

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.75/87

1. Shivram Baliram Shirasath
2. Sudhakar Shivram Shirasath
Central Railway Quarter No.
RB/II/5/6, Vashi Naka,
Trombay.

.. Applicants

v/s

1. The Union of India
through the General Manager,
Central Railway,
Bombay V.T.400 001.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T. 400 001.
3. The Senior Divisional Engineer,
and Estate Officer,
Central Railway,
Bombay V.T.400 001.

.. Respondents

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

Appearances:

1. Mr.D.V.Gangal,
Advocate for the applicants.
2. Mr.N.R.Bhavsar
(for Mr.B.S.Chopra)
Counsel for the Respondents.

JUDGMENT

Dated: 6.11.1987.

(Per: J.G.Rajadhyaksha, Member(A))

The applicant filed this application under section 19 of the Administrative Tribunals Act, 1985 on 20.1.1987. On 23.1.1987 while admitting the application the question of interim relief was also considered. An ad interim relief in terms of para 11(e) of the application was granted i.e. the Respondents were restrained from evicting the applicants from Railway Q.No.RB II/5/6 at Vashi Naka, Trombay. On 5.2.1987, Mr.Chopra the Learned advocate for the Respondents stated that respondents had recovered possession of the quarters in the occupation of the applicants with the help

of the police though a formal reply was not filed. On 13.2.1987 we were told that applicant No.2 was in possession of the quarters which had earlier been allotted to applicant No.1. ^{also} We were told that the eviction notice issued by the Estate Officer should be treated as null and void and the respondents should be restrained from evicting the applicants. That interim relief had been granted to applicants. The respondents produced certain documents including an affidavit of the Inspector of Works which showed that though respondents had recovered possession from the applicants they had mis-used the interim orders issued by the Tribunal, broken open the lock and re-occupied the quarters. Since it appeared that respondents had officially recovered possession on 16.1.1987 i.e. almost a week before we gave our interim relief orders with the help of the Police, we felt it appropriate to vacate the stay order granted by us, and grant liberty to the respondents to take such action as they might consider appropriate. The matter has come up for final hearing on 12.10.1987 before a single member Bench of the Tribunal.

2. The facts briefly are that applicant No.1 was in the service of the respondents as a Male Nurse and retired from service on 1.1.1983. Applicant No.2 is the son of applicant No.1 and is at present serving as a Senior Draughtsman in the Central Railway having joined service with them in 1980. Quarter No.RB-II/5/6 at Vashi Naka, Trombay had been allotted to applicant No.1. Applicant No.1 applied on 5.11.82 to allow applicant No.2 to share the said quarters with him. Applicant No.2 also applied on 25.11.82 for allotment of quarters to him on priority basis as he was the son of a retiring government servant who had been sharing accommodation with him. Both the requests were not granted and

were pending as yet. Yet actually on 7.11.1986 the Estate Officer held proceedings against the applicant No.1 and gave an order that he and all other persons residing in the said quarter No.RB-II/5/6 at Trombay should be evicted from the said quarters under section 5(1) of the Public Premises (Eviction of Unauthorised Persons) Act, 1981. It is this order that is being challenged and it has been the case of the applicants that applicant No.2 being in railway service is entitled to allotment of quarters on out of turn basis as soon as the applicant No.1 retires from service. The respondents have resisted the application by filing the written statement on the 20th July, 1987. Their only contention was that the applicant No.2 must apply for allotment of quarters and wait in the list until his turn is reached, there can be no automatic transfer of quarters from applicant No.1 the father, to applicant No.2, the son. They also added that out of turn allotment is done in very very exceptional circumstances and in the present case the applicant No.2 was not entitled to out of turn allotment. There was a rejoinder submitted by the applicants on 12th August, 1987. One of the contentions therein is that the administration i.e. the respondents have been recovering normal rent from the salary of applicant No.2 and have stopped granting him H.R.A. which he would have been entitled to had he been occupying private premises and not railway quarters. Therefore, the deduction of normal rent and stoppage of H.R.A. both entitled the employee to treat his occupation of quarters as regularised in his own name.

