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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~O.A.~~ No.

T.A. No. 10/88

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DATE OF DECISION 12.3.1990

Shri Gangaram M. Gupta & Anr. Petitioner

Shri D.N. Kamra.

Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent

Shri A.L. Kasturey

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman,

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?


(KAMLESHWAR NATH)
VICE-CHAIRMAN

(25)

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

Tr. Application No.10/88.

Shri Gangaram M.Gupta & Another.

... Applicants.

V/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri Justice Kamleshwar Nath,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Mr.D.N.Kamara, advocate
for the applicants.
Mr.A.L.Kasturey, advocate
for the respondents.

Oral Judgment:-

Dated: 12.3.1990

(Per Shri Justice Kamleshwar Nath, Vice-Chairman)

The Writ Petition described above is transferred to this Tribunal under section 29 of this Tribunals Act for a direction to the parties to allot and transfer to Applicant No.2 Railway Quarter No.150/4, Santacruz (East) Railway Colony and for release of retirement dues of applicant No.1

2. The applicant No.1 Shri Gangaram M.Gupta was in the employment of the Western Railways as a Guard and in that capacity was allowed occupation of the Railway Quarter in dispute. Applicant No.2 Shri Vijaykumar G.Gupta is his son and was a Class.IV employee of the Railways who had been allowed by an order dt. 12.10.1982 Ex.'B' to share the accommodation with applicant No.1. Ex.'B' contained a condition that in case applicant No.1 was transferred for whatever reason he would vacate the premises.

3. The applicant No.1 retired on 31.12.1982, but both the applicants continued to reside in the disputed quarter. Applicant No.2 was not eligible to occupy that quarter.

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4. It appears that the opposite parties were pressing upon the applicant to vacate the accommodation, while the applicant No.1 had been approaching the department to allow the accommodation to applicant No.2 so that the applicant filed a Writ Petition No.2174/85 in the Hon'ble High Court of Judicature at Bombay. The case was decided by a Judgment dt. 6.11.1985 Ex.'G'. This judgment records the submissions made on either side on the basis of which the petition was allowed to be withdrawn. Applicant No.2 expressed his willingness to make a formal application for allotment of quarter of type 'A' which was his entitlement; he was to make the application on or before 15th March, 1986. That gave more than four months time. The judgment went on to say that on such application being made the respondents (i.e. the opposite parties here) were agreeable to allot type 'A' quarter to applicant No.2 and till such allotment the opposite parties agreed to permit both the applicants to occupy the quarter in dispute at the normal rent.

5. Two days before the time stipulated in the Judgment Ex.'G' the applicant No.2, made an application (dt. 13.3.1986) Ex.'H' to the opposite parties stating that he had passed Coaching Clerk Training and was awaiting posting orders and therefore, was authorised for a type 'B' quarter i.e. the type to which the disputed quarter belongs. He prayed that accordingly the disputed quarter be allowed to him. Further, the applicant No.2 was actually promoted to Class.III on 9.4.1986 i.e. almost three weeks after the deadline fixed in the judgment Ex.'G'.

6. It appears that in the mean time there were some proceedings before the Magistrate and in the light of the directions of the Magistrate the opposite parties issued allotment order dt. 2.2.1986 Ex.'I' of quarter type I (which

is equivalent of type 'A') in favour of applicant No.2. The quarter stated there was No.163/7; that number was changed to 158/9 by order Ex.'J' dt. 1.8.1986. This position came to be, it is noticed, after the application Ex.'H' of applicant No.2. The applicant however, did not occupy quarter No.158/9 of type I.

7. The grievance of the applicant is that the allotment of the quarter had been delayed to him for a long period and that in course of time he has become entitled to Class II having been promoted to Class III service and therefore, he is entitled to allotment of the disputed quarter. It is also urged that the refusal to allot the disputed quarter to him has caused a hostile discrimination qua four persons specified in para 12 of the application and therefore, allotment may not be denied to him. He lastly said that applicant No.1 has been wrongfully deprived of his pensionary benefits like gratuity, encashment of leave, breach of rest allowances, free passes etc.

8. The reply of the opposite party is that the disputed quarter was within the entitlement of applicant No.1 and therefore applicant No.2 has been allowed to share the same, but the entitlement came to an end as soon as the applicant No.1 retired on 31.12.1982. The fact that on 9.4.1986, i.e. more than 3 years after the retirement of applicant No.1 applicant No.2 was promoted to Class.III is not material for his entitlement which has to be determined w.e.f. the date of retirement of applicant No.1. It is also pointed out that the entire relief sought by the applicant is hit by the doctrine of res judicata in view of the judgment dt. 6.11.1985 in Writ Petition No.2174/85

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Ex.'G' followed by another decision dt. 8.10.1986 in OA No.259/86 Annexure 'I' to the reply. It is urged that the applicant No.1 could get pensionary benefits only in terms of the Judgment in O.A. 259/86.

9. It may be mentioned that in O.A. 259/86 Annexure 'I' to the reply both the present applicants were applicants. The first paragraph of the judgment would indicate that the case was primarily for applicant No.1 to obtain retirement benefits, but on an appreciation of the case of both the parties, the Tribunal felt that the retention of the disputed quarter was the main tangle in the problem and that the pensionary benefits of the applicant No.1 were probably withheld because he had not vacated the quarter. The last paragraph at page 2 of the judgment however further indicates that the application was not only for pensionary benefits, but also for allotment of quarters. The relevant portion of the judgment is as follows:

" Though this application is regarding pensionary benefits as well as allotment of quarter, it is obvious that the main dispute is regarding the retention of the quarter which the applicants are occupying since prior to the retirement of applicant No.1. Applicant No.1 will certainly be entitled to arrears and pensionary benefits after he vacates the quarter which was allotted to him prior to his retirement. As the quarter is not yet vacated, the question of arrears and pensionary benefits will not arise at this stage. We, therefore, find no substance in this application and it is liable to be rejected summarily. We, however, propose to give a direction regarding grant of arrears and pensionary benefits after applicant No.1 vacates the quarters in his occupation. We, therefore, pass the following order:

ORDER

- 1) The application is summarily rejected under Section 19(3) of the Administrative Tribunals Act, 1985.
- 2) After applicant No.1 vacates the quarter which is in his possession since prior to his retirement the respondents should

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give his arrears and other pensionary benefits as may be due to him as early as possible."

