

BOMBAY BENCH

Radhyeshyam J. Yadav Applicant

Union Of India through
General Manager,
Western Railway,
Churchgate,
BOM-BAY.

Divisional Railway Manager (E),
Western Railway,
Bombay Division,
Bombay Central,
BOMBAY.

Chief Works Manager,
Railway Workshop,
Lower Parel,
BOMBAY.

.. Respondents.

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

1. Shri Suresh Kumar,
Counsel for the applicant.

2. None for the respondents.

DATED :

PER.: SHRI M. R. KOLHATKAR, MEMBER (A)

In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the facts are as below :-

1. The applicant's father who was a railway employee, retired on 31.05.1989. The applicant was employed as a railway employee on 21.09.1991. Apparently, at the time of the appointment of the applicant his father had not vacated the quarters. At annexure A-4 is an application undated in which the applicant's father requested for allotment of the

quarter standing in his name at the time of his retirement in the name of his son. There is a reminder dated September 1992 at page 21. The grievance of the applicant is that, an attempt was made to evict him forcibly on 31.03.1994 and therefore he was constrained to approach the Court and obtained interim relief against eviction. According to the applicant, neither he nor his father can be evicted from the Railway quarter without following the due procedure of law under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is (conceded) by the applicant that the railway instructions relating to ^{transfer of quarter on} father to son basis do not apply to him because he was employed more than two years after the retirement of the father but there have been cases like that of Xavier Kuriakose, in which the Railway Administration have permitted the retention of the quarter by the son in relaxation of rules. Lastly, it is contended that the applicant is physically handicapped suffering from polio and therefore entitled to be allotted ^{quarter} on out-of-turn basis on the basis of Railway Board instructions dated 17.11.1966 as amplified in the instructions dated 12.05.1983. The instructions dated 17.11.1966 envisage that requests from physically handicapped railway employees should also be entertained for registration in the out-of-turn register on the merits of each case with due reference to the degree of their disability. The circular dated 12.05.1983 states that only two classes of physical disability should be taken into account for recommending the case for allotment of quarter on out-of-turn basis, namely; (i) Severe deformity in lower extremity and (ii) total blindness. According to the applicant, since he suffers from polio of the legs, his case is full-y covered by the railway instructions for allotment of the quarter on out-of-turn basis to the physically ^{handicapped} persons.

2. The respondents have opposed the application. They have pointed out that the applicant obtained the ad-interim relief on 25.04.1994 by making a wrong statement. The applicant's father retired not on 31.01.1992 after the appointment of the applicant on 21.09.1991 but the father had actually retired on 31.05.1989 i.e. well before the appointment of the applicant. It is pointed out that in terms of the rules relating to regularisation of quarters, the applicant is not ~~at~~ all entitled.

3. Although in the earlier order sheet there was a reference to Full Bench decision in Liaquat Ali son of Mahmood Ali in O.A. No. 2684/93 decided on 29.05.1995, it is clear and fairly conceded by the counsel for the applicant that he does not claim for regularisation of the quarter on father to son basis. What he submits is that his father has retained the quarter because his pensionary benefits have been with-held by the respondents. Secondly, he contends that his case is required to be considered as that of ^a physically handicapped person. In support of his proposition that there cannot be eviction without due process of law, the counsel for the applicant relies on Smt. Violet Issaac & Others V/s. Union Of India ((1991) 16 ATC 491). In that case, the Supreme Court which was essentially concerned with the family pension scheme had occasion to observe that railway administration is free to evict the appellant in accordance with the rules but only ^{the} after/arrears of family pension are paid to Mrs. Violet Issaac. Reliance is also placed on Union Of India V/s. Wing Commander R.R. Hingorani ((1987) 2 ATC 939) and Union Of India & Others V/s. Shiv Charan ((1992) 19 ATC 129) which are also said to underline the position that eviction cannot be resorted to without following due process of law

4. In the instant case, however, the relief claimed is for regularisation of the quarter on the basis of the eligibility of the applicant for regularisation and to quash the eviction proceedings. The counsel for the applicant made a belated attempt to state that he would like to amend the O.A. to bring in the issue of pensionary benefits due to the father of the applicant which has been with-held but such an ammendment cannot be allowed at such a late stage.

5. On consideration of all pleadings, documents and arguments, we find that the O.A. has no merit and is therefore liable to be dismissed. This dismissal however, would be without prejudice to the right of the applicant to be considered for allotment of quarters according to his turn as a physically handicapped person in terms of Railway Administration instructions dated 17.11.1966 and 12.05.1983 and for that purpose the date of registration of the applicant in the waiting list for the physically handicapped category would be treated as the date on which his father first applied for transfer of the quarter in favour of his son or on the date the applicant got employed i.e. 21.09.1991, whichever is later. The O.A. is disposed of in terms of above ^{direction} with no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).