

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 967/2003

New Delhi this the 12<sup>th</sup> day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Smt. Jagwati Devi  
W/o Late Ravindra Kumar  
R/o Rly Qr. No.98-D/2, Tughlakabad  
New Delhi.

...Applicant

(By Advocate Sh. George Paracken  
proxy for Sh. M.K.Bhardwaj)

-Versus-

1. Union of India through  
The General Manager  
Northern Railway, Baroda House  
New Delhi - 110 001.
2. The Divisional Railway Manager  
Northern Railway, New Delhi.
3. The Divisional Supdt. Engineer  
Northern Railway, New Delhi.
4. Chief Crew Controller  
Northern Railway, TKD, Delhi.

(By Advocate Sh. B.S.Oberoi)

...Respondents

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.4.2003, directing her eviction from the Railway quarter No.98-D/2, Tughlakabad and further sought direction to dispose of the pending appeal and revision filed by the deceased railway servant.

2. Applicant is widow of late Ravinder Kumar who was appointed as Running Room Bearer in 1978. The deceased was allotted present Railway accommodation. In May, 1988 applicant was transferred from Tughlakabad and as per the relevant rules prevalent he could not have continued in the railway accommodation. However he has not reported to the transferred place and had subletted the accommodation which

disciplinary proceedings were initiated and by an order dated 28.8.90 deceased Railway servant was removed from service.

3. Husband of applicant died in April, 1997. As applicant has been residing unauthorizedly in accommodation she has been directed to vacate the same by the impugned order, giving rise to the present OA.

4. By an order dated 17.4.2003 respondents have been restrained from evicting applicant from Railway quarter.

5. In the OA it is contended that on account of illness husband of applicant was referred to AIIMS and <sup>h</sup>way back he has met with an accident and expired. The family consist of five dependent members.

6. According to the pleadings late husband of applicant after being removed without following the enquiry submitted the appeal but the same was not disposed of. Ultimately, after the death of her husband, applicant approached the Tribunal in OA-2771/97 but the same was dismissed in account of removal of the deceased from service and non-challenge to the aforesaid order.

7. A revision petition was filed on 4.1.99, which according to applicant is still to be disposed of.

X

8. Placing reliance on a decision of Full Bench in D.N. Singh v. Union of India, Full Bench Cases (1989-1991) Vol. II it is contended that till the appeal or revision is pending a government servant cannot be evicted from accommodation.

9. On the other hand, respondents' counsel Sh. B.S. Oberoi took a preliminary objection of limitation and contended that although the husband of applicant was removed in 1990 and died in 1999 no appeal has been preferred by him and the appeal annexed does not show any date and acknowledgement as to the communication to respondents.

10. In so far as mercy appeal-cum-revision is concerned, it is not maintainable as the same was not made within the stipulated period of time, i.e., 45 days under the Railway Servants (Discipline & Appeal) Rules, 1968. Moreover the same has never been tendered to the competent authority.

11. I have carefully considered the pleadings on record and the submissions made by the learned counsel for the parties. As held by a Larger Bench consisting of five Members in Calcutta Bench of this Tribunal in Mrs. Chandra Kala Pradhan v. Union of India, reported in AT Full Bench Judgments- (1997-2001) page 410 legal heirs have been held to be entitled to initiate proceedings before this Tribunal after the death of the deceased employee. In the light of the aforesaid right of applicant to challenge the removal cannot be disputed. However, as husband of applicant was removed in 1990 and had not preferred any appeal till he

was alive upto April 1997 and the appeal annexed at page 13 (A-3) of the OA shows as 10.9.91, having denied to have received by respondents, in absence of any acknowledgement or proof of communication to respondents the same is not admissible. As per Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, the appeal is to be preferred within 45 days from the date of impugned order, i.e., 20.8.90 in the present case having failed to prefer an appeal, at this belated stage same cannot be considered.

12. Moreover, a mercy appeal has been shown to have been received by the respondents on 30.4.97 preferred by the widow, in that event as well if the same was not disposed of within one and a half years as per Section 20 of the Administrative Tribunals Act, 1985, applicant could have challenged the orders before this court.

13. In so far as revision-cum-mercy petition filed by applicant, showing the date as 4.1.99 is concerned, the same has been filed beyond the time period stipulated under the Rules, i.e., 45 days and if the same was not responded to applicant could have approached this court.

14. Though the law of limitation applies harshly even in a deserving case but the same has to be applied with all its rigour. Having failed to challenge the impugned orders within the stipulated period of limitation, impugned order of eviction cannot give a new lease of limitation to applicant and moreover after removal of government servant and after expiry of the permissible

(5) 9

period family members have no right to retain the accommodation. The decision of Full Bench (supra) would have no application in the present OA.

15. In the result, having regard to the decisions of the Apex Court in S.S. Rathore v. State of M.P., AIR 1990 SC 10 and Ratam Chandra Sammanta & Ors. v. Union of India & Ors., GT 1993 (3) SC 418, present OA is not only hopelessly barred by limitation, but also delay and laces. Accordingly the OA is dismissed. Interim order passed on 17.4.2003 is hereby vacated. No costs.

  
(Shanker Raja)  
Member (J)

'San.'