

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

O.A.No. 1001 of 1998

DATE OF DECISION: 25-9-2001

Amir Alaf Abdul Majid.

..Petitioner(s)

Mr.G.S.Walia

:Advocate for
the Petitioner(s)

Versus

1. UOI, through General Manager, Western Rly,
Hqsoffice, Churchgate, Mumbai & another.

..Respondent(s)

Mr.Suresh Kumar

:Advocate for
the Respondent(s)

THE HON'BLE SRI Justice V.Rajagopala Reddy, Vice Chairman
THE HON'BLE ~~xxx~~ Smt.Shanta Shastri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? NO
3. Whether His/Their Lordship wish to see the fair copy of the ~~z~~ Judgement
4. Whether the Judgement is to be circulated to the other Benches ?

JUDGEMENT DELIVERED BY HON'BLE SRI Justice V.Rajagopala Reddy, VC

HSS
M(A)

Mr
HVRGRJ
VC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH
MUMBAI

O.A.No.1001 of 1998. Date of Order:25-9-2001.

Between:

Amir Altaf Abdul Majid,
working as Electric Signal
Maintainer Grade-II under
Chief Signal Inspector,
Western Railway, Bulsar-396 001,
residing at Q.No.269/A Type II,
East Railway Yard, Bulsar-396 001 ...Applicant

and

1. Union of India, through General Manager, Western Railway, Head Quarters office, Churchgate, Mumbai-400 020.
2. Divisional Railway Manager, Mumbai Division, Western Railway, Mumbai Central, Mumbai-400 008.

....Respondents

Counsel for the Applicant :: Mr.G.S.Walia

Counsel for the Respondents : Mr.Suresh Kumar

Coram:

The Hon'ble Sri Justice V.Rajagopala Reddy, Vice Chairman

The Hon'ble Smt. Shanta Shastri, Member(Admn.)

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: O R D E R :

(Per Hon'ble Sri Justice V.Rajagopala Reddy, Vice Chairman)

The applicant was appointed as Electrical Signal Maintainer Grade-II in the Railways on 22-8-1990. At that time, the applicant's father was working as Guard Grade-'B' and his father was allotted a Railway Quarter No.T/269/A Type II at Valsad. The applicant has been staying in the said Railway Quarter and sharing the accommodation thereof since his birth. The applicant's father retired on 30-6-1994 after attaining the age of superannuation. It is stated by the applicant that immediately after joining service, he had applied for permission for sharing the accommodation with his father. For some time thereafter he was transferred to Atul and he was re-posted in 1994 at Valsad, where his father was working. He again made an application for permission for regularisation of the quarter on 16-2-94. The said permission was granted by letter dated 6-6-1994 with effect from 16-2-1994. By letter dated 20-9-1994, he was informed that the quarter could not be regularised in his name as he had not completed 6 months' ~~sharing~~ sharing

prior to his father's retirement and that he had completed only 4 months of sharing. Aggrieved by the above order, the applicant filed the present OA.

2. It is the case of the applicant that though he has been transferred to Atul for a brief period, his family was sharing the accommodation with his father at Bulsar and that all the while he was not drawing HRA. It is also stated that by letter dated 14-12-1993, his father made an application for regularisation of his quarter in favour of the applicant as he had been sharing his quarter since he joined service. The learned Counsel for the Applicant therefore contends that the fact of sharing of the quarter cannot be doubted and that infact it should be treated as if he has been sharing the quarter from the date of his entry into service and that the ^{6 months} period of sharing is not a rigid rule and in view of the fact that the applicant has been living right with his father ^{from 1990}, the impugned order rejecting his application is not valid.

3. It is, however, stated in the reply that the applicant made his application for regularisation on the basis of

sharing of the quarter with his father, only on 16-2-1994 and as his father retired on 30-6-1994, the period of 6 months' sharing prescribed in the rule has not been complied with. Hence the applicant was not entitled for regularisation, out of turn of the quarter allotted to his father. It is also stated that the applicant's father had been declared as unauthorised occupant and ~~Estate~~ ^{the} Officer has also issued a notice of eviction against his father and also for payment of penal rent, as he had retired from service, ~~after~~ the expiry of 4 months after the retirement of his father. The respondents had also taken the plea of limitation stating that the OA filed in 1998 questioning the order of the respondents dated 16-2-1994 is hit by Section 21 of the Administrative Tribunals Act.

4. The applicant filed an M.P.No.296 of 1999 for condonation of delay and to which the respondents filed reply.

5. We have given careful consideration to the arguments advanced by the learned Counsel on either side and also perused the pleadings.

6. Though it is stated by the applicant in the OA that he filed an application on 4-7-1992 for permission of accommodation with his father, the copy of such application was not filed as an Annexure. On the otherhand it is stated by the respondents that he made an application only on 16-2-1994, after he was re-posted at Bulsar from Atul to which place he was transferred in 1992. Though the applicant has filed the copies of the applications stating that his father made an application on 14-12-1993, requesting for regularisation of his quarter in favour of his son, it is not stated in the OA that such an application has been filed. On the date of the said alleged application by his father, the applicant was not working at Bulsar. We therefore have to hold that the date of application for permission was ~~not earlier than~~ 16-2-1994.

