

(13)

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

Original Application No.367/88.

Shri L.P.Nagar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Mr.G.S.Walia.

Respondents by Mr.J.G.Sawant.

Oral Judgment:-

(Per Shri P.S.Chaudhuri, Member(A)) Dated: 20.6.1989.

This application was filed on 1.6.1988 under 1985 Section 19 of the Administrative Tribunals Act (for short, the Act). In it the applicant who is working as Deputy Shop Superintendent in the Central Railway Workshop at Matunga in the scale of Rs.700-900 (R)/2000-3200(R.P.S.) prays for setting aside the order dated 24.5.1988 allotting Railway Quarter No.F/2 at Matunga to the third respondent and, instead, allotting it to the applicant.

2. In exercise of the powers conferred by Section 5(6) of the Act, the Chairman of the Central Administrative Tribunal has by order dt. 21.3.1988 authorised all the Members of the Central Administrative Tribunal to function as a Bench consisting of a Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as are specified in the said order. Cases relating to allotment of and eviction from Government Accommodation have been so specified in the said order. As the prayer in this case, which I have mentioned earlier, relates to allotment of Government accommodation, it thus is such a case. In

view of this position I have proceeded to hear and decide this case sitting as a Bench consisting of a Single Member.

3. The applicant joined Central Railway on 1.8.1975 as an Apprentice Mechanic. He has been living in non-railway accommodation since then. On 19.10.1977 while he was working in the Group 'C' post of Chargeman Gr.B in the then scale of Rs.425-700 he applied for a Railway Quarter and his name appeared at S.No.22 in the waiting list for such quarters vide Ex. 'B' to the application. He was promoted to his present post w.e.f. 1.1.1984. In terms of the Railway Board's letter dated 5.6.1981 Railway Employees working in the then scale Rs.700-900(R) are entitled to Type IV quarters. On 26.12.1984 he applied for a 'F' type quarter which, in terms of respondent no.2's letter dated 6.8.1980, is one of the types of quarters classified as a Type IV quarter. His name was included at S.No.24 of the list of staff waiting for change of quarters vide Exh. 'D' to the application. It is also in the waiting list for allotment of quarters vide S.No.195 of Exh. 'B' to the application (supra). On 12.10.1987 he submitted an application pointing out that an 'F' type quarter, No.F/4 (correctly, No.F/2) had been vacated on 30.9.1987 and requesting that this quarter be allotted to him since his name was on top of the list. On 24.12.1987 he submitted a further application, the relevant portion of which reads as under:

"Today (24/12/87) at about 13.00 hrs I was summoned by S.P.O. to enquire about my willingness for allotment of F-4 vacant quarter while the Quarter Committee Meeting was in progress.

I have firmly stated that I am first on turn for claiming F-4 vacant Quarter and am entitled for the same as per authentic list maintained at your end.

I, therefore, request your kind control that the vacant F-4 Quarter at MTN be allotted to me as I am already due being first on turn."

On 29.3.1988 he submitted a further application asking for the allotment of this quarter. It is the applicant's case that on the basis of these facts his date of registration for a 'F' Type - or Type IV - quarter dates from 26.12.1984. Being aggrieved at not receiving a reply and apprehending that this quarter was being allotted to the third respondent herein, on 27.4.1988 the applicant filed O.A. 275/88 before this Tribunal. On 28.4.1988 an interim order was passed restraining the respondents from allotting Quarter No.F/4 at Matunga to anybody till 12.5.1988. At the next hearing on 12.5.1988 it was observed that it was not quarter No.F/4 which was vacant but quarter No.F/2. At this hearing the respondents stated through counsel that no decision had yet been taken for allotting quarter No.F/2 to anybody. They further stated that quarter No.F/2 would be allotted according to rules and by taking into consideration the waiting list for registration of railway quarters, a copy of which is attached as Exhibit 'B' to the application. It may be mentioned that the Exhibit 'B' referred to is the same as Exhibit 'B' attached to the present application. The applicant then requested that the application be disposed of as withdrawn. This was allowed and the interim stay granted earlier was vacated. Thereafter, on 24.5.1988, the respondents' issued the impugned order allotting quarter

