

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW ~~XXXXXXXX~~ BOMBAY BENCH
NEW BOMBAY 400614

O.A. No. 502/1987

198

~~XXXXXXXX~~DATE OF DECISION 22.09.1987

Mr. Parasram Singh Petitioner

Mr. G S Walia Advocate for the Petitioner(s)

Versus

General Manager Central Rly. Respondent

Mr. P R Pai Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J G Rajadhyaksha, Member (A)

~~The Hon'ble Mr. XXXXXXXXXX~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

ORIGINAL APPLICATION NO. 502/87

Mr. Parasram Singh
Chargeman Grade 'A'
C/o. Shri G S Walia
Advocate
High Court
89/10 Western Rly. Exmployees Colony
Matunga Road
Bombay 400019

Applicant

V/s

1. The Union of India
through General Manager
Central Railway, Bombay V T
2. General Manager
Central Railway, Bombay V T
Bombay
3. Additional Chief Mech. Engineer
Central Rly. Workshop
Matunga, Bombay 400019
4. The Chief Works Manager
Central Rly. Workshop
Matunga, Bombay 400019

Respondents

Coram: Hon'ble Member(A) J G Rajadhyaksha

Appearance:

1. Mr. G S Walia
Advocate
for the Applicant

Mr. P R Pai
Advocate
for the Respondents

JUDGMENT

[Per : J G Rajadhyaksha, Member(A)]

Dated : 22.9.1987

The applicant who is a Chargeman Gr. A in the Central Carriage Yard, Matunga, Bombay, under the Additional Chief Mechanical Engineer, Central Railway Workshop, Matunga, has submitted this application under section 19 of the Administrative Tribunals Act 1985

on the 28th July 1987. There was no impugned order as such but apprehending denial of Railway Quarters Type RB-III to which he is entitled, he came to the Tribunal.

2. It was his case that whenever quarters of appropriate type fell vacant the employees entitled thereto would get an allotment, in their turn. In a waiting list maintained by the respondents, applicant appeared at serial no.15 and it was shown that he had submitted his application on 15.6.1975 for allotment of such quarters. In 1979 he was allotted lower category Railway Quarters Type RB-I at Kurla which he occupied. But he continued to be on the waiting list. The applicant applied on 25.6.1985 for change from lower type to higher type of quarters in terms of Railway Board's orders conveyed by respondents letter dt. 15.5.85. He was paying much higher rent for occupying a much lower type of quarters. It was also his case that he would be the first on the waiting list and since two Railway Quarters of Type RB-III had fallen vacant and were lying vacant for about two months, he should be allotted one of them. He mentioned the numbers of these quarters as RB-III/270/1 and RB-III/270/9. The relief that he sought was a mandatory order to the respondents to allot to him one of the two above mentioned quarters and direct the respondents to recover only Rs. 150 from his pay towards the rent of the quarters as long as he occupied the Type RB-I Quarters. He also sought refund of the excess payment of rent.

3. The application was kept for hearing on admission on the question of interim relief on 3.8.87. On 3.8.87, the Learned Advocate for the respondents made certain statements and the Tribunal's orders of that day read as follows:

"Heard Mr. Walia for the applicant and Mr. D S chopra for the Respondents. Without going into the merits at this stage, it appears that the applicant stands at Sl.(1) in the waiting list and in that background there should not be any apprehension in the mind of the applicant that quarter would not be allotted to him. Secondly, the administration would not normally find any difficulty in allotting a quarter to the applicant and I am further told that the question of allotment of quarter is considered and decided by a Committee. In that background, the matter is adjourned to 10.8.1987 for considering the interim relief."

4. The matter was then adjourned to 10.8.87 as it then appeared that available Vacant Quarters and applicant's waiting list number would be properly matched and an allotment made by 10.8.87. On that day the respondent's replies for interim relief were taken on record and they were directed to file reply to the main application on 20.8.87. They were also asked to keep ready at the time of hearing all relevant rules about allotment of quarters. The operative part of the order may, with advantage, be reproduced:-

"On 3.8.1987 Mr. Chopra has stated before me that the quarter is likely to be allotted to the applicant. That time Mr. Chinnaswami, Head Clerk working under Mr. Andhalkar was present. I was also informed by Mr. Chopra in the presence of Mr. Chinnaswami that the vacant quarters would not at least be allotted to anybody till today. I, however, felt that such a statement need not be recorded as it was made by advocate as instructed by Mr. Chinnaswami. Today Mr. Andhalkar states that the quarter has been allotted to some one else. He is directed not to hand over the quarters to the allottee, till further orders if the possession is not already given. The application is admitted."

