

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 460/98.

Date of Decision: 7.1.1999.

T.G.K.Pillay & Anr.

.. Applicant

Shri G.S.Walia.

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

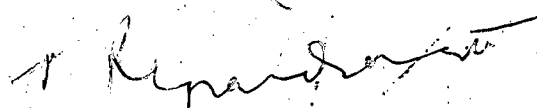
The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

(3) Whether it needs reference to the Library?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.460/98.

Thursday , this the 7th day of January, , 1999.

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

1. T.G.K.Pillay,
Retired Chief Typist,
Headquarters Office,
Western Railway.

2. Anil Kumar Gopal
Krishna Pillay,
C/o. Shri G.S.Walia,
Advocate, High Court,
Industrial Traders Building,
Opp. Maharashtra State Co-op. Bank Ltd.,
Nagindas Master Road,
Fort,
Mumbai - 400023.

...Applicants.

(By Advocate Shri G.S.Walia)

V/s.

1. Union of India, through
The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway, Bombay Central,
Mumbai - 400008.

...Respondents.

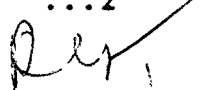
(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri Justice R.G.Vaidyanatha,Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. Since the point involved is a short point, after hearing both the learned counsels, I am disposing of this O.A. at the admission stage itself.

2. Few facts which are necessary for disposal

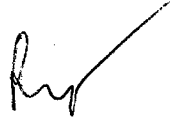


of this application are as follows.

The first applicant is the father and the second applicant is the son. Both are railway employees. The first applicant was allotted Railway Quarter No.123/9 at Bandra (East) and he retired from service on 28.2.1998. The second applicant was residing with his father since the date of allotment of this quarters in 1972. The second applicant also was appointed as a Khalasi in the Railways in 1994.

In the application for Recruitment and other correspondence with the Railways the second applicant has always been showing his residential address as the quarters in question. The second applicant also applied to the Railway Administration for out of turn allotment and regularisation of this quarters from father to son basis as per the Circulars issued by the Railway Board. The Railway Administration has paid HRA to the second applicant by mistake and subsequently this mistake has been rectified by starting recovery of the H.R.A. from the second applicant. The Railway Administration has also granted sharing of accommodation between the two applicants as per the order dt.15.5.1997. Now, the respondents have rejected the second applicant's request for regularisation of the quarters. Being aggrieved by that order, the applicants have approached this Tribunal, the applicants therefore, pray that the orders of rejection of regularisation of the quarters dt.27.2.1998 and 24.3.1998 be quashed and the respondents be directed

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to regularise the Quarter No.123/9 in favour of second applicant.

3. The respondents in their reply have stated that inspite of residing with the father in the quarters in question, the second applicant has drawn HRA after he was appointed by the Railway Administration, this is contrary to rules. Though sharing of accommodation was granted to the applicants, the applicants have suppressed the fact that second applicant has been drawing HRA from 1984 to 1997. In view of the suppression of the fact and drawing of HRA, the second applicant is not entitled for regularisation of quarters. It is therefore, stated that the applicants are not entitled to any other reliefs.

4. In the light of the pleadings and the arguments addressed before me, the only point for consideration is whether the second applicant is entitled for out of turn allotment and regularisation of the quarters or not.

5. At one stage the learned counsel for the respondents contended that there is no hereditary right for a son to claim the quarters which had been allotted to his father and reliance was placed on a decision of the Full Bench of this Tribunal reported in 1994 - 1996 Administrative Tribunals Full Bench Judgments 193 (Liaquat Ali and Anr. V/s. Union of India & Ors.). No doubt in that case the Full Bench has observed that this out of turn allotment cannot be claimed as of right, but it is a concession given to Railway employees. There cannot be any dispute about this position of law.

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In fact, the Full Bench has observed that out of turn allottees constitute a distinct class and allotment to them should be considered strictly in accordance with Circulars issued by the Railway Board from time to time (vide para 33 of the reported judgment).

The respondents counsel also relied on a case reported in 1998(1) SLR 353 (Harish Chander V/s. Chandigarh Administration & Ors.), where a Division Bench of Punjab & Haryana High Court has ruled that there is no provision for out of turn allotment of quarters from father to son on hereditary basis. That was in respect of rules framed by Chandigarh Administration where there was no provision at all for such out of turn allotment.

In the reply, the respondents have not taken the stand that the Quarters cannot be allotted on father to son basis. They have not pleaded that no out of turn allotment of quarters is permissible. On the other hand, the stand taken in the reply is that since second applicant has drawn HRA by suppressing the fact of living in the same quarters with his father he is not entitled for out of turn allotment. Even in the impugned orders in which the request of the second applicant was rejected the same reasoning is given. Therefore, this is not a case where the Railway Administration is rejecting the claim of the second applicant on the ground that no quarters are available or there are other claimants who have precedence over the second applicant or the quarters are required for other employees who are in sensitive

jobs etc. When no such stand is taken by the respondents and when the respondents are rejecting the claim of the second applicant on the ground that he does not fulfil the requirements mentioned in the Railway Board Circular, it is not open to the respondents now to say that quarters cannot be allotted on father to son basis. No such plea is taken in the reply. On the other hand, the Railway Board Circulars themselves provide for out of turn allotment from father to son basis subject to certain conditions. The question is whether the second applicant has fulfilled those conditions or not.

The learned counsel for the applicant also placed before me an unreported Judgment of the Apex Court dt. 3.9.1991 in Civil Appeal No.3496/91 in the case of Gangaram N.Gupta and Another V/s. Union of India & Ors. The Supreme Court has pointed out that since the son's case is squarely covered by the Railway Board Circular, he is entitled to allotment of accommodation on the retirement of his father.

Therefore, ultimately the question is whether second applicant is entitled to allotment of quarters from father to son basis as per the conditions mentioned in the Railway Board Circular.

6. At one stage, the learned counsel for the respondents commented on the delay on the part of the second applicant for applying for sharing accommodation. He argued that the second applicant should have given such an application as soon as he was appointed, but not after a lapse of time. In my view, this argument has no merit since the question of

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sharing of accommodation is not before this Tribunal. The Railway Administration has already conceded second applicant's request for sharing accommodation and ^{has} as passed an order accepting the same. It was open to the Railway Administration to have rejected the claim on the ground of delay. When the Railway Administration has already passed an order and granted the sharing of accommodation, it is too late in the day now to contend on behalf of the Railway Administration that the request for sharing of accommodation was belated.

7. There is no dispute that certain conditions are to be complied with by a Railway employee for seeking out of turn allotment of quarters. In this case, there is no dispute that second applicant fulfills all the requirements as mentioned in the Railway Board Circular, but ^{only} ~~the~~ point of dispute between the parties is this. According to second applicant he had drawn HRA without knowing that he is not entitled to draw HRA. The stand of the Railway Administration is that since second applicant has drawn HRA by suppressing the fact that he is residing with his father in the Railway quarters, he is not entitled for out of turn allotment. This is the only point of dispute between the parties. But for this dispute, there is no controversy that second applicant fulfills all the other requirements mentioned in the Railway Board Circular.

8. The respondents are relying on the 1992 Amendment to the Allotment Rules, which is at Ex.6, at page 44 of the paper book. The relevant portion

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reads as follows:

"It should be ensured that no out of turn allotment of accomodation is made to such employee in case he/she has been drawing HRA by supressing the fact that he/she was sharing the accommodation allotted to his/her father".

(underlining is mine)

In this context, the earlier Rule prior to this amendment may be seen. In the Railway Board's Orders on Establishment, 1990 edition, Volume - I, the relevant circular regarding allotment of quarters is R.B.E. No.7/90, at page 4. At page 5, the earlier Rule was Rule No.8 which simply said that if the dependant employee was drawing HRA and stops drawing that amount six months before retirement of the concerned employee, the dependant is not eligible for allotment of regularisation of the quarters. There, the mere fact of drawing HRA was sufficient to dis-entitle the dependant to claim out of turn allotment. But the 1992 amendment mentions not mere drawing of HRA, but drawing of HRA by suppressing the fact of residing in the quarters with the father. Therefore, the emphasis in the 1992 amendment is about "suppression" of the fact. Here an element of fraud or ^{deceit} ~~deceit~~ comes into play. Therefore, mere drawing of HRA is not sufficient, but it should be by suppressing the fact.