10. We have heard the learned counsel for both parties at considerable length. It is undisputed that till applicant No.1 retired, applicant No.2 was not entitled to the disputed quarter. It is equally clear that as soon as applicant No.1 retired his right to stay in the quarter came to an end and with that the right of applicant No.2 to share the same with applicant No.1 also came to an end. Nevertheless the occupancy of both the applicants was protected by the judgment dt. 6.11.1987 by the Hon'ble High Court which provided, on the submission made by both the parties, that on a formal application being made by applicant No.2 on or before 15th March, 1986 for allotment of quarter type 'A' the opposite parties would allot such a quarter and till such allotment the opposite party would permit both the applicants to continue to occupy the quarter in dispute at normal rate of rent.

11. But the applicant No.2 committed a breach of the representation made on the basis of which the Hon'ble High Court passed the order. Before 9.4.1986 the applicant No.2 had not been promoted to class III and yet in his application Ex.'H' dt. 13.3.1986 he said that he had passed Coaching Clerk Training, was awaiting posting orders and was authorised for a type II quarter. The application Ex.'H' 13.3.1986 therefore cannot be treated to be an application in terms of the judgment of the Hon'ble High Court.

12. The fact that on 9.4.1986 the applicant No.2 was promoted to class III could not entitle him ^{to} a quarter of type II at any point of time prior to 9.4.1986 including the date of retirement of his father applicant No.1.

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13. The learned counsel for the applicant has laid emphasis on the delay in disposal of the application for allotment. The policy of regularisation of accommodation by dependents as contained in Railway Board's Circular Ex.'C' speaks inter alia, of two conditions:

- "1. that the sharing has been there for at least six months and
2. that the residence which being shared falls within the eligibility of the dependent employee."

Even if it be assumed that the delay on the part of the opposite parties in granting permission for sharing may be ignored in respect of the duration of the six months period of sharing, there is no question of ignoring the criterion of eligibility for the quarter which is being shared. The learned counsel however, says that if the quarter being shared is not within eligibility then the opposite parties must allot a quarter to which the applicant No.2 was eligible or for a type next below in accordance with the policy contained in Ex.'C'. But that allotment would have been subject to a proper application for allotment of the entitled class. We have also pointed out that applicant No.2 never applied for allotment prior to 13.3.1986 and even when he filed the allotment application Ex.'H', he did not ask for the allotment of the entitled class, but of a higher class viz. the quarter in dispute. The applicant No.2 himself has failed to satisfy the conditions of the allotment. He could not make a grievance of the opposite parties failure to make allotment to him of a quarter of type 'A' at the time when the applicants father was still in employment or even shortly thereafter.

14. There is substance of the contention of the learned counsel of the opposite parties that the points which have been raised in the present petition had

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had arisen in O.A. 259/86 and that this Tribunal may not issue directions which would not be in conformity with those contained in Judgment dt. 8.10.1986. It is not quite correct to say that that application was only for obtaining the pensionary benefits of applicant No.1; the judgment clearly indicates it was also for protection of the applicant's claim to the disputed quarter. The Tribunal held that applicant No.1 would be entitled to arrears and pensionary benefits after he vacated the disputed quarter. Rejecting the application summarily, the Tribunal nevertheless directed that after the applicant No.1 vacated the quarter in his possession since prior to his retirement, the opposite parties would give his arrears and other pensionary benefits as might be due to applicant No.1 as early as possible. There can be no escape from that direction of this Tribunal which has become final and has not been challenged in the competent forum.

15. In reply to plea of discrimination as set out in para 12. of the application the statement in para 14 of the counter is that those illustrations were not relevant as allotment of quarters out of turn is within the discretion of the competent authority. That is not an adequate defence; but the true legal position is that before a person can claim benefit of discrimination his own right for the remedy sought ought to be established. Assuming that the allotments to 4 persons referred to in para 12 of the application were not in conformity with the rules, that would not add strength to the applicants case because two wrongs cannot make one right. The plea of discrimination could have been availed only if it could be shown that the applicant had a legal right to the disputed quarter.

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16. On a careful consideration of all the matters, this petition is dismissed with a direction that the opposite parties will allot within one month from the date of receipt of a copy of this order one quarter of type I to applicant No.2 if not already done and is still vacant, which the applicant No.2 may occupy, and within one month of vacating the disputed quarter by both the applicants the pensionary benefits of the applicant No.1 as admissible to him under the rules shall be paid to him. The parties shall bear their own costs of this case.

M.Y. Priolkar

(M.Y. PRIOLKAR)
MEMBER (A)

Kamleshwar Nath

12.3.1990.
(KAMLESHWAR NATH)
VICE-CHAIRMAN

Judgement dt. 12-3-90
Served on R. No. 1 & 2
on dt. 23-4-90

M.Y.
30/4/90

Judgement dt. 12-3-90
Served on Applicant No. 2
on dt. 21-4-90

Supreme Court order against
CAT, judgement dt. 12-3-90
received on 26-9-91
put

Supreme Court, served
dt. 3-9-91 - against CAT
judgement dt. 12-3-90
received on 29-10-91
for