

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 609/93

2-12-99
Date of Decision:

John Moses & Anr.

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri A.L.Kasturey

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.609/93

Dated this the 2nd day of December 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

1. John Moses,
Retd. ELC (DFO),
Bandra,
R/o Qr.No.209/10,
Bandra (East),
Bombay.
2. Nelson J. Moses,
Ticket Collector,
Bandra,
Western Railway, Bombay.

... Applicants

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay.

... Respondents

By Advocate Shri A.L.Kasturey

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O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This OA. has been filed by the two applicants jointly wherein Applicant No. 2 seeks regularisation of the quarter occupied by his father, Applicant No. 1 at the time of retirement in his name on out of turn basis.

2. The Applicant No. 1 while working as Ticket Collector Central Railway, retired from service on 31.12.1991. He was occupying a Type-II Railway quarter at Bandra at the time of retirement. Retention of the quarter after retirement was allowed upto 1.8.1992. The Applicant No. 2, son of the Applicant No. 1 was selected for the post of Ticket Collector as per the letter dated 10.10.1991 from Railway Recruitment Board, Mumbai. However, he was sent for training to the Training School as per order dated 2.3.1992. After completion of training he joined on the working post on 17.3.1992, i.e. during the authorised occupation of the said quarter by the applicant No. 1. The Applicant No. 2 submits that he was staying with his father before being appointed and thereafter also. No House Rent Allowance (HRA) was paid to the applicant^{No 2} on the ground that Applicant No. 2 was sharing quarter with his father. The applicant was entitled for regularisation of quarter in his name as per rules. However, applicants on 8.4.1993 received a notice stating that they were in unauthorised occupation of the quarter and should vacate the same. This notice was replied by Applicant



No.1 stating that the said quarter should be allotted in the name of the Applicant No. 2. However, the respondents did not regularise the quarter which the applicant No. 2 was entitled as per rules. Not only this, the full Gratuity (DCRG) payment of Applicant NO. 1 has been withheld on the ground of non vacation of the quarter. Similarly, post retirement Railway passes as due have been also with-held. Aggrieved by this, the present OA. has been filed on 3.6.1992 seeking the following reliefs :-

- (a) To set aside the notice dated 8.4.1993.
- (b) To hold that the Applicant No.2 is entitled for regularisation of the quarter in his name at normal rent.
- (c) To direct respondents to pay full amount of Gratuity with 18% interest per annum thereon.
- (d) To hold and declare that the applicant is entitled for 2 sets of post retirement passes every year.

3. The main case of the applicant is that the applicant NO.2 was appointed as a Railway servant within the permissible period allowed for retention of the quarter after retirement and accordingly relying upon the rules laid down for allotment of quarter in case of compassionate appointment, the applicant No.2 is entitled for regularisation of the quarter. The applicant has relied upon the Railway Board's Circular dated 25.6.1966 and has

stated that there cannot be any discrimination between the employees employed on compassionate basis or otherwise within the permissible period in the matter of allotment of quarter.

4. The respondents have opposed the application and have filed written statement. The respondents submit that applicant no. 1 was permitted retention of the quarter upto 31.7.1992 after retirement on 31.12.1991. He did not vacate the quarter on 31.7.1992 and therefore was rightly declared as unauthorised occupant as per the notice dated 8.4.1993. As regards the entitlement of the regularisation of the said quarter in the name of the Applicant No. 2, the respondents contend that the same was not admissible in terms of Railway Board's letter dated 25.5.1966. The conditions as laid down in the letter dated 25.5.1966 are not met with as the applicant No. 2 was appointed in Railway service on 17.3.1992 after the retirement of his father. Further no permission for sharing of accommodation was granted. As regards non payment of HRA, no instructions were given to Station Superintendent, Bandra where the applicant was employed for ^{no} payment of HRA. He has managed with the office not to pay any HRA and therefore any certificate issued to this effect is not valid. Further, the case of the Applicant No. 2 cannot be considered at par with that of compassionate appointment as professed by him. There is no case of discrimination as two categories are distinct. As regards the withholding of DCRG, the respondents state that the same was withheld for the recovery of the rent dues at penal rate as per

the rules. Post retirement passes had been withheld in terms of Railway Board's order dated 24.4.1982 and necessary notice to this effect was issued to the applicant. In view of what is stated in the written statement, the respondents plead that the applicants are not entitled for the reliefs prayed for and the OA. deserves to be dismissed.

