

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.4671 OF 2014

New Delhi, this the 19th day of November, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Karan Anand,
Aged 29 years,
s/o Sh.Arun Kumar Anand,
working as Assistant Loco Pilot,
Northern Railway Station,
Delhi Sarai Rohilla,
R/o Q.No.JQ/5B, Type II, Basant Lane,
New Delhi

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Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.
3. The Sr. Divisional Engineer/Estate,
Northern Railway, Delhi Division,
State Entry Road, New Delhi

í í í .Respondents

(By Advocate: Mr. Kripa Shankar Prasad)

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ORDER

Brief facts: While serving as Loco Pilot in Delhi Division of the Northern Railway, the applicant's father was allotted Railway Quarters

No.JQ/5B, Type II, Basant Lane, New Delhi. As per the Safety Related Retirement Scheme for Drivers and Gangmen, dated 2.1.2004, the Drivers and Gangmen in the age group of 50 to 57 years could seek retirement, and employment to a suitable ward of the employee could be considered on receipt of application from him for retirement under the Scheme. The nomenclature of the said Scheme was modified by the Ministry of Railway as Liberalized Active Retirement Scheme for Guarantee Employee for Safety Staff (hereinafter referred to as LARSGESS). The father of the applicant applied for voluntary retirement, and sought for employment of his ward (the applicant) under the LARSGESS. On acceptance of his request, the applicant's father was retired from service w.e.f. 24.6.2012, and the applicant was appointed to the post of Assistant Loco Pilot w.e.f. 25.6.2012. Immediately after joining as Assistant Loco Pilot, the applicant applied for regularization of the said railway accommodation in his name. In response to the letter dated 21.2.2013, the applicant furnished some relevant documents to the respondent-Railway authorities. Thereafter, respondent no.3, vide order dated 16.5.2013, rejected the request of the applicant, by saying that as per the Railway Board's circular dated 2.1.2004, the said railway accommodation could not be regularized in his name. Being aggrieved, the applicant submitted representation, and raised the issue in the Ministry of Railway through the Union. Considering the issue of regularization of quarters in favour of the wards of the Railway employees recruited under the

LARSGESS, the Railway Board issued a circular No.E(G)2012 QR1-12, dated 21.2.2014, which is reproduced below:

GOVERNMENT OF INDIA(BHARAT SARKAR)
MINISTRY OF RAILWAYS(RAIL MANTRALAYA)
(RAILWAY BOARD)

No.E(G)2012 QR-1-12 New Delhi, Dated: 21.02.14

The General Managers,
All Indian Railways & Production Units.
(Others :As per standard list)

Sub: Allotment/Retention of Railway quarter to the wards of Railway employees recruited under the LARSGESS Scheme on the Railways.

Ref: (1) Rly. Bd's letter No.2013 E{IR}II/1/17 dated 18.02.2014.

(2) NFIR's letter No:II/34/7 dated 16.08.2012 and

(3) AIRF's letter No.AIRF/415/AIRF/116 dated 21.05.2013.

Following receipt of demands from both the Federations and meeting held by the Board with the Federations (AIRF) & NFIR) on 07.02.2014, the issue of regularization of quarter for the wards of Railway employees recruited under the LARSGESS Scheme on the Railways has been considered by the Board.

2. The Board, in exercise of powers vested with the full Board for making reasonable relaxations in public interest, have decided that the quarters occupied by the employees taking VRS under the LARSGESS scheme may be allowed retention of accommodation in the name of only those wards who are eligible for the same type of accommodation, and for others, the wards may be considered for a fresh allotment as per their entitlement on out of turn basis.

3. This issues with the concurrence of Finance Directorate of the Ministry of Railways.

4. Kindly acknowledge receipt.

5. Hindi version will follow.

Sd/
(S.K.Panda)
Deputy Director Estt.(Genl.)ö

After the above circular dated 21.2.2014 was issued by the Railway Board, the applicant made a representation dated 21.3.2014 requesting the respondent-Railway authorities to regularize the said Railway accommodation in his favour. It is claimed by the applicant that respondent no.3 forwarded his case as well as other cases to the Northern Railway Headquarters for clarification as to whether the Railway Board's circular dated 21.2.2014 is applicable from the date of its issue or from a date prior thereto. Instead of referring the matter to the Railway Board to clarify their own circular dated 21.2.2014, *ibid*, the Northern Railway Headquarters, vide its communication dated 11.7.2014 (Annexure A/1), clarified that the circular dated 21.2.2014, *ibid*, would be applicable only w.e.f. 21.2.2014. Hence, the applicant filed the present O.A. on 23.12.2014 seeking the following reliefs:

- õ(i) That the Honøble Tribunal may graciously be pleased to pass an order of quashing the impugned 11.7.2014 (Annex.A/1) and order dated 16.5.2013 (Annex.A/2) declaring to the effect that the same is totally illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to consider the request of the applicant for regularization of the quarter No.JQ/5B, Type II Basant Lane, New Delhi on out of turn allotment basis from the date of appointment with all the consequential benefits.
- (ii) Any other relief which the Honøble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.ö

