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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 688/87

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DATE OF DECISION 2.12.1993

Mrs. Neeta R. Jadhav Petitioner

Mr. L M Nerlekar

Advocate for the Petitioners

Versus

G.M., Central Rly. & Anr. Respondent

Mr. S.C. Dhawan

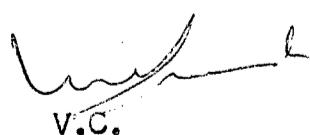
Advocate for the Respondent(s)

**CORAM:**

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. ~~Whether the application is maintainable or not~~
2. To be referred to the Reporter or not ?
3. ~~Whether the application is maintainable or not~~
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
V.C.

NS/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 400001

OA NO. 688/87

Mrs. Neeta R. Jadhav  
Railway Quarter no.11/MS/RB/II/126  
Central Railway Quarter  
Matunga, Bombay 400019

Applicant

v/s

1. General Manager  
Central Railway  
Bombay V.T.

2. Senior Divisional Personnel Officer  
Central Railway  
Bombay V.T.

Respondents

Coram: Hon. Shri Justice M.S. Deshpande, Vice Chairman  
Hon. Shri M.R. Kolhatkar, Member(A)

Appearance:

Mr. L M Nerlekar  
Counsel for applicant

Mr. S C Dhawan  
Counsel for respondents

ORAL JUDGMENT:

(Per: M S Deshpande, Vice Chairman)

DATED: 2.12.1993

The applicant is the daughter of one D J Dethe who was a Class III employee of the respondents railways and he retired with effect from 31.12.1984. He was in occupation of the Railway Quarter. The applicant who is married, resided with her husband for some time and returned to reside with Dethe. She also is a Class III railway employee. Permission was granted on 21.6.84 to the applicant to share the quarters which has been allotted to Shri Dethe for a period of six months on condition that she would not draw the amount of House Rent Allowance. Since the pay bills for the month of June 1984 were prepared before permission was granted on 21.6.1984 the HRA for June 1984 came to be paid to the applicant, but was recovered later in August 1984 as she was sharing the quarter allotted to her father.

After the expiry of the period of six months the applicant applied for permission to share the quarters, but that application came to be rejected on 21.12.1984. After the retirement of Detha a notice was served on him on 3.9.85 for eviction under the provisions of Public Premises Unauthorised Occupants Eviction Act and the eviction order came to be passed 31.10.1987. The applicant made an application on 16.12.85 for out of turn allotment of the quarter which was occupied by the father to her as she had been sharing the accommodation with him and had not drawn the HRA for the period of six months. That application was rejected on 16.2.86. When the order of eviction was about to be executed on 3.11.1987 the applicant approached this Tribunal and obtained the interim stay to eviction and the applicant continues in occupation of the quarter since then.

2. The respondents contention in this respect is that the applicant forced her entry into the premises on 3.11.1987 after the possession was obtained from Detha and that her possession is not authorised.

3. The applicant prays for a direction to the respondents to transfer the quarter standing in the name of D J Detha to her name or alternatively the allot a suitable quarter to her.

4. It is in the context of the above narrated facts that the questions which have been raised by the parties came to be considered. Though Mr. Nerlekar, learned counsel for the applicant urged that the rules on the basis of which allotment was refused to the applicant are discriminatory on the ground of gender, The learned

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counsel for the respondents states that this was not true and that does not appear to be the contention of the applicant in the present case. The question still has to be considered on the terms and conditions Central Railway Circular dated 7.7.83, Exhibit 'F'. The subject is stated to be 'Retention of Rly. Qtrs. by staff on retirement - Allotment to their wards in out of turn basis' and it has been provided that on fulfilment of five conditions mentioned therein a dependent relative would be mandatorily entitled to the allotment of the quarter. The first condition is that the employee concerned has been allotted railway quarter and has also been permitted to share such quarters with his dependent relative, such as wife/husband/son or daughter, as the case may be. Condition no. 2 is that the specified relative, so permitted to share railway accommodation, is in railway service and is eligible for allotment of railway quarter. Condition no.3 states that such a relative has been in actual sharing of the accommodation for a period of not less than six months prior to the demission of service by the employee concerned. According to the learned counsel for the respondents, condition no.1 has not been fulfilled in the present case because permission to share the quarter had been refused to the applicant on 21.12.1984. Obviously that order became final because no proceedings were taken by the applicant or her father against the refusal of the permission. It follows, therefore, that on 31.12.1984 when the applicant's father retired the applicant did not have a valid permission to share the accommodation with her father.

5. Shri Nerlekar, learned counsel for the applicant, urged that the applicant filed an application on 16.12.1985 for out of turn allotment but her application

came to be rejected on 16.2.86 on the ground that the applicant was married. The position of the applicant's application for out of turn allotment has to be determined in the light of instruction contained in letter dated 7.7.83 wherein the Railway Ministry's letter is reproduced. It is clarified that the out of turn allotment is a concession and that retention of quarters beyond permissible period is to be treated as unauthorised. In the penultimate paragraph it has also been pointed out that until the dependent relative is allotted an appropriate type of quarter on out of turn basis the occupation of quarters will be treated as unauthorised beyond the normal permissible period for retention of the railway quarter after retirement under the extant orders. It is therefore clear that out of turn allotment is an exception to the general rule and that the right to get an out of turn allotment would arise only if the conditions mentioned in the letter are strictly complied with. In the present case the applicant had not been permitted to share the accommodation with her father after 21.12.84. That rejection has become final because no proceedings were taken challenging the rejection. With regard to the application for out of turn allotment rejected on 16.2.86, it is obvious that the father would not have been entitled to retain the quarter upto that date in view of his retirement on 31.12.84. Merely because the applicant has made an application for out of turn allotment that would not give <sup>her a</sup> right for such allotment. With the father's retirement the occupation of the quarter was regarded as unauthorised. It is apparent from the circumstances that in the proceedings under

the Public Premises Eviction Act the Eviction order came to be passed on 31.10.1987. In the present circumstances, therefore, the applicant's occupation of the quarters which has not been permitted ~~should~~ not have been translated <sup>in to</sup> as authorised occupation only because she had made an application for allotment of quarters after her father's retirement, when his occupation was also unauthorised.

6. Shri Nerlekar referred to us to the observations in HARINDER SINGH V. UNION OF INDIA & ORS., I(1990)ATLT(CAT) 141 which is a single bench decision. But that is <sup>not</sup> on the question which has been raised before us but about the interpretation regarding the duration of sharing and it was in that context held that it would be a narrow and technical interpretation of rules if the question of sharing is stretched to include that six months period should have been as a Government servant and that specific permission should have been given although once the house rent allowance has not been paid to the applicant, such permission can also be presumed. Shri Nerlekar urged that since the HRA has not been paid to the applicant throughout it should be inferred that the quarters had been allotted to the applicant out of turn. In our view such an inference would not necessarily follow as the respondents had made it clear that permission to share the quarter has been refused and eviction proceedings had been initiated and successfully completed against the father on the basis of his unauthorised occupation. The applicant would not, therefore, come within the letter dated 7.7.1983, Exhibit F and we find that the applicant

would not be entitled to the relief which she has claimed.

7. The application is, therefore, dismissed. However, three months time is granted to the applicant to vacate the quarter. We make it clear that if the applicant is eligible for allotment of a quarter according to her turn the order that we are passing would not come in any way for such allotment. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)  
Member(A)



(M.S. Deshpande)  
Vice Chairman