

Unreportable

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3032/1998**

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Decided on : 04.03.2009

UMA RANI SHARMA & ANR.

. . . Petitioners

through : Mr. Anil Kumar Chundurur &
Mr. Neeraj Kr. Jha, Advocates

VERSUS

UNION OF INDIA & ORS.

. . . Respondents

through: Mr. B. S. Rajesh Agrajit, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. Admitted facts appearing on the record of this Court are sufficient to allow this writ petition and set aside the order of the Tribunal whereby OA of the petitioner herein has been dismissed.

2. Father of the petitioner no.2 was working as Senior Pharmacist with the respondent Railways. In September, 1988 he was posted at Central Hospital, Delhi. Vide orders dated 12.9.1988 he was transferred to Jagadhri in Ambala Division. This order reads as under:

“In partial modification of item (2) & (3) of this office notice of even number dated 26.8.1988, C.M.O. has approved the following revised orders in regard to transfer of element from CH to JUDW Hospital for posting orders of Pharmacist:

The element of the post of Sr. Pharmacist Gr. Rs.1640-2900/RPS Central Hospital, instead of Gr. Rs.1400-2600/RPS is temporarily transferred to Jagadhri Hospital in exchange with the post of Pharmacist Gr. Rs. 1350-2200/RPS from Jagadhri Hospital to Central Hospital and Sh. Ved Prakash, Sr. Pharmacist is accordingly posted in Gr. Rs. 1640/2900/RPS in Jagadhri Hospital.”

3. It is not in dispute that as per the aforesaid orders, the father of petitioner no.2, Ved Prakash Sharma (hereinafter referred as deceased employee) was transferred temporarily which is manifest from the plain language of the order itself. It is also an admitted position that in case of temporary transfers, the concerned employee is allowed to retain the staff quarters at the place of post from where he is transferred to another station. The deceased employee was allotted Railway quarter No. C-3/A, Railway Colony, Lajpat Nagar, New Delhi and therefore he claimed that he had right to retain that quarter during the period he was temporarily transferred to Jagadhri. The provision relating to ‘temporary’ transfer and retention of railway quarter by an employee on such transfer reads as under:

“i) During the entire period of “temporary” transfer an employee may be permitted to retain the quarters at former place of posting on payment of normal rent/flat rate of licence fee rent. Temporary transfer should not, however, be ordered for a period of more than 4 months unless there are pressing circumstances.”

4. Since the posting of the deceased employee continued at Jagadhri beyond four months, the respondent asked the deceased employee to vacate the staff quarter and notice dated 10.7.1989 was served upon him terming his occupation as unauthorized. The deceased employee approached the Tribunal and filed OA no. 1770/1989. This OA was disposed of vide order 28.11.1989 directing him to make representation to the competent authority within a fortnight with direction to the respondent to consider and decide the same. It was also directed that till the time his

representation is disposed of he would not be dispossessed. Though the deceased employee made representation dated 30.1.1990, his representation was not decided at all and that is the position till date.

4. The deceased employee in the meantime was transferred back to Delhi vide orders dated 27.7.1990. However he was not relieved immediately and could join back in Delhi on 14.12.1990.

5. Though no orders on the representation preferred by the deceased employee pursuant to direction dated 28.11.1989 of the Tribunal was passed by the respondent, the respondent served notice upon the deceased employee directing recovery of market rent from his salary vide orders dated 17.8.1990. The deceased employee rushed to the Tribunal again and OA 2436/1990 seeking quashing of demand contained in the letter dated 17.8.1990. Interim order dated 22.1.1991 was passed in the said OA directing respondent not to deduct any amount from the salary of the deceased employee pursuant to the admission dated 17.8.1990 till further orders. As the ill-luck would have been, within few days thereafter, i.e., on 27.1.1991, he passed away.

6. Deceased employee was survived by his wife petitioner no.1, two unmarried daughters and three sons including petitioner no. 2 herein. Since the deceased employee died in harness, request for compassionate appointment was made which was duly considered by the respondent and finding justification in this request, the Petitioner no. 2 was given appointment as Clerk in Stores Branch with effect from 9.5.1991. Thus, he got appointment within four months from demise of his father.