2. It has been contended by the applicant that the General Manager (P), Northern Railway, has no authority or power to issue any

clarification with respect to any circular issued by the Railway Board. As the matter has already been referred to the Railway Board to clarify as to the date from which the circular dated 21.2.2014, *ibid*, takes effect, the Northern Railway Headquarters have acted without jurisdiction in issuing the communication dated 11.7.2014, *ibid*, clarifying that the Railway Board's circular dated 21.2.2014, *ibid*, would be applicable with effect from 21.2.2014 and, therefore, the said communication dated 11.7.2014 is illegal and liable to be quashed. When in consideration of his grievance and the grievance of other similarly placed persons, the Railway Board issued the circular dated 21.2.2014, and when he remained entitled to regularization of the said Railway accommodation and/or out of turn allotment of Railway accommodation in terms of the said circular dated 21.2.2014, the respondent-Railway authorities ought not to have rejected his request for regularization of the said Railway accommodation and/or allotment of the Railway quarters on out of turn basis.

3. *Per contra*, it has been contended by the respondents that after his retirement under the LARSGESS Scheme with effect from 24.6.2012, the applicant's father was granted permission to retain the said railway accommodation for 4 months w.e.f. 25.6.2012 to 24.10.2012 on normal license fee, and for further 4 months from 25.10.2012 to 23.10.2013 on double the license fee as per extant rules. As the applicant's father failed to vacate the said railway accommodation despite repeated notices, the allotment of the railway accommodation was cancelled, and he became an

unauthorized occupant, and eviction proceeding was initiated against him. In the meantime, the applicant's application for regularization and/or out of turn allotment of the said railway accommodation was rejected, vide letter dated 16.5.2013, on the ground that as per the Railway Board's circular dated 2.1.2004, the said railway accommodation could not be regularized in his name. As the applicant's case pertained to the period prior to the issuance of the Railway Board's circular dated 21.2.2014, and his request was already rejected, vide order dated 16.5.2013, the further request made by the applicant was not acceded to, and the instruction dated 11.7.2014 was issued by the competent authority stating that the Railway Board's circular dated 21.2.2014 would be applicable to cases where the employees took retirement, and their wards were employed in the Railway, under the LARSGESS Scheme on or after 21.2.2014.

4. I have perused the records, and have heard Mr. Yogesh Sharma, the learned counsel appearing for the applicant, and Mr. Kripa Shankar Prasad, the learned counsel appearing for the respondents.

5. After having given my anxious consideration to the facts and circumstances of the case, and the rival contentions, I have found no substance in the contentions of the applicant. In the absence of any stipulation in the circular dated 21.2.2014 issued by the Railway Board that it would have retrospective effect, or that the cases where the Railway employees retired and their wards were appointed under the LARSGESS prior to the date of issuance of the circular dated 21.2.2014 would be

considered for regularization and/or allotment of the Railway accommodation on out of turn basis, I have no hesitation in holding that the said circular dated 21.2.2014 has only prospective operation, i.e., from the date of its issue. Thus, the respondent-Railway authorities cannot be said to have acted without jurisdiction in saying in their communication dated 11.7.2014 that the Railway Board's circular dated 21.2.2014, *ibid*, would be applicable from 21.2.2014.

6. Admittedly, there are instructions issued by the Railway Board that 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 (other than daughter-in-law) may be allotted Railway accommodation on out of turn basis provided that the said relation is a Railway employee eligible 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. Instructions have also been issued by the Railway Board to the effect that the same Railway accommodation, which had been allotted to the retiring or deceased Railway employee, may be regularized in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. Keeping in mind the above provisions, the Railway Board, in paragraph 2 (xv) of its circular No.E(P&A)/I-200/RT-2(KW), dated 2.1.2004, stipulated as follows:

õ(xv) For the purpose of reckoning eligibility for residential accommodation, wards appointed under this scheme will be

treated at par, with those appointed through direct recruitment, from the open market; the terms of regularization of accommodation as applicable to the wards of employees appointed on compassionate basis, will not be applicable in their case.ö

It is the admitted position between the parties that the nomenclature of the Scheme introduced by the Railway Board, vide circular dated 2.1.2004, *ibid*, was modified as LARSGESS, vide circular dated 11.9.2010, without any change in the terms and conditions contained in the circular dated 2.1.2004. The applicant's father took voluntary retirement w.e.f. 24.6.2012, and the applicant was appointed as Asst. Loco Pilot w.e.f. 25.6.2012 under the LARSGESS. In view of paragraph 2(xv) of the circular dated 2.1.2004, *ibid*, I do not find any fault with the respondent-Railway authorities in rejecting the applicant's request for regularization of the Railway accommodation which had been allotted to his father. Furthermore, acceptance of the applicant's plea would lead to reopening of all cases which had already been rejected by the respondent-Railway authorities in accordance with the Railway Board's circular dated 2.1.2004, although the circular dated 21.2.2014 does not so intend.

7. In the light of above discussions, I have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. The interim orders automatically stand vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER