

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1267/94

30.11.2000
Date of Decision :

M.C.Desai & Anr. Applicant.

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Others. Respondents.

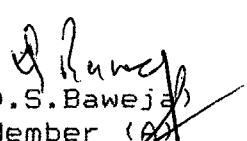
Shri V.D.Vadhavkar Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 1267/94

Dated this the 31st day of January 2000.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. M.C.Desai,
Ex-Chargeman,
Under Dy.Chief Engineer,
Western Railway, Mumbai.

2. Hemant M. Desai,
Khalasi,
Under Dy.CEE (EMU),
Mahalaxmi, Mumbai.

... Applicants

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
Churchgate, Mumbai.

2. Divisional Railway Manager,
Western Railway,
Bombay Division,
Bombay Central, Bombay.

3. Dy.C.E.E.(EMU),
Mahalaxmi Workshop,
Western Railway,
Mahalaxmi,
Bombay.

... Respondents

By Advocate Shri V.D.Vadhavkar

O R D E R

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

Through this application, the applicants have sought regularisation of Railway quarter on the father to son basis on the retirement of the father.

2. Applicant No. 1, while working as Electrical Charge man on Western Railway, retired from service on 31.1.1991. He was occupying Type-II Railway quarter at the time of retirement. The Applicant No. 2, son of Applicant No. 1 was appointed as Khalasi in Group 'D' in Railway on 26.11.1990 as a regular employee. The applicant No. 2 was sharing the quarter with his father since allotment 10 years back and continued to share even on his appointment on the Railway. Applicant No. 2 had been also not paid any House Rent Allowance (HRA). It is the case of the applicants that in terms of Railway Board's letter dated 25.5.1966, Applicant No. 2 is entitled for regularisation of the quarter occupied by his father on retirement as he meets with all the conditions laid down. It is further submitted that the provision in Railway Board letter dated 25.5.1966 are mandatory in nature as classified by Western Railway as per letter dated 5.5.1983. Accordingly, the applicant No. 2 informed the concerned authorities as per his letter dated 10.1.1991 that he was sharing accommodation with his father. Thereafter, the applicant No. 2 made several requests for regularisation of the quarter dated 10.1.1991, 18.3.1992 and 23.6.1994. However, no action has been taken by the Administration to regularise the quarter in the name of the applicant No. 2. In addition, the payment of Death-cu-retirement Gratuity (DCRG) and issue of post retirement complementary passes to the applicant No. 1 have been also withheld. Feeling aggrieved, the present OA. has been filed on 10.12.1994 seeking the following reliefs :-

(V)

- (a) to direct respondents to regularise either the quarter occupied by applicant No. 1 or any other eligible type of quarter in the name of the applicant No.2 from the date of retirement of applicant No.1.
- (b) to direct respondents to release DCRG of applicant No.1 with 18% per annum interest thereon.
- (c) to direct respondents to issue post retirement passes to applicant No. 1 immediately.

3. The respondents in the written statement have opposed the DA. At the outset, a plea is taken that application is barred by limitation. Joint application is also not maintainable as the reliefs prayed for are different. On merits, it is stated that the applicant No. 2 was appointed only on 26.11.1990, i.e. 2 months and 5 days before retirement of his father on 31.1.1995. In view of this, the applicant No. 2 does not meet with the condition of 6 months of sharing prior to retirement as laid down in the Railway Board's letter dated 25.6.1966. It is stated further that mere information of staying with father does not mean permission for sharing under the rules has been granted. The payment of HRA was stopped only from 8.3.1991 after retirement. The applicant No. 2 was accordingly not entitled for regularisation of the quarter allotted to his father. Further the request for regularisation was made only on 23.10.1991 and the same was not considered as applicant No. 2 was not eligible. Withholding of DCRG of the applicant has been done for non-vacation of the quarter as per rules. Post retirement passes have been also not issued due to unauthorised occupation of the quarter.

4. The applicant has not filed any rejoinder reply for the written statement.

5. As per order dated 2.1.1995, it was directed to maintain status quo in respect of possession of the quarter till the next date. On the next date, i.e. 16.1.1995, this interim stay order was modified to continue till further orders.