No.F/2 at Matunga to the third respondent. Being aggrieved at this, the applicant filed this application on 1.6.1988. On that very day an ex-parte ad interim stay was granted restraining the respondents from allotting quarter No.F/2 and, if allotted, from handing over possession thereof to the allottee mentioned in the impugned order without the Tribunal's permission. On 13.6.1988 this stay was extended till the decision of this application.

4. The respondents' have opposed the application by filing their written reply. I have heard Mr.G.S.Walia, learned counsel for the applicant, Mr.J.G.Sawant, learned counsel for the respondents No.1 and 2 and Mr.C.D.Alex, respondent No.3 in person.

5. It is the say of the respondents 1 and 2 that waiting lists for allotment of quarters vide Exhibits 'B' and 'D' to the application, to which I have had occasion to refer earlier, were circulated along with their letter dt. 15-5/6/85. Exhibit 'B' is the list of employees eligible for initial allotment of quarters. Exhibit 'D' is the list is the list of employees who applied for and are eligible for change of quarters. It is these respondents' say that inclusion of the applicant's name in Ex.'D' is an error inasmuch as, he was not in occupation of quarters and so his name cannot appear in a list for exchange of quarters. Respondents confirm that in respect of both the list for initial allotment and the list for change of quarters, the employees are placed in the said lists in accordance with the dates of their respective applications.



6. It is these respondents further submission that the third respondent, C.D.Alex, was initially allotted a Type II quarter in 1962. On 8.4.1983 he applied for a change to a R.B. III quarter or 'F' type quarter. It is their submission that the date of this application was inadvertently overlooked while preparing the waiting list for change of quarters at Exhibit 'D' wherein his name was shown at S.No.30 on the basis of a subsequent application dt. 3.4.1985. Shri Alex therefore, represented through a Quarter Committee Member drawing attention to his earlier application dt. 8.4.1983. Pursuant to this representation, the original register maintained in the office for the purpose of allotment of quarters was modified and Shri Alex was shown at S.No.8 therein on the basis of his application dt. 8.4.1983 and thus became senior to the applicant whose admitted date of application is 26.12.1984.

7. It is further say of these respondents that the quarter committee since initiating the preparation of two lists for allotment of quarters, viz. One for initial allotment and the other for change of quarters, introduced the practice of allotting quarters alternatively from the said two lists. According to the respondents the particulars of allotment of 'F' type quarters since 1985 is:

"Y.B.Pandit	Change of Quarter 6.5.1985
S.D.Mhatre	Initial Allotment 23.1.1986
S.S.Sharma	Change of Quarter 17.12.1986
M.R.Choudhary	Initial Allotment 25.7.1987
C.D.Alex	Change of Quarter 24.5.1988."

It is their conclusion in the light of the above submissions

the allotment of Quarter No.F/2 to the third respondent, Shri C.D.Alex, is as per the normal practice and just and fair to all the aspirants for quarters.

8. The applicant assails these arguments on the ground that R-3 had submitted two applications for a 'F' type quarter, the first on 8.4.1983 and the second on 3.4.1985. It was his submission that in both these applications respondent No.3 had asked for the allotment of a RB Type-III quarter or a 'F' Type quarter. It was his contention that 'F' type quarters were Type IV quarters and hence could not be equated with RB Type-III quarters. Mr.Sawant did not oppose this stand. Mr.Alex, however, contended that 'F' type quarters were equivalent to Type-III quarters. He contended that these two types of quarters had been equated in the matter of recovery of conservancy charges in terms of circulars dated 19.9.1978 and 17.11.1980. He also added that in terms of a Circular dated 29.8.1988 'F' type quarters had been grouped with Type III quarters in the matter of flat rate of licence fee (standard rent). I do not see any validity in Mr.Alex's submission. The circulars of 1978 and 1980 deal with conservancy charges and group different type of quarters together for this sole purpose. These circulars do not deal with the grouping together of different quarters for the purposes of allotment. Similarly, the circular of 1988 deals with fixation of rent for quarters. Even if it is contended that the fixation of the same standard rent makes the two types of quarters - viz. Type III and 'F' type - the same for purposes of allotment, a circular dated 29.8.1988 cannot be the

authority for an allotment order dated 24.5.1988.