The hearing was then adjourned to 20.8.1987.

5. On 20.8.87 the respondents were represented by one Mr. Nagaich, Senior Personnel Officer, but the respondent's counsel was not available. Written Statement filed by them on 19.8.87 was not found to be conforming to the requirements of Rule 12 of the Central Administrative Tribunal (Procedural Rules) 1987. It also contained blanks. Again it will be useful to reproduce from that order some portions as follows:-

"4. At today's hearing it came to light that the aforesaid two quarters at Parel were already taken possession of, by the allottees as below:

Quarter Number	Date of order of allotment	Date when possession is taken of by the allottees	Name of the Allottee
RB/III/270/1	19.6.1987	11.7.1987	KV Nagaich
RB/III/270/9	6.8.1987	8.8.1987	L B Yati

"5. It is seen Shri K V Nagaich who is present today, is one of the allottees and is therefore an interested party. The Tribunal is informed by Shri Andhalkar that another Quarter bearing No. RB/III/272/1 is lying vacant at present at Parel ready for allotment. Shri V G Andhalkar states, that the order passed by this Tribunal on 10.8.1987 could not be complied with, as the allottees had already taken possession of the aforesaid two quarters at Parel before that date. The matter, however, would be examined in the course of the final hearing of this application. In the meanwhile, the Respondents are directed not to allot the above Quarter no. RB/III/272/1 lying vacant at Parel to anyone, until further orders."

The matter was adjourned to 3.9.87 and on that day for reasons recorded in the order, it was further adjourned to 14.9.87 with a ~~peremptory~~ ^{peremptory} direction that there would be no further extension of time.

6. On 14.9.87 the respondents have filed a fresh written statement resisting the application on the ground that the applicant cannot claim residential quarters to be allotted to him as of right and respondents would observe their system of allotment to avoid favouritism and whims in the allotment of quarters. It went on to say that the application of the applicant was misconceived and there was deliberate suppression of relevant material facts. The written statement added that the applicant applied for quarters on 15.6.76 and he was allotted RB-I type quarters on or about 4th July 1979 which he had accepted and occupied, and, therefore, the claim registered pursuant to his application having been fully satisfied, there was no question of keeping him on the waiting list and allotting higher type of quarters to him. He applied for such higher type only on 8.1.86. The applicant was told by a reply on 25.3.86 that he would now stand at serial no. 45 in the waiting list as it was a fresh application for change to a higher type of quarters. Serial no. 45 was yet to be reached and therefore the applicant had no claim. Applicant again applied on 12.6.87 and inadvertently the applicant was allotted serial no. 66 in the waiting list. Further, inadvertency is claimed for continuing the name of applicant at serial no. 15 in the waiting list adding that his name should have been removed as soon as a RB-I type quarter was allotted to him. There was a flat denial that a sum of Rs. 300 was being recovered from the applicant as rent. There were three exhibits attached to this written statement.

13

7. On 14.9.87 I have heard both Mr. Walia, the Learned Advocate for the applicant and Mr. P R Pai, the Learned Counsel for the respondents. It is Mr. Walia's contention that the applicant belongs to an "essential category" being Chargeman Gr.A and is, therefore, entitled to quarters. Mr. Pai admits that the applicant belongs to the essential category.

8. Mr. Walia states that on 15.6.75 applicant was Chargeman Gr. B and even at that time he was entitled to Type-III quarters. Mr. Pai's reply to this contention was that he would be entitled to Type-III quarters, if available. Mr. Pai, however, disputes the suggestion that the applicant had applied on 15.6.75. There was a typographical error in the waiting list which showed the date of his application as 15.6.75 when it was actually 15.6.76. I do not think this error is fatal to applicant's case.