3. I have heard Mr.D.V.Gangal the learned Advocate for the applicants and Mr.N.R.Bhavsar (for Mr.D.S.Chopra) Counsel for the respondents. It is Mr.Gangal's contention that applicant No.1 retired and applicant No.2 who had been staying with him since his birth was entitled to an out of

turn allotment of the same quarters on father to son basis. Applicant No.1 had been in occupation of the quarters since 1958. He retired on 1.1.1983 and applicant No.2 joined respondent's service on 13.3.1980 initially as a Tracer and is now a Senior Draughtsman since 1982. Applicant No.2 is working at Thane since October, 1984 and since admittedly applicant No.2 was in occupation, applicant No.2 should be considered as eligible to get out of turn allotment of the same quarters. Mr.Bhavsar argues that unless and until it is proved that applicant No.2 had been officially sharing quarters with applicant No.1 for a period not less than 6 months prior to the retirement of the applicant No.1, there could be no right arising in his favour for allotment of the quarters.

4. Mr.Bhavsar had also faintly suggested, citing Railway Board's directives that such an application for sharing of accommodation or allotment of accommodation must be made more than 6 months before the retirement/decease of the original occupant. This is for obvious reasons, not acceptable. While retirement can be anticipated, decease cannot be.

5. Mr.Gangal argues that on 5.11.1982 applicant No.1 applied to the authorities to let applicant No.2 share the quarters, there was no reply. On 25.11.1982, which is in advance of the retirement of applicant No.1 applicant No.2 applied for allotment of the quarters by transfer; still there was no reply. He repeated his request on 28.2.1983 and yet there was no reply. Mr.Bhavsar suggests that respondents took no action on the various applications as the applicants had submitted a formal application to the Central Administrative Tribunal & that the matter was sub judice.

6. Mr.Gangal points out that since May, 1983 normal rent

is being recovered from the applicant No.2. This rent is Rs.37.90 paise, Since then HRA has also been denied to the applicant No.2. Even now the applicant No.2 is not getting HRA and is paying rent. Since he has been evicted, at least the recovery of rent should have been stopped, but that has not happened. On the contrary applicant No.2 is even now paying rent without actual occupation of the quarters. On 19.10.1985 applicant No.2 submitted a fresh application for regularisation of the quarters in his favour. This application was sent to the authorities with recommendation by the Asstt.Engineer on 22.10.1985. There has been no reply to this representation either. On the other hand, applicant No.1 was served with a notice of eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, on 9.6.86. Applicant No.1 had replied to it on 20.6.1986. Another notice cum order was issued on 7.11.1986 evicting the applicants. The plea of applicant No.2 that he is paying rent and, therefore, is not an unauthorised occupant has fallen on deaf ears. It is therefore, Mr.Gangal's contention that the eviction order has been issued without application of mind and is, therefore, bad in law. Mr.Bhavsar's reply is that admittedly rent is being recovered from Applicant No.2 and HRA is not being paid to him. The question of payment of HRA did not arise as after the retirement of applicant No.1, rent was being recovered from applicant No.2. He contends that an out of turn allotment can be given only in very exceptional case. There is no such exceptional case here. He admits that applicant No.1 Male Nurse ^{has} is in the pay scale of Rs.425-700 and so is the Senior Draughtsman in the same pay scale. The applicant No.2 would, therefore, be normally entitled to the same type of quarters as are in the occupation of applicant No.1. It is Mr.Bhavsar's con-

It is further contended that applicant No.2 never applied for accommodation, independently, but went on applying only for sharing of accommodation on out of turn allotment. He also adds that there is no prescribed proforma for allotment of quarters, and that he was not aware of the existence of any compilation of rules for allotment of quarters or of the existence of a "Quarter Allotment Committee" to consider such applications. He only adds that the case of applicant No.1 or applicant No.2 was not considered at any time at all. By way of a post script Mr.Bhavsar adds that applicant No.2 does not belong to the 'essential category' and therefore, he is not entitled to out of turn allotment of quarters. He could not, however, define what is meant by the 'essential category.'

7. One other point which Mr.Bhavsar made was that as Male Nurse applicant No.1 was in possession of quarters belonging to the medical pool, while applicant No.2 who is a Draughtsman should be entitled to accommodation from the Engineering Pool. And there are well established rules about surrender of quarters from one pool if out of turn allotment is to be made in favour of a person who is not entitled to allotment in the same pool. He contends that there is no such case either. Mr.Gangal states in reply that there are no separate pools for Engineering and Medical Staff.

8. Mr.Gangal then contends in conclusion that in the absence of any reply to the applicant No.1 and applicant No.2, it must be held that since the respondents are recovering rent and not paying HRA to applicant No.2 there is de facto allotment in his favour since May, 1983. Mr.Gangal

adds that on 24.2.1987, applicants had to vacate the quarters and even now normal rent is still being recovered from the wages of the applicant. This is something which is very strange and disturbing and, therefore, Mr.Gangal argues that applicant No.2 is entitled to the allotment of quarters. Mr.Gangal adds that if the quarters are allotted to the applicant No.2, he is willing to forego HRA and pay rent and abide by all other conditions that might be imposed by the respondents or by the Central Administrative Tribunal. He is willing to pay rent from 1.1.1983 the date on which the applicant No.1 retired and would, of course, claim HRA from 24.2.1987 when the said quarters were vacated by the applicants.

9. Having heard the learned advocates for both the sides and perused the records, I have come to the conclusion that even if applicant No.2 was not entitled to an allotment straightaway in 1983 he was entitled to be considered for allotment of quarters. On 5.11.1982 applicant No.1 applied to the Divisional Railway Manager to let him share accommodation with his son (applicant No.2). I am told that there is no reply. On 28.2.1983 applicant No.2 applied to the same Divisional Railway Manager stating that he had been transferred to Bombay and since his father was working as Male Nurse and had been in occupation of quarter No.RB-II/5/6/Trombay, he should be allotted the same quarters. This application of applicant No.2 dated 28.2.1983 has not been replied to. Again on 19.10.1985 applicant No.2 applied for allotment of the quarters pointing out that it is within the powers of the Divisional Railway Manager to give out of turn allotment. This application was recommended by the Assistant Engineer, Thane on 22.10.1985, still there seems to be no

response. On 29th June, 1986 applicant No.1 replied to a notice dated 9.6.1986 issued to him by the Estate Officer under section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act. On 16.1.1986 again applicant No.2 had applied for allotment of quarters, this again was recommended by the Assistant Engineer. On 6.11.1986 applicant No.1 submitted a representation in response to summons dated 20.10.1986 to appear before the Estate Officer. What seems to have happened is that on 7.11.1986 the Estate Officer 'heard' his case No.45/86 and gave 15 days time to the applicant No.1 to vacate the quarters and passed the final order evicting him from the quarters. There is an observation that the respondents in that matter i.e. the present applicant was given liberty to cross-examine, but he had no cross-examination to make. Mr. Gangal's reply on this point was that since there was no examination there could not be a cross-examination. Final orders of eviction thereafter had been issued, driving the applicant to the Central Administrative Tribunal. At page 69 Annexure 'L' is an extract of the Railway Board's letter dated 25.6.1966 laying down certain guidelines for giving out of turn allotment to relations of Railway Servants who are in railway service and who are eligible for railway accommodation and who have been sharing accommodation with the retiring or deceased railway servant for at least 6 months before the date of retirement or death. The argument that this annexure would not be applicable to the present applicants as applicant No.2 was not sharing accommodation for more than six months with applicant No.1 is not really tenable. Annexure 'M' is again some guidelines about transfer of accommodation from one pool to another in the case of retiring or deceased

employees which could be followed by the respondents, if they so desired.