5. The applicant has not filed any rejoinder reply.

6. We have heard the arguments of Shri G.S.Walia and Shri S.C.Dhawan, learned counsel for the applicants and respondents respectively.

7. As per order dated 6.8.1993, it was provided as an interim stay order that applicants will be not evicted from Quarter No. 209/10, Bandra (East). It was extended from time to time and then as per order dated 19.11.1993, to continue till further order after admission of the OA.

8. The admitted facts which are central to deliberations on the merits of the claim made are :- (a) The Applicant No. 1 retired from Railway service on 31.12.1991 and the quarter occupied by him at the time of retirement was allowed to be retained upto 1.8.1992. (b) The Applicant No. 2 was appointed in Railway after retirement of the father. He was sent on training on 2.3.1992 and joined on the working post on 17.3.1992. (c) No HRA payment was received by the Applicant No. 2.

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With these facts, the claim of the applicants is that applicant no. 2 is entitled to the regularisation of the quarter occupied by applicant no. 1 placing reliance on the provisions in the Railway Board's Circular dated 25.6.1966. The main defence put forward by the applicant in the OA. is that Applicant No.2's case is to be treated at par with that of the compassionate appointment. The applicant submits that a ward of a deceased Railway servant if given compassionate appointment within a period of 12 months from the date of death, he is entitled for the regularisation of the quarter which was in occupation of his father at the time of death. The applicant has added further that regularisation of the quarter is to be treated equally in case of death and retirement and any other view will be discriminatory and in fact the order dated 25.6.1966 envisages this. With this submission, the applicants put forwards the case that since the applicant no.2 was appointed in the Railway during the authorised occupancy of quarter, he is entitled for regularisation of the quarter on out of turn basis under reference. We have carefully considered these submissions of the applicants and ^{are} unable to persuade ourselves to accept the same. In case of appointment on compassionate ground, the conditions laid down in the order dated 25.6.1966 (R-1 of the written statement) which will be gone into details subsequently cannot be complied with as per the scheme, laid down. Appointment has to take place after death and therefore a period has been stipulated within which compassionate

appointment^y materialises, the out of turn regularisation of the quarter in occupation of the father would be admissible. There is no such stipulation laid down in respect of retiring railway employees and the provisions in the circular dated 25.6.1966 do not admit any inference as^{is} being drawn by the applicant in his favour. If this was intention of the rules, then it would have been stated so and period for appointment would have been laid down for the ward of retiring employee. The ward of retiring employee and ward of the deceased employee given compassionate appointment after death belong to distinct categories. There cannot be any case of discrimination as made out by the applicant. In view of these observations, we fail to find any merit in this defence of the applicant.

9. As stated earlier, the above was the only ground advanced by the applicant in the OA. However, during the hearing, the counsel for the applicant developed his defence altogether on different grounds with thrust on the core argument that in case of the applicant, the conditions laid down in the order dated 25.6.1966 are complied with citing some orders/judgements and relying on legal propositions. Since the learned counsel for the respondents reacted to these pleadings, accordingly we are going into the merits of the same.



