not ?
  2. Whether it needs to be circulated to other Benches of the Tribunal ? X

MR Kolhatkar

(M. R. KOLHATKAR)

M (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

(2)

O.A.901/92

1. Paras Ram Singh
2. Ashok Singh Chouhan .. Applicants

-versus-

Union of India and  
two others. .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,  
Member(A)

Appearances:

1. Mr.G.S.Walia  
Counsel for the  
Applicants.
2. Mr.J.G.Savant  
Counsel for the  
Respondents.

Date of hearing: 27-4-94 and 28-4-94

Date of Judgment:

(Per M.R.Kolhatkar, Member(A))

JUDGMENT:

Applicant No.1 is father of applicant No.2 and retired from service as Deputy Shop Superintendent on 28-2-1991. Applicant No.2 was appointed to the railway service on 8-2-1991 i.e. twenty days prior to the date of retirement of applicant No.1 as Apprentice Assistant Driver(Diesel Assistant). Applicant No.1 was allotted a Railway Quarter No.RB/III/272/1 at Parel in 1987 and applicant No.2 has been residing with applicant No.1.

2. The training period of applicant No.2 was eight months and thereafter he was absorbed as Diesel Assistant(Assistant Driver) in the scale of Rs.950 - 1500. According to the applicant the training period is also

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counted as qualifying service and increments are also drawn for the training period and therefore the applicant was eligible for allotment of railway quarters.

3. According to Railway Board circular dated 25-6-66 Railway quarters can be regularised in the name of the son subject to fulfilment of <sup>certain</sup> conditions. In this case since the matter related to 1991 it is not disputed that it is the latest circular as issued by the Railway Board on 15-1-1990 which is relevant. Para 2 of this circular is quoted in full :

"2. 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 or deceased railway employee for atleast six months before the date of retirement or death and had not claimed any H.R.A. 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 case a residence of the entitled type or type next below is allotted."

According to applicant No.2 at the time of retirement of applicant No.1 i.e. father of applicant No.2, he was entitled to railway quarters <sup>of</sup> ~~though not~~ the same category. On 22-2-91 the applicants applied for <sup>permission for</sup> sharing accommodation

to be given to the applicants but by letter dated 28-2-91 applicant No.1 was informed that permission cannot be agreed to as he was retiring from railway service by the end of the month. The applicant No.1 as per rules retained quarters allotted to him for four months after retirement which expired on 30-6-1991 and by another letter dt. 3-9-91 applicant No.1 was further permitted to retain the quarters upto 31-10-91. On 21-10-1991 applicant No.2 applied for regularisation of the railway quarter on father to son basis and it was also stated by him that he was not getting HRA during the training ~~trainin~~ period and thereafter. However, the application was rejected and eviction proceedings were initiated against applicant No.1 by order dated 14-8-1992. An eviction order was passed. The DCRG of applicant No.1 was also withheld on account of non vacation of the quarters. The applicant has challenged the letter dated 24-12-1991 refusing regularisation of the quarter of applicant No.1 in the name of applicant No.2 and also eviction order dated 14-8-1992. The relief claimed by the applicant is to quash the order of refusal to regularise the quarters and also to quash the order of eviction. This Tribunal by its order dated 28-8-92 gave interim relief restraining the respondents from implementing the eviction order and the interim relief is continuing.

4. The respondents have resisted the application on the ground that the applicant No.2 was eligible for regularisation because he did not fulfil the conditions of Railway Board

circular dated 15-1-90 and in particular he was not in the service of the Railways at the time of the retirement of father i.e. applicant No.1 and he was not eligible for railway accommodation. Moreover even assuming that the training period would count as employment the applicant was a railway employee only for 20 days prior to the date of retirement of applicant No.1 and he was not sharing accommodation for six months as required under the rules. Moreover no permission for sharing the accommodation was granted. The eviction order is in order as it has been passed after following the procedure under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. At the argument stage the parties have relied on the following case laws: Applicant relies on the case of :

(i) Harinder Singh v. U.O.I. & Ors.

I(1990)ATLT(CAT)141 the ratio of which is that it will be a narrow and technical interpretation of rules if the question of sharing is stretched to include <sup>that</sup> the six months period should have been as a Government servant and that specific permission should have been given although once the house rent allowance has not been paid to the applicant, such permission can also be presumed.

(ii) Rajendra Anand and anr. v. U.O.I. & anr.  
(unreported case of Bombay Bench  
O.A. No.408/91 decided on 28-6-1993)

That was a case in which Harinder Singh's case was relied upon but the facts were slightly different inasmuch as the railway servant prior to his retirement had been transferred to another place and the Tribunal held that para 1732 of the Indian Railway Establishment Manual should not control the operation of the instruction dated 25-6-66.

(iii) Tashwarkhan Pathan and Anr. vs. U.O.I & anr. (unreported case of Bombay Bench O.A. 219/88 decided on 11-3-93) in which the Bench directed the Railways to condone the <sup>shortage in the</sup> ~~the~~ period for sharing the accommodation (four months instead of six months).

(iv) Applicant also relied on the judgment of Hareshkumar Chhaganlal and another vs. U.O.I. & anor. which is an unreported Ahmedabad Bench judgment in O.A. 201/90 decided on 14-9-93 delivered by Division Bench to which the present single bench was a party. In that case the request for allotment was turned down on the ground that on the relevant date the applicant was not<sup>a</sup> regular employee but he became a regular employee later on.