6. We have heard Shri G.S.Walia and Shri V.D. Vadavkar for the applicant and respondents respectively.

7. The basic facts involved in the issue under challenge are not in dispute. These are (a) the applicant No. 1 retired from service on 31.1.1991. (b) The applicant No. 2 was appointed in Railway service in Group 'D' on regular basis on 26.11.1990, i.e. 2 months and 5 days before retirement. (c) Applicant No. 2 was not in receipt of House Rent Allowance (HRA) since the date of appointment. The main defence of the applicant is that in terms of Railway Board's letter dated 25.6.1966, Applicant No. 2 is entitled for regularisation of the quarter occupied by his father at the time of retirement on out of turn basis or lower type quarter as per entitlement since all the conditions laid down for father to son regularisation of the quarter are met with. The respondents on the other hand have contested this and have contended that all the conditions are not met with.

8. The applicant has relied upon Railway Board's circular dated 25.6.1966 in support of his claim. However, on referring to the order of Full Bench dated 25.5.1995 in OA.No.2684/93 and connected OAs. in the case of Liaquat Ali Khan & Ors. which is relied upon by the respondents and which we will review subsequently, we note that the circular dated 25.6.1966 has been superseded and Railway Board have issued a circular dated 15.1.1990 consolidating all the instructions issued earlier from time to time which includes the circular dated 25.6.1966. Since ^{Not} the applicant has retired on 31.1.1991, this circular will be applicable to applicants case. We are not clear as to how the applicants have relied upon an outdated circular. In the circular dated 15.1.1990, following conditions are laid down for being eligible for regularisation of quarter on the basis of father to ward :-

"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 cases a residence of the entitled type or type next below is to be allotted."

9. In the present case, from the facts stated earlier, it is noted that all the conditions are complied with except the sharing of accommodation for a period of 6 months before retirement as pointed out by the respondents. The Applicant No. 2 was appointed only on 26.11.1990, i.e. 2 months and 5 days prior to retirement of applicant No.1. He was also drawing the HRA which was stopped only after the retirement of applicant No.1. Thus, on the face of it, the contention of the applicant that all the conditions are met with is not tenable. As stated earlier, the applicant has not filed any rejoinder reply and therefore there is no controversy^{ting} of respondents' contention with regard to non fulfilling the condition of sharing for a period of six months before retirement. It is^{only} during the arguments that the counsel of applicant propounded his defence to controvert the contentions of the respondents.

10. The counsel for the applicant submitted that the Respondent No. 2 was staying with his father before being appointed in Railway service and also continued to stay thereafter. In view of this, it is the contention of the applicant^{No.2}, that sharing of the accommodation with his father is inherent and no formal sanction was required and the condition of sharing accommodation for a period of six months before retirement even though applicant No.2 was appointed only 2 months before retirement is to be taken as complied with. It is also the stand of the applicant, that the sharing of the accommodation for a period of 6 months is not envisaged in the rules as a Railway servant only.

The applicant also stated that rules laid down by the Railway Board are pari-materia to the rules laid down for the other Central Government employees under SR-317 B as per the O.M. dated 1.5.1981. The Railway Board orders are therefore to be read with the same construction as in O.M. dated 1.5.1981. In the opinion of the applicant in O.M. 1.5.1981, the condition is only for residing for a period of 3 years and it does not specify that the entire period should be as a Government servant. On going through the O.M. dated 1.5.1981, we find that the understanding of the applicant of the provisions in the rules in O.M. dated 1.5.1981 is not tenable. In para 2, it is provided "during the same period of 3 years he should not have been drawing House Rent Allowance". The condition of non drawing of HRA can be met with only when the ward is a Government servant as otherwise he is not entitled for the HRA. Therefore, the sharing for the period of 3 years has to be as a Government servant and does not include the period for which the employee was not a Government servant. We, therefore, fail to understand the contention of the applicant as the provisions in para ² do not admit reading of the order as advocated by the applicant. With the ^{se} observations, we have no hesitation to hold that Railway Board instructions as per the letter dated 15.10.1991 clearly lay down sharing of accommodation for a period of six months as Railway servant and not otherwise. ^{therefore} The applicant No. 2 does not meet ~~ing~~ with this requirement.