10. Referring to the conditions laid down in the Railway Board's order dated 25.6.1966, for entitlement for regularisation of quarter by a ward in his name on out of turn basis occupied by his/her father namely (a) ward is a Railway servant, (b) eligible for railway accommodation and (c) had been sharing accommodation with the retiring railway servant for at least six months before the date of retirement, the applicant has advanced the first ground. The applicant submits that these conditions do not envisage that ward should be a Railway servant at the time of retirement. Similarly, the condition of sharing for six months could be complied with if the ward was staying with the father before retirement or thereafter during the authorised retention of the quarter. The Applicant No. 2 submitted that his father retired on 31.12.1991 and he was appointed on 17.3.1992 within the period of authorised retention of the quarter allowed upto 1.8.1992 and he had been continuously staying with his father before and after retirement since appointment on 17.3.1992 and no HRA has been paid to him. The Applicant No. 2 being Group 'C' employee is also entitled for Type ^{II} quarter. The counsel of applicant therefore contended that in view of these facts, all the conditions are complied with by the applicant no. 2. The counsel for the applicant further argued that a narrow and technical view should not be taken and the rules are to be interpreted liberally to benefit the staff and the applicant sought the support of following judgements/orders :-

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- (a) Har minder Singh vs. Union of India,
1990 ATLT (CAT) 141.
- (b) Sukhdev Singh vs. Union Territory of Chandigarh,
1983 (1) SLR 277 (Punjab & Haryana High Court).
- (c) Civil Appeal No.1183/94, Haresh Kumar Chagan Lal
vs. Union of India, judgement dated 21.2.1994 of
Hon'ble Supreme Court.
- (d) Paras Ram Singh & Others vs. Union of India,
OA.901/92 dated 31.5.1994 (of this Bench).

11. Before we go further into merits of the submissions made above, we will review the cited judgements/orders to determine whether they advance the case of the applicant.

Civil Appeal 1183/94 - Haresh Kumar Chagan Lal

This judgement has been relied upon by the applicant to support his contention that narrow and technical view cannot be taken in interpretation of the rules. We have carefully gone through this judgement. In this case, the appellant was ordered to be reinstated in service with further direction to treat him continuous in service for the purpose of regularisation and retirement benefits. The issue under challenge in the civil appeal was the out of turn allotment of the quarter occupied by his father at the time of retirement. The Tribunal had not allowed the relief holding that conditions stipulated for out of turn allotment were not met with. The

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Hon'ble Supreme Court however has observed that since the appellant was treated to be continuous in service, then admittedly he was residing with his father before the later retired from the service. In view of this, the Hon'ble Supreme Court held that the appellant was entitled under the rules for out of turn allotment. With these facts and circumstances of the case, the Hon'ble Supreme Court while allowing the relief observed that the Tribunal had taken an extremely narrow and technical view of the order which was not called for. This is not the situation in the present case. Here applicant No. 2 was appointed after retirement of the father and the case for out of turn allotment has to be considered in the light of the extant rules. We are therefore of the considered view that applicant cannot plead that a narrow view should not be taken and liberal interpretation of the rules to benefit the applicants should be made. Accordingly, the ratio of what is held in this judgement does not apply to the case of the applicant on the facts and circumstances of the case.

Sukhdev Singh vs. Union Territory of Chandigarh

Here the petitioner, a Government servant was staying with his father at the time of retirement on 1.4.1974 in a quarter which was permitted to be retained upto 30.5.1974. This quarter could not be regularised in the name of the petitioner as there were no such rules to this effect. However, subsequently rules were notified on 3.4.1974 as per which the son

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the quarter on out of turn basis. The applicant file an OA. before the Tribunal because the applicant had been sharing accommodation before retirement for about 4 months only, i.e. short of six months. The Bench allowed the relief, holding the view in para 7 that it will be narrow and technical interpretation of the rules if the question of sharing is stretched to include that six months period should have been as a Government servant....." In the present case the applicant no. 2 was appointed after the retirement of his father and therefore the ratio of what is held in this order will not directly apply to the present case.

Paras Ram Singh vs. Union of India

In this case also the applicant was in appointment before retirement of his father but the period was only twenty days. After analysing the various cited orders/judgements and the provisions in Railway Board's circulars the Bench concluded as under in para 7 :-

" 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 an eligible railway employee for some minimum period. In this particular case, that minimum period being twenty days seems to be adequate for our purpose....."