7. He on his appointment requested for regularization of the aforesaid staff quarter. This request was turned down by the respondent vide letter dated 8.10.1991. However this was communicated to the petitioner almost three years thereafter, i.e., only on 4.5.1994. Against this rejection, petitioners approached the Tribunal and filed OA 2664/1996. The said OA

has been dismissed by the Tribunal vide its judgment dated 29.5.1998. Assailing this judgment present writ petition is filed under Article 226 of the Constitution of India.

8. We may note at this stage that second OA no. 2436/1990 which was filed by the deceased employee challenging recovery of market rent came up for hearing in the year 1995 and was decided vide orders dated 15.5.1995. Direction was given to the respondent by the Tribunal to consider the representation dated 30.1.1990 preferred by the deceased employee or to take a decision on the representation having regard to the circumstances explained by him. The respondents were directed to take such a decision within one month. However, no orders were passed by the respondents even on this representation.

9. First question, in the aforesaid factual background that arises for consideration would be as to whether the deceased employee was in unauthorized occupation of the premises. As pointed out above orders of transfer dated 12.9.1988 clearly stipulated that it was a temporary transfer. It is also not in dispute that on temporary transfer the deceased employee had a right to retain the staff quarter allotted to him in Delhi. The only ground on which the respondents have treated him as unauthorized occupant is that his stay in Jagadhri was for a period longer than four months. We have already extracted the relevant provision given therein which would make it clear that in case of temporary transfers they duty is cast upon the department to ensure that said transfer is clearly not for more than four months, unless it continues beyond four months under pressing circumstances. Therefore, it was the obligation of the respondents to ensure that within four months the deceased employee is transferred back from Jagadhri to Delhi. That was not done. No reasons are forthcoming as to why the deceased employee was not sent back. We are not therefore in a position to find out as to whether he was made to

continue in Jagadhri under pressing circumstances or it was lapse on the part of respondent. However, one thing is clear. The continuation of the deceased employee at Jagadhri for more than four months was not his asking; it was not his choice; it could not be attributed to him at all and this was a situation created by the respondent themselves. Thus, on account of their own lapse they could not have penalized the deceased employee and now cannot penalize the petitioners.

10. Another aspect which needs to be highlighted is that the Tribunal had directed the respondents on two occasions to consider the representation of the deceased employee and passed appropriate orders. Even here the respondents remained adamant. Representations of the deceased employee were not considered and no orders passed thereon.

11. Under these circumstances, it does not lie in the mouth of the respondents to contend that the deceased employee was in unauthorized occupation. We are of the opinion that the transfer of the deceased employee remained temporary and therefore, he had right to retain the staff quarter in Delhi. Consequently, he never became unauthorized occupant of the said staff quarter.

12. Once we proceed on that basis, answer to the second question, namely, whether petitioners are entitled to get the said staff quarter regularized does not pose any problem. On 27.1.1991, father of the petitioner no. 2 passed away. Petitioner no. 2 got appointment within four months. The petitioner no. 2, under these circumstances, is entitled to get the staff quarter regularized in terms of respondents' policy dated 22.4.1982. Operative portion whereof is extracted below:

“It is clarified that in cases where a specified dependent relative (son/daughter/wife etc) secures an appointment on the Railway on compassionate ground within a period 12 months on death of the railway employee on whom he/she was dependent, he/she can be allotted a railway quarter on out of turn priority basis even if the appointment is to a

station other than the station of posting of the late railway employee. This is subject to the condition that the deceased employee or the specified relative did not/does not own a house at the place of posting”

13. In view of respondents’ own circular dated 21.6.1990 which, inter alia, stipulates that a person who is given appointment on compassionate basis even as trainee and has to undergo a training, he would be entitled to retain the railway accommodation allotted to the deceased employee shall be regularized.

14. Accordingly, we set aside the judgment dated 29.5.1998 rendered by the Tribunal. Consequently prayer contained in OA no. 2664/1996 preferred by the petitioners before the Tribunal is allowed.

15. The petitioners are, therefore, held to be entitled for regularization of the staff quarter no. C-3/A, Railway Colony, Lajpat Nagar, New Delhi. The Petitioners shall be entitled to costs quantified at Rs.10,000/-.

16. Learned counsel for the petitioners submits that terminal dues payable to the petitioners on the demise of deceased employee have not been released till date. If it is correct, the respondents are also directed to pay all the terminal dues along with interest to be calculated at 12% per annum within two months from the date of receipt of the copy of this judgment.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

March 04, 2009
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