

23

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 52 of 1995
Transfer Application No.

Date of Decision : 9.6.95

1.M.K. Chauhan
2.R.M. Chauhan

Petitioner

Mr. G.S. Walia

Advocate for the
Petitioners

Versus

U.O.I. & Anor.

Respondents

Mr. V.S.Masurkar

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, V.C.

The Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

uninitialled
Vice Chairman

trk

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN', BUILDING NO.6
PRESCOT ROAD, BOMBAY-1.

O.A. No. 52 of 1995

1. M.K. Chauhan

2. Rajendra M. Chauhan

..Applicants

V/s.

Union of India & Anor.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

Appearance:

Mr. G.S. Walia
Counsel for the applicants

Mr. V.S. Masurkar
Counsel for the respondents

ORAL JUDGMENT: DATED: 9.6.95
(Per: M.S. Deshpande, Vice Chairman)

By this application the two applicants seek regularisation of the Railway Quarter which stood in the name of the Applicant No.1 and for a direction to the respondents to release the D.C.R.G. which was payable to the Applicant No.1 together with interest at 18%

2. Applicant No.1 who is the father of the applicant no.2 retired from railway service on 31.8.92. Applicant No.2 was appointed as Peon on 6.12.1980 and had been residing with his father in quarter No.44/9 at Jogeshwari (E) Bombay. He was given temporary status w.e.f. 19.5.1987. No House Rent Allowance (HRA) was paid to the Applicant No.2 as he was sharing accommodation with his father. Applicant no.2 sought regularisation of the quarter which stood in the name of the Applicant no.1 in his name but that was not done and so a representation was made on 12.5.93 for the purpose of regularisation. Since there was no response to the representation the applicants, relying on para 2512 of Indian Railway Establishment Manual and Railway Board's letter dated 25.6.1966 approached the Tribunal by filing this application for regularisation of the quarter in the name of the Applicant no.2 and for releasing the DCRG which was unlawfully withheld by the respondents from the applicant no.1

3.

The respondents contention is that the applicant no.2 was not entitled to the regularisation of the quarter because he relied on circular dated 31.5.66 which would not be applicable since a later circular issued on 23rd September 1986, Exhibit R-2, entirely changed the entitlement and since the applicant obtained temporary status after the issuance of this circular the applicant no.2 would not be entitled to the relief of regularisation.

4. My attention is drawn to the circular dated 25.6.1966 on the subject of regularisation of allotment of railway quarter in the name of dependents of a railway servant who retires from or dies while in service, which is a copy of letter addressed to all the General Managers by the Railway Board and it provided that the dependent of a railway servant who belongs to the aforesaid category would be entitled to the allotment of 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.

5. According to Mr. Masurkar, Ld. Counsel for the respondents this circular would not of any help to the applicant as the position is altered by the circular dated 23.9.1986 Exhibit R-2 by which the Railway Board's letter dated 19.12.1981 was forwarded and contained the clarification that the orders contained in Railway Board's letter of 19.12.1981 constituted a special dispensation in favour of the eligible wards of retired or deceased employees and their scope is to be confined only to such of the wards as are regular employees. The circular explains that those casual labour and substitutes with or without temporary status are excluded from their purview. The submission of the counsel is that in view of clear

exclusion of casual labour with or without temporary status meant that the applicant no.2 would not be entitled for regularisation of quarter in his name. The ~~provision~~ ^{position} is, however, no longer res-integra in view of ~~a~~ Division Bench decision in 1994 (1) ATJ Vol.16 TILAK RAJ Vs. U.O.I. wherein the Principal Bench of the Tribunal referred to the case of Man Mohan Singh in O.A. No.1015/1987 and according to para 2 of the circular of the Railway Board dated 15.1.90 it was laid down as follows:

"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 mather may be allotted railway accommodation on out of turn basis provided that the said relation was a railway employee eligible also for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six 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 the entitled type or type next below is to be allotted."

6. It was only the letter dated 23.9.86, Exhibit R-2, that struck a departure from the decision about the rights and privileges admissible to the Central Railway Servants. The aforesaid judgment also took into consideration para 2511 of the Indian Railway Establishment Manual which provides that casual labourers ~~treated~~ ^{as temporary} are entitled to all the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. Temporary status holders are entitled to regularisation of quarter on retirement of father because they are entitled to allotment of quarters in terms of Rule 2511 of the

(7)

Indian Railway Establishment Manual. The Division Bench, therefore, held that the applicant before them to be eligible for out of turn allotment as he would fulfil other requirements as contained in Railway Board circular dated 15.1.90, which in fact reiterates the position as contained under circular dated 25.6.66, Exhibit D to the O.A.

7. Shri Masurkar, 1d. counsel for the respondents referred to para 11 of the Indian Railway Manual as a reference in the O.A. is only to para 2512 of the Manual and the circular dated 25.6.66. It is well settled that it is not necessary in a petition which sets out the facts on which the entitlements are based to precisely state the eligibility on the subject and it is sufficient if an indication of the legal rights or ~~existance~~ in the reliefs claimed by the application. Nothing, therefore, ~~turns upon~~ survives to the error in mentioning para 2512 of the Indian Railway Establishment Manual in place of 2511 from the Manual.

8. A few decisions on the subject were cited, including that of M.M. Siddiqui & Another Vs. U.O.I. O.A. No. 843/90 decided by this Bench of the Tribunal on 2.6.1994; O.A. No. 1243/93 S.S. Dastagir Vs. U.O.I. decided on 2.9.94; O.A. No. 236/93 Totaram & Anr. Vs. U.O.I. decided on 23.7.93; and GANGARAM M. GUPTA Vs. U.O.I. decided by the Supreme Court in C.A. No. 3496 of 1991, while deciding the SLP No. 357 of 1991. The submission of applicant no.1 is that his case was squarely covered by the Railway Board instructions and, therefore, the applicant no.2, the son, was entitled for allotment of accommodation to his son after the retirement of the father. In HARESH KUMAR CHHAGANLAL Vs. U.O.I. C.A. No. 1183 of 94 SLP No. 17686 of 1993 the Supreme Court has ~~stated~~ that the Tribunal has taken an extremely narrow and technical view of the order by which it directed the appellant to be re-instated in service and further stated that he will be accorded continuance in service for the purpose of regularisation and retirement benefits from 27.5.1985, though he was admittedly residing with his father before the latter retired from service, and if he was in continuous service, he was entitled under the rule to be permitted out of turn allotment. It is not necessary to refer to the other

cases cited but suffice to say that the provisions of Indian Railway Establishment Manual have been held to have the force of rules framed under Article 309 of the Constitution of India and the instructions issued by the Railway Board contrary to the provisions of Indian Railway Establishment Manual cannot supersede the provisions, such as those to be found in Annexure R-2 dated 23.9.86 to the written statement.

9. With regard to the withholding of the D.C.RG. it is apparent that the respondents have no defence, and they could not have withheld the DCRG only because the quarter has not been vacated.

10. In the result the respondents are directed to regularise the quarter No. 44/9 at Jogeshwari (E), which stood in the name of the applicant no.1, in the name of Applicant no.2 forthwith and release the amount of DCRG which was payable to the applicant no.1 together with interest at 12% per annum from the date the amount became payable until payment. The payment shall be made within three months from the date of communication of this order. The retirement passes shall also be released to the first applicant. No order as to costs.

(M. S. Deshpande)
Vice Chairman