After recording this finding and thereafter relying upon the order in the case of Harinder Singh and the judgement dated 21.2.1994 in the civil appeal No.1183/94 (supra) allowed the relief stating that narrow and technical view of the rules should be avoided in such matters. As discussed earlier in the case of

Harminder Singh, the ratio of what is held in the case would not come to the rescue of the applicant no. 2 as in his case, the appointment was after the retirement of his father and therefore the question of relaxation of period for sharing accommodation before retirement does not arise.

12. After considering the cited judgements/orders above, now we will take up the contentions of the applicant on merits. For this purpose, it would be appropriate here to reproduce the conditions laid down in the letter dated 25.6.1966 as under :-

"..... that when a Railway servant has been allotted 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."

It is the interpretation of the applicant that ward of the father need^h be a Railway servant which may be before retirement or after retirement when the house is still under occupation as permitted by the Government. Further condition of 6 months^{of} sharing is not to be as Railway servant and^h a ward. has been staying with his father before retirement, then that period will also qualify to meet with this requirement. On going through the order dated 25.6.1966, we are not impressed by the interpretation of the conditions laid down made by the applicant. While interpreting instructions/rules, the true meaning and scope can only be understood keeping in view the intention behind it. On plain

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reading of the provisions, it is obvious that the conditions are not independent of each other but are joined together by "and" and 'and' is to be read as 'conjective'. When read in this way, it is clear that all the conditions are to be fulfilled at the time of retirement and not thereafter. The ward has to be a railway servant at the time of retirement of father and then only he can be eligible for railway accommodation and sharing of residence with his father for a period of 6 months. If these conditions could be met with independently as contended by the applicant, then the conditions become firstly - open ended and vague and secondly if the intention was so then it would have been specifically stated so. Further, the applicant has relied upon the Railway Board's circular dated 25.6.1966. However, we note that this circular has been superseded by the subsequent circular. In this connection, we refer to the order of Full Bench in the case of Liaquet Ali vs. Union of India in OA.2684/93 and connected OAs. and decided on 29.5.1995 (supra) which has been relied upon by the respondents and brought on record through a Misc. Application. We will be reviewing ^{this} order in detail subsequently but for the present point, we note that in ^{this} order ⁱⁿ reference has been made to Railway Board's circular dated 15.1.1990. This circular is also referred to by the Bench in the case of Paras Ram Singh & Another. We note that this circular consolidates all the earlier instructions laid down for out of turn allotment of quarter and also refers to the earlier circular dated 25.6.1966, which has been relied upon by the applicant.

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Since the applicant has retired after the issue of this circular, the case of the applicant will be governed by the provisions of this circular. This circular lays down the same conditions for regularisation of the quarter in the name of ward as in the circular dated 25.6.1966 but with additional condition that no HRA had been claimed during the period of sharing. In this circular dated 15.1.1990, below para 3, there are number of Notes which indicate the nature of right if any created in respect of the allotment of the Railway quarter on out of turn basis. For our purpose, Notes (ii) & (iv) are significant and are reproduced below :-

" Note :- (ii) The concession of adhoc allotment would not be available in the case of a dependent who secures employment in the railway after the date of retirement of parent or during the period of re-employment.

(viii) If any employee's dependent is already drawing HRA and stops drawing the amount six months before retirement of this employee concerned, the dependent is not eligible for allotment regularisation of quarter."

As we have discussed earlier, the reading of the circular dated 25.6.1966 relied upon by the applicant conveys nothing else but that the conditions for out of turn allotment are to be complied with at the time of retirement. This obviously requires that ward has to be a railway servant at the time of retirement and not subsequently at any time. This interpretation is clearly confirmed by the Note (ii) extracted above. In the face of clear instructions laid down in the circular dated 15.1.1990, we are unable to accept the interpretation of the circular by applicant which is nothing but an exercise to stretch it to fit in with

his case. In fact, we fail to understand ^{as to} ~~that~~ how the applicant has relied on an old circular of 1966 and did not refer to circular dated 15.1.1990 which will apply to the case of the applicant. We therefore have no hesitation to conclude that interpretation made by the applicant with regard to compliance of the conditions for out of turn allotment is not tenable.

13. During the arguments, the counsel for the applicant, took the plea that case of the applicant is covered by the law laid down by the Hon'ble Supreme Court in the case of M/s. Laxmi & Co. vs. Dr. Anant R. Deshpande and another, 1973 AIR SC 171. The applicant, has argued that since the applicant no.2 was appointed after retirement, the subsequent event can be taken into consideration in granting relief as held by the Hon'ble Supreme Court. We have carefully gone through this judgement and find that this legal proposition advanced by the counsel for the applicant, is based on misreading of the judgement and is not tenable. The Hon'ble Supreme Court in para 27 has held as under

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"27. It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances, the court takes notice of the same. If the Court finds that the matter is no longer in controversy the court also takes notice of such event. If

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the property which is the subject-matter of suit is no longer available the court will take notice of such event. The court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice."

In the present case, the very foundation of the OA. is based on the appointment after retirement. The applicant, considers this as a subsequent event. But it is not so. This is not a development subsequent to the filing of the OA. and therefore not covered by the altered circumstances which can qualify as "subsequent event" as envisaged by their Lordships in this judgement. Therefore, this plea of the applicant is without any substance to merit consideration.

14. An other plea taken by the counsel of the applicant, during the arguments is that no HRA was paid to the applicant since his appointment as per documentry evidence at Annexure-'D' (letter issued by Station Superintendent) which would imply that the quarter had been regularised in the name of the applicant. The respondents have contested this stating that no instructions were issued to Station Superintendent for not paying HRA to the applicant and therefore ^{thus} ~~the~~ action by him is without authority. Further no sharing of accommodation was approved by the competent authority and applicant on his own managed with the office not to pay him HRA. We have carefully considered the rival contentions and inclined to reject the proposition of the applicant. The applicants have not brought out whether any application for

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sharing of quarter after the appointment of the applicant no.2 was made. There is no averment that the approval of competent authority was issued for sharing of the quarter. In fact, there is not a whisper of averment that ^{after} the appointment of the applicant no.2, request was made to regularise the quarter in his name. It is only after issue of show cause notice dated 8.4.1993 for vacation of the quarter after being declared as unauthorised occupant, the applicant no. 1 made the first request for regularisation of the quarter as is clear from his letter dated 19.4.1993 (Annexure-'E'). Merely of the fact that HRA was not being paid to applicant, ^{N^o 2} the applicant, cannot assume that the regularisation of the quarter was allowed which had to be done as per the extant rules. In the present case, as indicated earlier, even there was no such request. The applicant no.2 was not entitled for regularisation of the quarter on out of turn basis as the laid down conditions were not complied as held by us earlier. Incorrect action by the Station Superintendent in not paying HRA to the applicant no.2 will not amount to regularisation of the quarter in relaxation of the rules. The applicant has cited judgement of the Hon'ble Supreme Court in the case of Union of India vs. V.R.Deddappa, 1994 SCC (L&S) 142. The applicant drew out attention particularly to para 5 of this judgement. We have carefully considered what is observed by their Lordships and ^{find that} the same do^{es} not apply to the case of the applicant. We do not find that there is any injustice or arbitrariness in the action of the respondents when the applicant no. 2 is not entitled for regularisation of the quarter on out of