In view of this, I must reject the third respondent's submissions on this point.

9. From this Mr.Walia went on to contend that respondent No.3 was not eligible for a Type IV quarter on 8.4.1983 or even on 3.4.1985 and it was only on 1.9.1987 that respondent No.3 became eligible for such a quarter. This position was not disputed by the respondents. Mr.Walia then went on to argue that as employees could only apply for quarters of the type to which they were entitled and *and as respondent No.3 became eligible for such a quarter as 'F' Type quarters were Type-IV quarters/only on 1.9.1987,* it had to be concluded that respondent No.3's applications for RB III/*Type F - Type quarters on 8.4.1983 and on 3.4.1985 were valid applications only for Type III quarters and were not valid applications for 'F' Type quarters.* From this Mr.Walia concluded that there was no valid application from respondent No.3 on the basis of which a 'F' Type quarter could be allotted to him. Mr.Sawant contended that there was no need for further applications and that one application for a change of quarter was good enough for the purpose. I do not see any force in this line of argument, as, if it is accepted, there can then be no need to submit any application for quarters of higher types as an employee progresses in his career because a single application the day he joins service would serve the purpose. Mr.Alex contended that there was no need for him to apply as 'F' type and Type III quarters were the same.

But ~~we~~ I have already held that 'F' Type quarters are Type IV quarters and hence I do not see any force in Mr.Alex's submission. Mr.Alex's next submission was that there had been cases where quarters had been allotted even though the applicant had not applied for the particular type of quarter and, in any case, were not even eligible for such a quarter on that date. I do not see any force in this on the maxim "injuria non excusat injuriam" - one wrong does not justify another. From this one can only conclude that whereas there was a valid application dt. 12.10.1987 from the applicant for an 'F' type quarter, there was no such valid application from the third respondent. The earliest date from which the third respondent could have made an application for an 'F' type quarter or could have asked that an earlier pending application be converted into such an application is 1.9.1987, the date from which he became eligible for Type IV quarters.

10. Mr.Walia's final submission was that there was no authority for the alleged practice of allotment of quarters alternatively in turn from the two lists viz. one for initial allotment and the other for change of quarters. Mr.Sawant agreed that there were no circular to this effect but this followed logically from the circular dated 15-5/6/1985 that is mentioned in the say of the respondents. But on going through this circular I do not find any authority for such a practice. Although a distinction has been drawn between initial allotment and change of quarters from lower type to higher type, it does not stipulate that allotment of quarters will be done alternatively in between

initial allotment and change of quarter. Mr.Sawant went on to argue that the last few allotments had been done on that basis. Mr.Walia countered this by saying that the allotment may appear to be on that basis merely because the registrations had been in that order and in the absence of a specific order to that effect no such conclusion can be drawn. I see considerable merit in Mr.Walia's submissions on this point and I have no difficulty in holding that no such policy has, in fact, been laid down.

11. In this view of the matter I am of the opinion that there is considerable merit in the application and that it deserves to succeed.

12. Accordingly, the impugned order No.E2/2Q/Vol.35 dt. 24.5.1988 is quashed and set aside. The respondents are directed to allot railway quarter No.F/2 at Matunga to the employee eligible for the same on the basis of his valid application and valid registration for such a quarter. In the circumstances of the case there will be no order as to costs.



(P.S.CHAUDHURI)
MEMBER(A).