10. I am further of the view that on the retirement of the applicant No.1 applicant No.2 who has already been in service of the respondents should have been considered for allotment of accommodation. The Circulars which have been attached at Annexures 'L' and 'M' to the application do seem to suggest that if permission for sharing has been granted, the railway servant who has been sharing accommodation with ~~his~~ retiring or deceased railway employee is eligible to be considered for out of turn allotment. It also seems to be possible that allotment from one pool can be given to a person entitled to allotment of quarters in another pool in certain circumstances. It is not, therefore, clear why the respondents are totally ruling out the possibility of applicant No.2 being eligible for consideration for allotment of quarters. This in my opinion is something which is not properly explained in view of the various Circulars and policy decisions on record as mentioned in ~~last only~~ the annexures to the application which are taken from the rules which the Railway Establishment Code contain in the matter of accommodation for Railway Servants. It is understandable that the applicant No.2 must apply formally for accommodation, that his application made thus will have to be placed in a waiting list, and that the committee for allotment of quarters should be in a position to consider the entire waiting list. What is not understandable however, is why the respondents are saying that applicant No.2 is not on the waiting list at all nor ^{is} he entitled to out of turn allotment. As observed above he had actually applied for accommodation, may be for the first time, on 5.11.1982. If that be so, then he deserves to be put on the waiting list

as on that date, and his claim also deserves to be placed before the accommodation allotment committee. Mr.Bhavsar's argument that there is no such thing as a waiting list is also not acceptable for the simple reason that the question of "out of turn" allotment cannot arise unless a person has a regular "turn" is in the waiting list and is expected to await it. Therefore, applicant No.2 should have been put on the waiting list on the basis of his application dated 5.11.1982. Whether he was allowed to share the quarters or not will be another question. Here again it is clear that applicant No.1 had applied for permission to share quarters with his son, this application is dated 5.11.82. I do not see why the respondents should not have granted permission even in the routine manner. Their only defence now could be that by granting such permission the applicant No.2 would have shared accommodation for less than 6 months with the applicant No.1 before the latter's retirement. All the more reason, why the permission to share should have been granted before contesting the claim of applicant No.2 that he had been officially sharing accommodation with applicant No.1. I feel that in this entire matter the respondents have not shown adequate alertness in dealing with the applications in the matter of allotment of accommodation made by applicant No.1 and 2 respectively. Their reply also is so short that it throws no light on the factual and legal position in this case.

11. I will dismiss as irrelevant the alleged incident where applicants are supposed to have been evicted but broke open the lock and re-entered the quarters until the Central Administrative Tribunal vacated its stay granted on some misconception and applicants were again thrown out, because there seems to be no rule governing allotment of

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accommodation that misconduct of this type would totally disentitle applicant No.2 from being considered for allotment of accommodation altogether. In the circumstances, I feel that while disposing of the application the respondents are required to be directed to take steps in respect of applicant No.2, considering the special circumstances of this case, I, therefore, pass the following orders:

ORDER

1. The application is partly allowed.
2. The application for allotment of accommodation submitted by applicant No.2 on 25.11.82 should be properly listed and applicant No.2 put on the waiting list as on that date so that his normal seniority in the waiting list vis-a-vis other applicants can be properly determined. In other words his "normal turn" can then be fixed.
3. Since the applicant No.2 is normally entitled to allotment of accommodation and he had in fact been sharing accommodation with Applicant No.1 ever since the Applicant No.2 entered service, he is entitled to be considered for out of turn allotment on retirement of applicant No.1. The Respondents shall therefore allot accommodation of Type RB II to applicant No.2 on "out of turn" basis.
4. Since applicant No.2 was in actual occupation of Quarter RB II/5/6 at Vashi Naka, Trombay and the Respondents have actually been recovering normal rent from him and have been denying House Rent Allowance to him, they shall treat him as being in

authorised occupation w.e.f. 1.3.1983 i.e.
two months after retirement of applicant
No.1 who is entitled to retain quarters for
two months after superannuation.

5. Respondents shall regularise the occupation
of Q.No.RB II/5/6 at Vashi Naka Trombay,
in the name of the applicant No.2 with
effect from 1.3.1983.
6. Respondents shall allot and give into
possession of applicant No.2 the said
quarters or any other equivalent or even
lower type (RB I Type) quarter to applicant
immediately and start charging normal rent
from the date such possession is granted
to him, in case Q.No.RB II/5/6 has in the
interim been allotted to someone else
For the period between eviction & restoration
of possession Applicant No.2 will be
entitled to HRA according to rules.
7. Respondents are expected to comply with
this order within one month from the date
of this order.
8. Parties to bear their own
Costs

(J.S.RAJADHYAKSHA)

Member (A)

Delivered in open
Court on 6.11.1989