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turn basis as per the extant rules. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Union of India vs. Wing Commander R.R. Hingorani, (1987) 2 ATC 939, wherein the legal proposition advanced by the applicant has been considered. In this case the respondent after transfer continued to occupy the accommodation for five years without intimation to the Government. The allotment though stood cancelled after two months as per SR.317-B (11)3, but this was done specifically after coming to know of unauthorised occupation. The applicant vacated the quarter on receipt of the notice. Recovery was made for penal rent from the settlement dues. This was challenged before the High Court in a Writ Petition and the same was allowed holding that since the rent at market rate was not recovered, there was a presumption of relaxation of condition for payment of market rate under SR.317-B-25. The Hon'ble Supreme Court has set aside the judgement of the High Court making the following observations in para 7 as under :-

"The view expressed by the High Court that there was a presumption of relaxation of the condition for payment of market rent under SR.317-B-22 due to inaction on the part of the government, is not at all correct. For a valid exercise of power of relaxation, the condition prerequisite under SR.317-B-25 is that the government may relax all or any of the provisions of the Rules in the case of any officer or residence or class of officers or types of residences, for reasons to be recorded in writing. There was no question of any presumption arising for the relaxation which had to be by a specific order by the government for reasons to be recorded in writing. Nor was there a question of any promissory estoppel operating against the government in a matter of this kind."

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In view of what is held by the Apex Court, the contention of the applicant is without any merit.

15. The counsel of the applicant, during the hearing put forward another plea that rules framed by the Railway Board for out of turn allotment of the quarter to the ward of the father on his retirement is a welfare legislation. The intention being that the retiring servant with his family could continue to live in the same house with his ward. Therefore on the considerations of equity and legitimate expectation, the applicant no.2 though appointed after retirement is entitled for the relief prayed for. In view of our earlier deliberations, we are not persuaded by the contention of the applicant. First the rules as per letter dated 25.6.1966 (15.1.1990) are not a welfare legislation but an exception to the general rules for allotment of ^{quarters.} ~~rules.~~ This exception has to be according to rules laid down. The learned counsel for the respondents while reacting to this plea stated that employees belonging to the cadre of the applicant no.2 are waiting for allotment of quarter against general quota since 1981. In such a situation how the claim of equity can be made by the applicant in relaxation of the rules? These rules do not provide any vested right as held in the order of Full Bench in case of Leaquat Ali and another as we would be reviewing subsequently. There cannot be any legitimate expectation in violation of the rules and on the presumption that relaxation of the rules will be allowed by the competent authority. Here also what is held by the Hon'ble Supreme Court in the case of Wing Commander R.R.Hingorani (supra) applies equally to this plea of the applicant, and accordingly deserves to be rejected.

16. Lastly, the counsel of the applicant, made a fervent plea that the applicants have been staying in the quarter for a period of 9 years now. Therefore considering the facts and circumstances of the case, strict interpretation of the rules should not be done and the applicants should be allowed reliefs prayed ^{for} as a special case without being cited as a precedent. In the light of our deliberations earlier and findings recorded, we find it difficult to consider this prayer. The plea ^{of} for for staying for a long period in the quarter is not tenable as the applicants have been staying in the quarter subsequent to issue of notice in view of the grant of interim stay order. Therefore for this period applicant, cannot claim any consideration as this was subject to final outcome in the OA. We have recorded findings above that the applicant no.2 is not entitled for regularisation of the quarter in his name as per rules. No relief could be granted in violation of the rules as it will put a stamp on the illegal action of the applicants to continue to occupy the quarter beyond the period of authorised retention without any regularisation. Here we will refer to the order dated 29.5.1995 of Full Bench in the case of Liaquat Ali & another vs. Union of India cited by the respondents by filing a Misc. Application and making a plea that in view of what is held in this order, the applicants are not entitled for any relief. On going through this order, we note that in view of conflicting decisions with regard to eligibility of a casual labourer with temporary status/substitute for regularisation of the quarter on out of turn basis on the retirement of his father, the matter was

referred to Full Bench. The Full Bench after review of the various Railway Board's circulars, provisions in Indian Railway Establishment Manual (IREM) and the cited orders/judgements reframed the question referred to the Full bench. Out of three questions, following two questions which are relevant to the controversy in the present OA. are reproduced here :-

- (i) Whether allotment of railway wuarter can be claimed as a matter of right?
- (ii) Whether ward of retired or retiring employee who was living in a railway quarter along with the retiring or retired railway servant with the permission of the railway administration foregoing house rent allowance has a right to claim regularisation of quarter in his name?

