

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/01522/2014

Dated of order: 09.12.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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1. S.K.Mallick @ Sushim Kanta Mallick son of Late Umakanta Mallick retired Mechanic Grade I under the Junior Engineer 1, Engineering Workshop, S.E.Railway, Kharagpur.
2. Soubhagya Kumar Mallick son of S.K.Mallick, Senior Trackman under Senior Section Engineer (P Way), posted at Kharagpur Division, S.E.Railway, Kharagpur.

Both residing at Railway Quarter No. 386/A, Unit 1, Type II at Development, Kharagpur, Post Office & Police Station - Kharagpur District-Paschim Medinipur, Pin-721301.

.....Applicants

For the Applicant: Mr.G.K.Das & T.K.Biswas, Counsel

-Versus-

1. Union of India service through the General Manager, S.E.Railway, Gardenreach, Kolkata-700 043.
2. The Chief Personnel Officer, S.E.Railway, Gardenreach, Kolkata-700043.
3. The Divisional Railway Manager, S.E.Railway, PO & PS Kharagpur, District-Midnapore (W), Pin-721301.
4. The Divisional Personnel Officer, S.E.Railway, PO & PS Kharagpur, District Midnapore (W), Pin-721301.

5. The Divisional Railway Manager (Engineer), S.E.Railway, PO & PS Kharagpur, District Midnapore (W), Pin-721301.
6. The Divisional Engineer (Headquarter), S.E.Railway, PO & PS Kharagpur, District Midnapore (W), Pin-721301.
7. The Addl. Divisional Engineer (Settlement), S.E.Railway, PO&PS. Kharagpur, District Midnapore (W), Pin-721301.

.....Respondents

For the Respondents: Mr.B.L.Gangopadhyay, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

Heard both.

2. This OA has been filed seeking the following reliefs:

“(a) Leave may be granted to file and prosecute this application jointly under Rule 4 (5) (a) of the Administrative Tribunal (Procedure) Rule, 1987 since both the applicants prayed for same relief arising out of same cause of action;

(b) The respondents be directed to release the retirement benefits in favour of the Applicant No.1 including full amount of DCRG with interest along with other retirement benefit regarding complementary pass (on medical grounds) under the provision of law with immediate effects;

(c) The respondents be further directed to give clearance certificate in favour of the Applicant No.1 for releasing the entire DCRG amount. upon handing over and taking over the same said Railway quarter No. 386/A Unit 1 Type II at Development Kharagpur in favour of Applicant No.2 (i.e. his son) being an Railway Employee under “Father and Son” Rules and to regularize the same in favour of the son of Applicant No.1 under the relevant provisions vide Railway Board’s Circulars and Guidelines being No. 233 of 1987, dated 21.08.1987 (Annexure A-9”) and Estt. No. 260 of 90 dated 19.12.1990 (Annexure A-8”) and Circular No. E (G) 89 QR 2/21 dated 11.8.1992 and Railway Board’s Circular dated 11.08.1992 (Annexure A-12”) and in view of the Memo vide allotment order dated

08.06.2012 approved by the competent authority being A.D.R.M., S.R.Rly, Kharagpur as in Annexure A-6"hereto with immediate effect and to set-a-side the impugned and illegal order dated 23.08.2012 as Annexure-A-7 hereto;

(d) Costs;

(e) Any other or further order or orders to which the applicants may be found entitled by this Learned Tribunal."
(Extracted as such)

3. The learned counsel for the applicants placing reliance on the records, would pyramid his argument which could succinctly and briefly be set out thus:

The Applicant No.2 is the son of Applicant No.1, the former employee of the Railways. The Applicant No.1 and his family members including Applicant No. 2 were in occupation of Type II quarters, even before the retirement of the Applicant No.2 and now they are also continuing there under the father and son Rule of the Railways. The Applicant No.2, as per Annexure-A/6 was allotted the said type II quarters. However, within a short span of time, as per Annexure-A/7 the said allotment order was cancelled and he was asked to vacate the type II quarters on the ground that he was not eligible to such Type II quarters and he was eligible only to Type I quarters, as per his Grade Pay is Rs. 1800/- . The Applicant, in the rejoinder, at para 16 set out the following details which are extracted hereunder for ready reference:

"16.once the same railway quarter has been allotted in favour of the son of your applicant no.1 vide letter dated 08.06.12 (Annexure-A/6) and approved by the higher authority after following the "father and Son Rule" of the statute of the said Railway Board Circulars your applicant no.2 being the son of applicant no.1 is legally entitled to regularize the same and that cannot be

cancelled by issuing another purported letter dated 23.08.2012 (Annexure-A/7) by the authority who is not at all empowered to do the same, when admittedly, the dependent employee is entitled to Type II quarter according to his grade pay @ Rs. 1800/- as has been done in case of other similarly circumstances employee/colleague of your applicant's son in the same department (Sr. SECTION Engineer) in the same grade of pay those instances are given below for the purpose of final adjudication of the present lis:

- a. **Dadi Ramesh Kumar** designated as UPG Trackman and grade pay of Rs. 1800/- working under the same said department being the Sr. Section Engineer (P>Way), Marshalling Yard, S.E.Railway, Kharagpur who had been allotted Type II Quarter being quarter No. FA/1/3, Unit 3, Type II, Gole Bazar, KGP;
- b. **Kumari R.Vasundhara**, Helper, Gr. II under SSE (DIS)KGP after due retirement of her father – R.Satyanarayana, Ex Hd Clerk Quarter No. PLC/22, Unit 4, Type II was allotted under "Father & Son Rule" on 03.12.2009 in the grade of pay at Rs. 1800/-;
- c. **Shri D.Kishore**, Helper, Gr. II under DME (D)/KGP son of Sri D.K.C.Rao Pattnaik allotted the same Type II Quarter No. LR/19, Unit 1, Type II at Nimpura, KGP under "Father & Son Rule" in the grade of pay at Rs. 1800/- on 01.02.2010;
- d. **K.Nagendra Kumar** UPG Trackman under SSE (P Way) allotted Railway Quarter No. LU/19, Unit 1, Type II at MKT KGP on 29.12.2010."

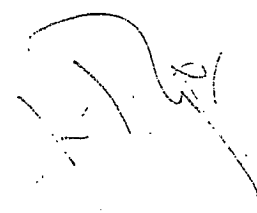
Placing reliance on the above extract, the learned counsel for the applicants would develop his argument to the effect that those persons referred to supra are applicants' colleagues in the same department and they were given the facility of occupying type II quarters under the father and son Rule. However, the applicants were discriminated by the railways warranting interference at the hands of this CAT. The learned Counsel for the Applicants would also submit that because of

this issue, the DCRG payable to the applicant No.1 is withheld. Accordingly, he would pray for allowing this OA.

4. Per contra, the learned counsel for the Respondents placing reliance on the averments in the reply as well as the supplementary affidavit filed by the railways would pilot his argument which could tersely and briefly be set out thus:

The Railway did not discriminate any one, and as per the father and son rule, which the applicants relied on, it is clear that the son would be allotted the same quarters occupied by the father provided the son is eligible for that quarters as per his grade pay, but in this case, the applicant no.2 being the son of applicant No.1, the former employee, was not entitled to type II quarters and he is entitled to only type I quarters because his Grade Pay is Rs. 1800/-. Accordingly, he would pray for the dismissal of this OA.

5. The points for consideration is as to -

- (i) Whether the Applicant No.2 is entitled to Type II quarters, which was allotted in favour of the Applicant No.1, even though the GP of the Applicant No.2 is Rs. 1800/-;
 - (ii) Whether the Applicant No.2 could claim to continue in Type II quarters simply because his colleagues were allotted Type II quarters under the same father and son rule though they are also in the same grade pay of Rs. 1800/-.
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6. At the outset we would like to fumigate our mind with the Father and Son Rule which is at Annexure-A/8. An excerpt from it would run thus:

“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 may be allotted Railway accommodation out of turn basis provided that the said relations was a Railway employee eligible for Railway accommodation and had been sharing accommodation with the retiring or deceased Railway employees 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.**” (emphasis supplied)

7. A plain reading of the aforesaid provision would make it clear that if the son of an employee, before the retirement of his father stays with him for at least six months, then he would be entitled for retaining the said quarters provided he is eligible to occupy that type of quarters as per his Grade Pay. It is also clear that such a person even though might be entitled to a higher type of quarters he can retain the same quarters. However, if the son of that employee is getting a lesser pay for which that type of quarters cannot be claimed by way of a right then he should be allotted only according to his scale of pay. In such a case we are at a loss to understand as to how by way of right the applicant could claim extension of the benefit of **the father and son rule** that too when he is not entitled to Type II quarters as per his Grade Pay.

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8. The learned counsel for the applicants drawing our attention to one other circular would point out that the Type I quarters were constructed during British era and railway authority itself took up the stand to demolish the said type I quarters because those are in a dilapidated condition. That point in this OA cannot be canvassed before this CAT and it is entirely a different issue.

9. The next phase of the argument of the learned counsel for the applicants is that his colleagues are getting the GP of Rs. 1800/- whereas they have been allotted type II quarters under father and son rule in the same vicinity; on that we would like to point out that one wrong cannot be cited as a precedent for doing another wrong. The Railway should not favour some employees by allotting Type II quarters even though they are not entitled to it and at the same time such benefit should not be denied to the applicants only. However, we are not giving any positive finding on that issue as that is a matter to be probed into by the railway administration. It is a trite proposition of law that equals should be treated alike, and the railway should follow an uniform policy and cannot discriminate one employee from the other. As such, we would like to dispose of this matter by giving the following direction.

The Railway administration within a period of three months from the date of receipt of a copy of this order, shall scrutinize as to whether similarly circumstanced persons like the applicant No.2 were given Type II quarters even



though they were not eligible for the same and if they find it so then suitable remedial action should be resorted to by the Railway and if the Railway think fit to allow Type II quarters to be occupied by the personnel in Grade Pay of Rs. 1800/- without they being entitled then the same treatment should be extended to the Applicant No.2 also.

10. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G. Rajasuria)
Judicial Member

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