9. In my view, there is ^{intrinsic} ~~intrinsic~~ material on record to show that there was no intention on the part of the applicants to suppress this fact at any time. For instance, even when second applicant applied

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for this job his father had to give a declaration. A copy of the declaration is at page 17 of the paper-book. The first applicant has given this declaration stating that second applicant Anil Kumar is his son, he is wholly dependant on him and he is residing with him in the quarters in question viz. 123/9. Therefore, at the time of appointment or even before appointment, the Railway Administration is told that the son is residing with the father in the same Railway Quarter. Then it is stated in para 4.3 of the application that for taking Railway Pass the second applicant has given his residential address as 123/9; this has not been denied in the reply.

Then, in 1996 when the second applicant gave the application for sharing accommodation dt. 26.4.1996 has clearly mentioned that he is staying with his father in Quarter No.123/9 and wants formal order for sharing accommodation. The ^{declaration of father} ~~declaration~~ of/ is at page 20 where the first applicant has given a declaration stating that his son is staying with him and he is drawing HRA since 16.3.1994.

Therefore, at no stage, there is anything to show that the applicants have suppressed the fact of second applicant staying in the quarters. It is true that second applicant has drawn HRA for some time. We must bear in mind that second applicant was appointed as Khalasi which is a Class.IV post, we cannot expect a Class.IV person to know all the Rules of the Railway Administration. Therefore, it is a case of Railway Administration paying HRA to

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second applicant by mistake. As soon as the mistake came to light, the second applicant has given application for sharing accommodation and has brought to the notice of the administration that he is already drawing HRA; then while granting sharing accommodation the Competent Authority has passed an order that HRA paid to the second applicant be recovered back. Accordingly, the HRA paid to second applicant has since been recovered.

In the peculiar facts and circumstances of this case, this is not a case of the second applicant suppressing the fact of staying in the quarters and then drawing HRA. On the other hand, this is a case where HRA is paid, but however, the administration is informed that he is still staying in the quarters. It could be a mistake on the part of the second applicant or mistake on the part of the Railway Officials or both and certainly it is not a case of deliberate mis-leading or deliberate suppression of fact. That is the only ground given by the Competent Authority to reject the claim of the second applicant and for the reasons mentioned above, the rejection cannot be sustained.

10. The learned counsel for the respondents invited my attention to an unreported Judgment of this Bench dt. 26.8.97 in OA 607/93, where the claim was rejected on the facts and circumstances of that case.

On the other hand, the learned counsel for the applicant invited my attention to my own Judgment dt. 29.6.1998 in O.A. 6/98 where on similar circumstances, I have held that there was no suppression

and therefore, the son is entitled to quarters as per the Railway Board's Circular.

After considering the facts and circumstances of the case, I hold that the second applicant is entitled to regularisation of the quarters by out of turn allotment on father to son basis as per the Railway Board Circular.

11. The applicants have also filed M.P. 744/98 for interim order regarding release of DCRG and post-retirement complimentary pass to the first applicant. This M.P. was filed on 23.11.1998 for interim orders since the respondents had not yet filed reply to the O.A. Now, that I am disposing of the O.A. itself on merits, the question of grant of interim relief prayed for in this MP does not arise. It is open to the applicant to make representation to the respondents for release of DCRG and for issue of post-retirement passes and in case any adverse order is passed by the Railway Administration, he can challenge the same according to law. With these observations, M.P. stands disposed of.

12. In the result, the application is allowed. The orders of the respondents dt. 27.2.1998 and 24.3.1998 are hereby quashed. Since second applicant satisfies all the requirements of the Railway Board Circular, the respondents are directed to regularise the Quarter No.123/9 in the name of second applicant in terms of the Railway Board Circular. M.P. 744/98 is disposed of subject to observations mentioned in

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para 11 above. The respondents to comply with this order within a period of 30 days from the date of receipt of copy of this order. In the circumstances of the case, there will be no orders as to costs.

R. G. Vaidyanatha
(R.G. VAIDYANATHA) 7-1-99

VICE CHAIRMAN

B.