The learned counsel for the applicant stated that the SLP 1183/94 against the above case was admitted by the Supreme Court which had held that Tribunal had taken a narrow and technical views of the matter and it allowed the SLP.

6. Respondents on the other hand relied on the single bench judgment of this Bench in the case of Neeta R.Jadhav vs. GM Central Railway and another, O.A. No.688/87 decided on 2-12-93 By Vice-Chairman. In that case the application for regularisation was negatived. The applicant had relied on Harinder Singh's case but the Bench distinguished Harinder Singh's case on the facts. The Bench held that the applicant had not been permitted to share the accommodation after 21-12-1984 and that since no proceedings were taken challenging the rejection, the rejection has become final and subsequent application made by the applicant for out of turn allotment would not give her <sup>the</sup> right for such allotment.

7. We have considered the matter. It is clear that the present case depends for its decision on an interpretation of Railway Board circular dated 15-1-1990 which has already been quoted by us. Railway Board instructions require that the employee for regularisation of quarter on father to son basis must have been sharing the accommodation with the retiring or deceased railway employee for atleast six months before the date of retirement or death and ~~had not~~ should not

have claimed any HRA during the period.

In this particular case, the father retired on 28-2-91 and it is not disputed that the son i.e. applicant No.2 was sharing the accommodation with the father six months prior to his retirement. It is also not disputed that applicant No.2 who was a railway employee at the time of retirement had not been claiming any HRA during the twenty days' period he was in service. The contention of the respondents that applicant No.2 was not in service cannot stand. The applicant has pointed out instructions of the Department of Personnel which have been adopted by the Railway Board by its circular dated 15-11-91 stating that the training period can be counted for the purpose of drawing increments. In other words, training period is duty for purpose of FR 26 and therefore the applicant No.2 was a railway employee eligible for allotment. The second contention of the respondents that such eligible railway employee should share accommodation for six months is not borne out by plain reading of the rules. In Harinder Singh's case it was held that it will be a narrow and technical interpretation of rules if the question of sharing is stretched to include that six months' period should have been as a Government servant. Apart from this, in our view, in this particular case the "rule of last antecedent" will apply vide page 251 of G.P.Singh on Principles of Statutory Interpretation. According to this rule, relative and qualifying words, phrases and clauses are applied to the antecedent immediately preceding. Reference to six months



reference to follows sharing of accommodation and therefore the condition of six month applies only to sharing and it does not apply to the applicant being an eligible railway employee for six months. It may be pointed out that in Harshkumar Chhaganlal's case also, the interpretation which was adopted by the Tribunal was only that the applicant should be <sup>a</sup> railway employee <sup>for some period</sup> at least and not that he should have been employed for six months. The Supreme Court has also laid down that in such matters narrow and technical interpretation of rules should not be adopted. Considered from all points of view, therefore, we hold that it is not necessary that a railway employee should be an eligible employee for six months prior to the date of retirement. It is enough that he is <sup>an</sup> eligible railway employee for some minimum period. In this particular case, that minimum period being twenty days it seems to be adequate for our purpose. Further contention of the respondent is that the sharing ought to have been permitted sharing. In this connection respondents referred to Central Railway circular No.147/83 which is an interpretation of Railway Board circular dated 25-6-66 which has been re-issued as mentioned by us on 15-1-90. It has been rightly pointed out by the counsel for the applicant that it is not within the powers of the Zonal Railway Managers to issue <sup>circulars</sup> which are inconsistent with the instructions of the Railway Board. In our view, the circular No.147/83 is clearly such an example of inconsistent instructions issued by Zonal Railway and it is not binding

on us. We are also not fully bound by Mrs. N.R. Jadhav's case because that decision was based on authority of the circular No. 147/83 and in any case as pointed out by counsel for the applicant that case ~~was~~ proceeded on equitable considerations and in particular the fact that ~~although~~ the father was evicted, the daughter broke open the lock and forcibly occupied the quarter, and that the application for regularisation was sought to be <sup>made as</sup> an afterthought.

8. We are therefore fully bound by the judgment in Harinder Singh Vs. U.O.I. as well as the observation of the Supreme Court in SLP 1183/94 in which Supreme Court laid down that extremely narrow and technical view of the rules should be avoided in such matters. As pointed out by us, even on a strict interpretation of the rules the applicant is fully entitled to the regularisation of the quarter on father to son basis though of not <sup>of the</sup> same type. ~~and is also entitled to relief of DEAG.~~ We therefore dispose of the application by passing the following order :

#### O R D E R

Application is allowed. The order of the respondent refusing regularisation of the quarter vide order dated 18-6-92 (Ex. 'H') ~~and order dated 24-12-91 (Ex. I)~~ and order dated 24-12-91 (Ex. I) are hereby quashed and set aside. The respondents are directed to regularise the

quarter in favour of applicant  
No.2 by strictly following the  
Railway Board's order dt.15-1-90  
and the same may be regularised  
in the name of applicant No.2  
if he is eligible for residence  
of that type. If he is not  
so eligible he may be allotted  
a residence of the entitled type  
or type next below and he should  
not be disturbed in his possession  
of the quarter till such allotment

is made. D G R G is directed to be  
released as per adjournment of court  
No order as to costs. with interest on per  
miles.

*M.R. Kolhatkar*

(M.R.KOLHATKAR)  
Member(A)