7. As per the Railway Board's letter dated 15-1-1990 pertaining to regularisation of allotment of Railway quarters in the name of an eligible dependent of Railway employee, who retires from or dies while in service, a period of 6 months' sharing with accommodation of the said Railway

servant before the date of retirement of the said Railway servant and during which the incumbent should not claim any HRA, the residence of the Railway servant may be regularised in the name of the eligible dependent, if he/she was eligible for a residence of that type or higher type. In other cases, a residence of the entitle type or type next below was to be allotted. It is not necessary for us to go into the question whether the applicant had fulfilled all the requirements under this regularisation Scheme. The impugned order was passed on the ground that he had not complied with the condition of 6 months' sharing of the accommodation before the date of retirement of his father. As the application was made on 16-2-1994, as held by us supra and as his father retired on 30-6-1994, the applicant could be said to have had sharing of the accommodation with his father for a period of only 4 months.

8. The next question to be considered is whether 6 months' period of sharing is mandatory. It should be noted that the Scheme of regularisation of Railway Quarter was conceived on 15-1-1990 as a special concession to the employees, as an out of turn allotment. It is an exception to normal

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procedure of allotment of Railway Quarters. The exception provides certain conditions to be fulfilled. This is analogous to the Recruitment by way of compassionate appointment. The law is well settled that benefits under an exception would be allowed only if the case falls squarely within the four corners of the said provision. All the conditions thereunder are strictly complied with. The applicant himself says that he made a formal application on 16-2-1994. He also stated in the OA that the HRA was being deducted from the date when permission was granted to share with his father i.e., with effect from 16-2-1994. Thus, the second condition of non-drawing HRA was only from 16-2-1994. Hence, the earlier period of sharing cannot be counted for reckoning the 6 months' period.

9. It is now brought to our notice that the employees, who had joined service after the applicant who sought allotment on their own name were allotted the quarters on their own turn, but the applicant is not yet allotted any quarter on the ground that his application for out of turn regularisation under the above Railway Board's letter was rejected and that he had not registered his name for allotment on his own turn.

10. The learned Counsel for the Applicant Sri Walia therefore submits that the applicant cannot be placed in worse position than an employee, who had made an application in his own turn.

11. We find justification in this submission. The Railway Board's letter was issued in order to regularise the quarters, by way of sharing the accommodation, on out of turn basis. If such application was rejected, the applicant must be considered for allotment of the quarter on his own turn. It is not seriously disputed that the applicant must have registered his name for allotment as per his eligibility, but for the request made for regularisation.

12. It is true that the applicant has been transferred to another place in 1991, but it is stated that he has been transferred only for a period of 7 months and the place to which he was transferred was within a short distance.

13. Thus the applicant continued to work at Bulsar right from the date he joined service in 1990. As pointed out by the learned Counsel for the Applicant that if the

employees, who had entered service in 1990, were allotted quarter on their own turn, there could be no good reason for not considering the applicant's case for allotment, on his own turn even though his request for regularisation of his father quarters was turned down. It is not in dispute that against the applicant's father an order of eviction was passed by the Estate Officer and he was also found liable to pay penal rent as per the rules. But this fact in our view, considered opinion, should not affect the consideration of the applicant's case for allotment of an eligible quarter in his own right.

14. It is now brought to our notice that the HRA is still being deducted from the salary of the applicant and that he has been continuing to reside in the said quarter. Though the plea of limitation has been raised by the learned Counsel for the Respondents, in view of the undisputed fact that the Counsel to whom the file has been entrusted for approaching this Tribunal unfortunately expired in 1997, and also in view of the fact that HRA was still being deducted from his salary, we are of the view that the OA cannot be rejected at the threshold on the ground of limitation.

15. In view of the above facts and to meet the ends of justice, taking a comprehensive view of the issues involved in the case, and with the consent of the applicant's Counsel, we pass the following Order:

- i) The respondents shall consider, treating the date of applicant's initial joining in service at Bulsar as the deemed date of his application/registration for allotment of quarter, on his own normal turn for entitlement of a quarter to which he was eligible and pass an order, within three months;
- ii) The applicant undertakes to vacate the present quarter within three months from the date of the above order subject to whatever decision that might be taken as regards his entitlement;
- iii) If the junior in service of the applicant was allotted a quarter on his own turn (in the normal course), the applicant shall be entitled for allotment of the quarter;
- iv) The applicant takes upon himself the liability of his father to pay the penal rent as per the extant rules till date, on the Railway Quarter after giving



due credit to the HRA deducted already from the salary of the applicant from 16-2-1994, the date from which he was permitted to share the quarter with his father;

v) The applicant shall give the undertaking to vacate the quarter as contained in Clause (1) above as well as his liability to pay his father's penal rent as agreed to in Clause (iv) above, within 15 days from today, to the Registrar of this Tribunal.

16. The OA is accordingly disposed of, in the circumstances without any order as to costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)

Ch. Rajagopal

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN

DATED: this the 25th day of September, 2001

Dictated in Open Court

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