The Full Bench has answered both the questions in negative. The third question with regard to entitlement of a casual labourer with temporary status/substitute for out of turn allotment, the Full Bench held that in terms of the Railway Board's circulars, the same was not admissible as the required conditions are not met. Therefore, the out of turn ^{allotment} cannot be claimed as a matter of right and has to be governed by the relevant rules laid down. Para 33 of this order deserves to be reproduced here as under :-



" Under the circulars, out of turn allottees constitute a distinct class. Since they take precedence over others who have been waiting for allotment for a long time, it is necessary that their claims are considered strictly in terms with the circulars and not in a manner which enlarges the scope of the circulars."

In view of what is held in para 33 by Full bench, what is held in the cited judgements of Harminder Singh and Paras Ram Singh & others (supra) by the applicants is no longer valid. In the light of these deliberations and keeping in view what is held by the Full bench in case of Liaquat Ali, we reject the prayer of the applicant, that relief be granted in view of the facts and circumstances and without strict interpretation of the rules as a special case without the decision being quoted as a precedent.

17. As regards the relief of the payment of the Gratuity (DCRG), the respondents have submitted that the same was withheld due to non vacation of the quarter and same will be released on vacation of the quarter. The applicants have not controverted this by filing rejoinder reply. In fact the counsel for the applicants did not argue on this issue during the hearing. In view of this submission of the respondents, the only direction that can be given is that on vacation of the quarter, the respondents will release the DCRG as due after deduction of the rent arrears if any as per the extant rules.

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18. For the relief of issue of post retirement passes, the respondents have submitted that the passes were withheld as per the instructions laid down by the Railway Board in the letter dated 24.4.1982 after issue of the show cause notice as provided in this letter. This has not been contested by the applicant. The applicant, ~~has~~ not cited any rules in the OA. to support his relief. The applicant has not challenged the circular dated 24.4.1982 when disclosed by the respondents in the written statement. The counsel of the applicant, did not argue on this point also during the hearing. However, keeping in view what is held in the order dated 25.10.1990 in the case of Wazir Chand by the Full Bench, it is provided that on vacation of the quarter, the issue of the post retirement passes as admissible as per extant rules will be started prospectively. The applicant, ^{are} is however not entitled for payment of interest for delay in payment as held by the Hon'ble Supreme Court in the case of Union of India vs. Ujjagar Lal , 1997 SCC (L&S) 473.

19. In the result of the above deliberations, we conclude as under :-

(a) There is no merit in the relief with regard to regularisation of the quarter under reference in the name of the applicant No. 2 and OA. stands dismissed for this relief.

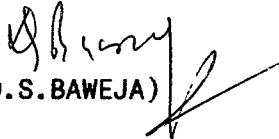
(b) Payment of Gratuity as due will be arranged within two months of the vacation of the quarter. Respondents are at liberty to deduct the arrears of rent if any as per extant rules from Gratuity amount due.

(c) Issue of post retirement passes will be started prospectively as soon as the quarter is vacated.

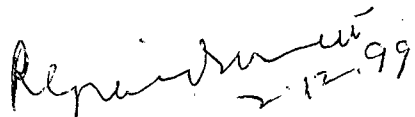
(d) Interim stay orders dated 6.8.1993 and 19.11.1993 stand vacated. For this period of occupation of the quarter, the recovery of the rent will be done as per the extant rules.

(e) The applicants are allowed to retain occupation of the quarter for a period of two months from the date of this order to make arrangements for alternative accommodation.

(f) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.


(R.G. VAIDYANATHA)
VICE CHAIRMAN