9. Mr. Walia contends that on 4.7.79 a RB-I type quarter was allotted to the applicant and he had to accept it for want of any other accommodation, but he continued on the waiting list. Mr. Pai states that no quarters were available till 1979, and since one became available it was allotted to the applicant on 4.7.79. He accepted it and thus deprived some other Railway servants of the RB-I type quarter. I am unable to understand the logic of this argument, when applicant himself is also a Railway Servant.

10. Mr. Walia then contends that for the first time the Railways issued certain orders on 15.5.85 regarding guidelines for allotment of quarters and the waiting list was circulated therewith. Applicant's entitlement

14

to quarters has not been disputed and he has been shown in the waiting list for RB-III type quarters. Therefore, on 25.6.1985 i.e., after the receipt of the guidelines it seems the applicant applied for Type-III quarters complaining that some one viz., Mr. Mhatre who had applied after him i.e., on 29.10.1975 was shown at serial no.10 in the waiting list and he was at serial no. 15. Interestingly the waiting list has ink numbering showing Mhatre as being (2) and applicant (3) after the typewritten serial numbers. Even though two quarters fell vacant in Parel in Type-III applicant apprehended that he would not get allotment and therefore he applied to this Tribunal. To this Mr. Pai's reply is that the so called letter of 25.6.85 has not reached the respondents at all. The only letter on their record is the letter dated 8.1.86 and the same was replied by stating that the applicant's claim for betterment would now be freshly wait-listed. By his letter dated 12.6.87 he had only complained against having to pay higher rent. When the learned advocate was shown a xerox copy which bears the signature and the stamp of the Yard Master, he could not say whether the Yard Master had forwarded the letter to the Additional Chief Mechanical Engineer or had failed to do so. He reiterates the contention that with the allotment of the RB-I quarter applicant's claim to Railway Quarters had ceased to be in existence. The theory that he advanced was "no right, no remedy" and he explained it by saying that under the earlier system Railway Servants could not claim quarters as of right and, therefore, applicant's claim is imaginary, and

1

even now he cannot claim quarters as of right, but he can be considered only when quarters are available and that too in his turn.

11. Mr. Walia then stated that he had submitted an application for contempt of court but he would not press it if one more quarter viz., RB/272/1 which had fallen vacant is allotted to the applicant. Mr. Walia argues that applicant bona fide believed that since he was shown in the waiting list he would duly get RB-III type quarters. Yet by way of abundant caution he submitted his letter of 25.6.85. Mr. Pai however maintained that applicant had no right to be in that waiting list and he could get quarters only in his turn.

12. At this juncture Mr. Walia drew my attention to the additional statement submitted by him on behalf of the applicant on 29.9.1987 with a copy thereof to the respondents. He had enclosed Railway Board's directives to establish his contention that applicant was entitled to RB-III type quarters and that he had submitted a letter on 25.6.85. Respondents have not ruled out applicant's entitlement to a Type-III Quarters. They only deny applicant's claim of being high up in the waiting list and his right to get an allotment.

13. We now come to the interesting part of the case. The order passed by the Honourable Member Shri L H A Rego on 20.8.87 discusses allotment orders issued on 19.6.1987 and 6.8.1987 in favour of Mr. K V Nagaich and Mr. L B Yati, respectively. Mr. Nagaich was present in the Tribunal on that day though he was an interested party.

16

14. Orders had already been given by the Tribunal to the respondents to produce all record before the Tribunal. From a ~~perusal~~^{perusal} of these it is seen that Mr. Nagaich, Senior Personnel Officer, submitted an application on 11.5.87 for temporary allotment of RB-III quarters since it was inconvenient for him to travel for work from Nerul (New Bombay). This application was kept before the Quarter Allotment Committee on 16.5.87. Curiously enough, from the minutes it is seen that Mr. Nagaich presided over this meeting. His application was considered and an allotment order in his favour was issued. While the minutes are dated 16.5.87 the allotment order is said to have been issued on 13.6.87 and Mr. Nagaich occupied the quarter on 11.7.87. So far as Mr. Yati is concerned, he was given "out of turn" allotment though he was at serial no. 104 in the waiting list as his son aged 7 years was certified by the Chief Medical Officer to be suffering from "Nephroti Syndrome". There would, therefore, be no serious objection to that allotment in favour of Mr. Yati on compassionate grounds. It may stand in spite of the circumstances brought to our notice.