11. The applicant No.2 also does not meeting with the requirement of non drawing of HRA for six months. As per applicant's own statement, the payment of HRA was stopped only from 8.3.1991 after the applicant No. 1 retired on 31.1.1991.

12. The applicant has cited the following orders to support his contention that six months sharing ~~whether~~ as a Railway servant is not mandatory requirement :-

(a) Harinder Singh vs. Union of India & Ors.

(1990) ATLT (CAT) 141 dated 7.12.1989.

(b) Paras Ram Singh & Ors. vs. Union of India & Ors. OA.901/92 dated 31.5.1994.

(c) G.M.Vyas & Anr. vs. Union of India & Ors. OA.1300 of 1994 decided on 7.1.1997.

On going through these orders, we note that the case of G.M.Vyas has been decided by the same Single member bench which decided the case of Paras Ram Singh & Ors. holding that ratio in this order applies to the case of G.M.Vyas.

The case of Paras Ram Singh & Ors. has been allowed following the ratio in the case of Harinder Singh. In all the three cases, the period of appointment in Railway service was less than 6 months before retirement. In the case of Harinder Singh, a view has been taken 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 and specific permission should have been given although once the house rent allowance has not been paid to the employee such permission can also be presumed. Keeping in view the ratio of what is held in this case, first we find that in the present case HRA was continued to be drawn till retirement and it was stopped only after retirement. Secondly, this issue has been examined by the Full Bench in the case of Union of India Vs. Liaquat Ali Khan, OA.NO.2689/93 and connected OAs. and decided on 29.5.1995 and cited by the respondents. What is held by Full Bench will prevail. It is noted that judgements in the case of Harinder Singh and Paras Ram Singh are dated 7.12.1989 and 31.5.1994 respectively and are before the Full Bench decision on 29.5.1995. In the case of G.M.Vyas, though the order is after 29.5.1995, the Bench has noted the Full Bench judgement. In the case of Liaquat Ali, the issue referred to was with regard to the eligibility of the temporary status casual labourer/substitute for regularisation of the quarter on out of turn basis on retirement of his father.

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 quarter 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 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 by the Full Bench, the ratio of what is held in the case of Harinder Singh & Paras Ram Singh is no longer valid. Regularisation of the quarter can be permitted within the ambit of the rules as it is a concession and exception to the normal rules. If the requirement is of 6 months' sharing

before retirement, then it cannot be relaxed. If 4 months, 2 months or 20 days is taken as adequate, then the rules will have no sanctity and any period less than 6 months should be treated as relaxed as otherwise it will be a narrow and technical review. If such a view is held then ~~there is~~ no period need to be specified. It is not the intention of the rules laid down as per the order dated 15.10.1991. Keeping in view of what is held by the Full Bench, we are not persuaded to accept that the appointment of applicant No. 2 even for a period of two months before the retirement is adequate and the applicant No. 2 should be taken to have met with the condition of 6 months of sharing as he was staying with his father before appointment also.

13. The counsel for the applicant vehemently argued on the point of not taking a narrow technical view of the condition of sharing for a period of six months before retirement. The applicant relied upon the following two judgements of the Hon'ble Supreme Court :-

(a) Ganga Ram Gupta vs. Union of India,

Civil Appeal No.3496 of 1991

judgement dated 3.9.1991.

(b) Hareesh Kumar Chhaganlal vs. Union of India

Civil Appeal No.1183 of 1994

judgement dated 21.2.1994.

After carefully going through these judgements, we note that the Hon'ble Supreme Court has made this observation of taking narrow and technical view of the matter in the context of the facts and circumstances obtaining in these cases. The Apex Court has not laid down the law that in every case the rules are to be interpreted liberally and narrow and technical view is not to be taken. In the present case, we do not find that the situation exists which calls for liberation interpretation of the provisions of the rule¹.

