

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

Original Application No. 346/86.

1. Manilal Jetha Mekwan,
2. Shantilal Manilal Mekwan,
Platform Porter,
C/o. Station Superintendent,
Bombay Central.

... Applicants.

V/s.

1. Union of India through
General Manager, Western
Railway, Churchgate,
Bombay.
2. Divisional Railway Manager,
Bombay Division, Western
Railway,
Bombay. 400 008.

... Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil.

Appearances:

Mr.G.S.Walia,
advocate for the
applicant.

Mr.R.C.Master,
advocate for the
respondents.

Oral Judgment:

(Per Shri B.C.Gadgil, Vice-Chairman) Dt. 16.6.1988

This is an application concerning the question of allotment of a Railway Quarter to a dependent of a railway employee.

2. Certain facts are not in dispute. The applicant No.1 Shri Manilal Jetha Mekwan is the father of applicant No.2. The father joined Railway Service in 1950 as a Class.IV. He was allotted a railway quarter at Tardeo, Bombay, in 1962. He has voluntarily retired from service on 8.5.1984. His son Shri Shantilal (applicant No.2) was also employed by the railway administration in Class.IV service on 11.3.1982. The contention of applicant No.2 is that he is entitled to allotment of the quarter (which was allotted to applicant No.1) in terms of the instructions issued by the Railway Board on 25.6.1966. The said letter is Annexure 'D'. The instructions are that when a railway servant who was allotted railway accommodation, retires from service or dies in service his son etc. may be allotted railway

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accommodation on out of turn basis, provided the said son is eligible for railway accommodation and had been sharing accommodation with the retiring employee for at least 6 months. It is not in dispute that the applicant No.2 i.e. son was sharing the accommodation with his father for more than 6 months before 8.5.1984. Similarly, it is not in dispute that applicant No.2 is eligible for an accommodation in his own turn. The contention of the applicants is that applicant No.2 is entitled to the allotment of the said quarters on the basis of the above mentioned letter dt. 25.6.1966, the railway administration did not accede to this request and hence this application.

3. The railway administration resisted the application by contending that the instructions dt. 25.6.1966 have been further clarified by the Railway Board by letter dt. 4.6.1983. A copy of that letter has been attached at Ex.I to the reply. It says that the concession of out of turn allotment of the railway quarters to a specified relative is applicable only in the case of normal retirement i.e. retirement after attaining age of superannuation and not in the case of voluntary - premature retirement. In para 2 of the said letter an exception has been made in favour of those employees who have retired on medical grounds. The respondents therefore, contended that in view of this position the applicant No.2 is not entitled to allotment of the quarters, as applicant No.1 has not retired on superannuation, but has voluntarily retired.

4. After this written statement was filed, the applicant amended the application by filing Misc. Petition No.346/86. By that amendment the clarification

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mentioned in the letter dt. 4.6.1983 is challenged on the ground that an arbitrary classification has been made and that such classification has no nexus to the object to be achieved. The respondents filed an additional reply contending that the classification is quite legal and proper and that therefore, there is no question of the said instructions dt. 4.6.1983 being bad on account of any arbitrary classification.

5. At one stage Mr. Walia wanted to contend that the letter dt. 4.6.1983 is not at all issued by the Railway Board and that therefore, that letter would at the most constitute administrative or executive instructions. According to him the contents of the Railway Board's letter of 1966 cannot be modified by such executive instructions. However, this submissions does not appear to be well founded. In the first place it is material to note that the letter has been written by the Desk Officer of the Railway Board and it has been addressed to all the General Managers. Secondly, what is more important is the applicant in his amendment has specifically admitted that the said letter dt. 4.6.1983 is the Railway Board's letter, this can be seen from the initial part of paragraph 6.10 ground No.(b), the applicant has reiterated this position by saying that the letter dt. 4.6.1983 is by the Railway Board. Thus the 1966 instructions are by the Railway Board and modification or clarification thereto is also by the Railway Board. Under these circumstances it will not be possible for Mr. Walia to contend that the letter dt. 4.6.1983 cannot modify the instructions in the letter of 1966.

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6. The next contention of Mr.Walia is that the Railway Board by issuing the letter of 1983 has prepared two class viz. (1) employees who have retired on superannuation and (2) employees who have retired otherwise. According to him the said classification is arbitrary and it has no nexus with the objects to be achieved. Mr.Master for the respondents submitted that the classification is not arbitrary. The respondents rely upon the letter Ex.II which contains the reasons for showing that the classification is on rational basis. He further contended that a sort of concession has to be bestowed upon the employees who have retired on superannuation by making a provision that his dependent family member, if in service would be entitled to get a quarter on out of turn basis. It is true that Mr.Walia drew my attention to letter dt. 5.5.1983 which show that the Railway Board has clarified that the instructions about the allotment of quarters on out of turn basis are of a mandatory type. However, that would not make any difference, even if the provision is a mandatory one. The retirement contemplated by the Railway Board is that the employee must retire on superannuation. A person retires on superannuation after he has completed requisite years of service till age of superannuation. As against that a voluntary retirement is after all a voluntary and unilateral act on the part of an employee, he can so voluntarily retire on his own even without attaining the age of superannuation. He can retire even after the age of 45 if he has completed the minimum years of service. This is one of the distinguishing features between retirement on superannuation and voluntary retirement. A decision to give

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benefit of out of turn allotment to the dependent of an employee who has rendered full service till superannuation cannot be legally attacked on the ground that the concession is not available when the retirement is on unilateral basis and without reaching the age of superannuation. In my opinion, the railway administration has taken an appropriate view to bestow some concession to dependents of a person who retires on superannuation and also makes a provision that that concession would not be applicable to the persons who have not so retired on superannuation. In addition, I may state that as mentioned in Ex.II there is some difference in the retirement benefits available to those two categories of retirees. It will therefore be very difficult for the applicant to contend that the classification of such retired servants is arbitrary and it has no nexus with this object sought to be achieved.

7. The net result therefore, is that the instructions of 1966 read with those of 1983 do not permit allotment of the quarters to applicant No.2. The claim made by applicant No.2 for such allotment is therefore, not permissible. Consequently, the application is dismissed, there would however, be no order as to costs.

B.C.Gadgil
(B.C.GADGIL)
VICE-CHAIRMAN

After the above order was pronounced Mr.Walia for the applicant submitted that the applicants intend to consider the question of filing a Special Leave Petition in the Supreme Court and that the interim injunction restraining the respondents to vacate the applicant from

the quarter may be continued for about 3 months. Mr.Master submitted that the applicant No.1 has retired in 1984 and for the last 4 years the applicants have not vacated. He however, left the matter to the Tribunal. In my opinion, the injunction earlier granted should be continued upto 31.8.1988.

B.C.Gadgil
(B.C.GADGIL)
VICE-CHAIRMAN