15. During the hearing I requested Mr. Pai to state how the Learned Advocate for the respondents came to make certain statements on 3.8.87 on which the Tribunal gave certain directions; and again on 10.8.87 how because of the alleged change in the circumstances the tribunal had to give certain other orders. He stated that the statements on behalf of the respondents on 3.8.87 clarified that the Quarter Allotment Committee would decide the matter finally. He was also requested to clarify how the action by the Quarter Allotment Committee could

17

be valid if Mr. Nagaich presided over it, considered his own application and the committee recommended the allotment in his favour. Mr. Pai's reply that the Quarters Allotment Committee consists of one Gazetted Officer, three Union representatives and one representative of SC/ST employees, does not at all satisfy me as to the bona fides of the Committee's decision to allot quarters in favour of Mr. Nagaich.

16. Having heard the Learned Advocates for both the sides, perused the entire record produced by the respondents according to the Tribunal's orders, I would hold that the respondents have not made out any good case for dismissal of the applicant's application. Admittedly applicant is in the "essential category" and is entitled to RB-III quarters. Even though he applied on 15.6.1976 (and not 15.6.1975) he still is on the waiting list for RB-III quarters. This read with the statement made by the Learned Advocates on 3.8.87 to the effect that applicant was at serial no. 1 in the waiting list and that there would normally be no apprehension that quarters would not be allotted to him strengthens applicant's case. What has occurred thereafter can only be termed curiously unfortunate. The Tribunal had asked for records to be produced because it apprehended that the records might have been tampered with. I have seen the records, though without going deep into the question whether the papers shown to me are correctly serially numbered in the files. I would give the benefit to the respondents of my impression that prima facie the records

18

do not seem to have been tampered with. Therefore, Mr. Walia's prayer for contempt of court need not be considered and no order need be passed on that aspect. In so far as the allotment of quarters are concerned, as observed earlier the allotment in favour of Mr. Yati may be treated as unassailable but the allotment in favour of Mr. Nagaich cannot be, by any stretch of imagination, described as proper and made without violation of any ethics or rules of natural justice. It was highly irregular on the part of Mr. Nagaich to have presided over and participated in the deliberations of a Committee which was considering his own application and that too dated 11.5.1987 i.e., some twelve years later than applicant's application, for allotment of quarters and further to have recommended allotment of quarters in his own favour, whatever might be the circumstance leading to such a recommendation. To that extent the proceedings of the Quarter Allotment Committee suffer from the vice of immorality and impropriety though in the strictest sense it might not be totally illegal. But on this ground they deserve to be struck down. I do not propose to disturb the allotment made especially in view of the statement made at the Bar that Mr. Nagaich has now been allotted Officer's Quarters and he would soon be vacating the RB-III quarters. ^fthough I was contemplating ~~an~~ order that Mr. Nagaich should be ordered to vacate his quarters within 48 hours and those should be given into possession of applicant, I desist from doing so because it would penalise his family more than Mr. Nagaich himself.

[Handwritten signature]

17. I, however, hold, considering all the circumstances urged before me, that the applicant has established his claim for allotment of a RB-III quarter on the basis of his being the topmost in the waiting list, and in view of the fact that at least one RB-III quarter is lying vacant to be allotted to someone, as yet. I do not accept Mr. Pai's contention that with allotment of RB-I type quarter, applicant loses his claim to RB-III type quarter, as I feel that allotment of a lower type of quarter can never cause removal of an applicant's name from the waiting list for quarters to which he is normally entitled. There was no evidence that the applicant had given up his request for allotment of Type-III Quarters. I, therefore, feel that the application of the applicant deserves to be allowed.

I, therefore, pass the following orders:

ORDER

1. The application is partly allowed.
2. RB-III type quarter no. 272/1 which is stated to have fallen vacant shall be allotted to the applicant immediately without taking unduly long time on formalities.
3. In view of the discussions above, I am also inclined to saddle the respondents with the costs of this litigation. Without going into the details, I quantify the costs at Rs.300 (Rupees Three hundred) only and order that the same should be paid to the applicant within a period of one month from the date of this order.

J G Rajadhyaksha)
Member(A)

Delivered in open Court

on 22-9-1987