14. The counsel of the respondents also drew our attention to the recent order of the same Bench in the case of John Moses & Anr. vs. Union of India in OA.NO.609/93 dated 2.12.1999. He mentioned that the issue involved in the present OA, has been already examined in the OA.609/93 and the ratio of what is held in the order dated 2.12.1999 equally applies to the present OA. We are in agreement with the submission of the counsel of the respondents. The various cited judgements/orders and the pleas advanced by the applicant have been covered by the order dated 2.12.1999. We are of the considered view that what is held in the order dated 2.12.1999 applies to the present OA.

15. The respondents have also taken the plea of the limitation. The respondents bring out that the applicants made a request for regularisation of the quarter only on 23.10.1991 and the present OA, has been filed on 10.11.1994. The applicant

has filed an application for condonation of delay. We have gone through the application and note that the applicant has not advanced any convincing reasons for the delay. The applicants admit that they applied for regularisation of quarter only on 23.10.1991, i.e. 9 months after retirement. He has stated that applicant No. 2 sent a reminder on 18.3.1992. However, there is no averment for any reminder thereafter for taking the necessary action. Applicant only refers to verbal requests and assurance given by the concerned officers to explain the delay. It is obvious that the applicants kept quiet and the applicant No. 2 sent representation on 23.6.1994 before filing the OA. on 10.11.1994 perhaps apprehending eviction proceedings. The applicants plea that in respect of cases where father retired in 1984 and OAs. were filed in 1992,1994 and the same have been allowed because the applicants ^{were} _{still} continuing in the quarters. The applicant has not given any details of the OA. This argument is, however, not tenable as each case has to be seen on its own merits with regard to limitation. This contention also cannot be the explanation for delay in approaching the Tribunal. With this view of the matter, we are to ~~to~~ take that the OA. is barred by limitation.

16. As regards the relief of payment of Gratuity (DCRG) and the issue of passes, the respondents have opposed these reliefs stating that present OA. is not maintainable as the reliefs prayed for are plural in nature. We are not impressed by the

stand of the respondents. Payment of Gratuity and issue of passes are held up due to non vacation of the quarter as stated by the respondents. The applicant's case is for regularisation of the quarter. Therefore, till the regularisation issue is decided, the vacation of the quarter will not take place. Therefore, the reliefs of payment of Gratuity and issue of passes flow out of the regularisation of the quarter.

17. For the non payment of DCRG, the respondents have stated that same was with-held as the applicant No. 1 did not vacate the quarter as per the extant rules. This has not been contested by the applicant. Therefore, for the payment of DCRG if any due, the only direction can be issued is that the respondents will release the same after deduction of the rent arrears if any as per the extant rules after the quarter is vacated by the applicant No.1. The applicant No. 1 is entitled for payment of interest on the delay in payment of DCRG in view of the law laid down by the Apex Court in the case of Union of India vs. Ujjagar Lal, 1997 SCC (L&S) 473.

18. For the non issue of the passes also, the applicant has not contested the stand of the respondents. However, keeping in view what is held by the Full Bench in the order dated 25.10.1990 in the case of Wazir Chand, it can be directed that issue of post retirement passes as admissible shall be started prospectively on vacation of the quarter.

19. In the result of the above, we lay down as under :-

- (a) The OA. cannot be allowed and deserves to be dismissed so far as the relief for regularisation of the quarter in the name of the applicant No. 2 is concerned.
- (b) Payment of the Gratuity will be arranged within a period of two months after vacation of the quarter. Respondents are at liberty to recover the arrears of rent if any as per the rules.
- (c) Issue of the post retirement passes will be started prospectively as soon as the quarter is vacated.
- (d) Interim order dated 16.1.1995 stands vacated. For this period of occupation of the quarter, the recovery of the rent will be done as per the rules.
- (e) The applicants are allowed to retain quarter for a period of two months from the date of this order to enable making arrangements for the alternative accommodation.
- (f) No order as to costs.

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)

mrj.

VICE CHAIRMAN

R.G.Vaidyanatha
31/1/2001
(R.G.VAIDYANATHA)