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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 757/89.

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~~XXXXXXXXXX~~

DATE OF DECISION 8.6.1990.

Shri Martino A. Waz Petitioner

Shri I.M. Nerlekar. Advocate for the Petitioner(s)

Versus

D.R.M., C.Rly., Bombay & Another Respondent

Shri J.G. Sawant. Advocate for the Respondent(s)

**CORAM**

**The Hon'ble Mr. D. SURYA RAO, MEMBER(J)**

**The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER(A).**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

*[Signature]*

*[Signature]*

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

(6)

O.A.757/89

Shri Martino A Vaz, Thane

.. Applicant.

V/s.

Court of the Estate Officer and  
Sr.D.E.N.'s Chamber, DRM Office,  
Bombay V.T. & Another.

.. Respondents.

Coram : Hon'ble Member(J) Shri D. Surya Rao.

Hon'ble Member(A) Shri M.Y. Priolkar.

Appearances :

1. Shri L.M. Nerlekar, Adv.  
for the Applicant.
2. Shri J.G. Sawant, Adv.,  
for the Respondents.

JUDGMENT :

Date : 8-6-90

( Per : Hon'ble Member(J) Shri D. Surya Rao ).

The applicant herein a casual worker in the Central Railways is represented by Shri L.M. Nerlekar, Advocate while the respondents are represented by Shri J.G. Sawant, Standing Counsel. On behalf of the applicant it is contended that his father a Carpenter in the Central Railway was allotted Railway Quarter No. J-167, Breaksman Chawl at Kalyan, Bombay, that after the appointment of the applicant to the Railways his father made a representation on 20.10.1983 for transfer of the Quarter in the name of his son as both were sharing the same quarter and since the father was due to retire. On 14.5.1982 the second respondents decision was communicated rejecting this request since the applicant was a monthly rated casual employee and the said decision is enclosed as



Annexure 2. It is stated that the applicant was screened in 1982 and declared eligible for appointment as a permanent Railway employee, that ever since 1983 he was not being paid HRA since he was sharing accommodation with the father and that despite these facts eviction proceedings were commenced against the father and these culminated in an eviction order dtd.1.9.1989 issued by the first respondent. It is this order which is questioned herein. The order of eviction dt. 1.9.1989 is not assailed as being per-se bad but it is contended by Shri Nerlekar that the decision of this second respondent not to transfer the Quarter to the applicant on the ground that he was only a casual labourer and not a regular Railway employee is illegal and on this ground it is contended that the application be admitted and stay of eviction be ordered. Reliance is placed upon a decision of a single member of this Tribunal in O.A.271/1986 dtd.26.11.1987 ( rendered by Shri B.C. Mathur, Vice Chairman) wherein it was held that since a casual labourer who has attained temporary Status is entitled to all the benefits of a regular employee he cannot be denied the right to preferential allotment of the quarter which he is sharing with the father consequent on the latter's retirement. It is contended that when the Railways carried this decision in appeal to the Supreme Court the appeal was dismissed ~~xx~~ at the admission stage. It is further contended that when a Bench of this Tribunal took a contra decision in T.A.161/1986 and R.P.46 of 1987 the Supreme Court in Appeal Civil Nos.10829-30 of 1988 had on 14.10.1988 admitted the appeal and directed status quo in regard to eviction of the employee. On the same analogy it



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is contended that the present O.A. merits admission and grant of stay.

2. Notice of this application for admission was ordered by this Tribunal on 25.9.1989 while directing that the status quo be maintained. A reply has been filed on behalf of the respondents opposing the application and a copy thereof has been served on the applicant's Counsel. Shri J.G. Sawant Standing Counsel for the respondents contends that the application is liable to be dismissed on the ground that it is not maintainable. He contends that apart from rejection of a request made by the father for transfer of the quarter to the son on 5.5.1984 (vide exhibit-I to the reply) the applicant had also requested transfer on father to son basis and the said request had been rejected on 23.9.1985 (vide exhibit-II). Shri J.G. Sawant contends that this was the order by which the applicant was aggrieved and that he should have made an application within one year of its service if the applicant wished to contend that it was an illegal order. It is to be noted that the applicant in his application makes no mention of the rejection of this request for transfer of the quarter by the letter dtd.23.9.1985. It is also not satisfactorily explained why the applicant did not question the said order dtd.23.9.1985 since it is an order which affects his right to continue in the quarter. Even in the present application the said order is not questioned. When this was pointed out to Shri Nerlekar he requested that time should be given to him to amend his application to question the legality of the order dtd. 23.9.1985. Obviously this cannot be permitted as Section 21 of the Administrative Tribunal's Act, 1985 would be a ~~bar~~ <sup>bar</sup> to

his questioning the application. This provision lays down that if an employee is aggrieved by an order he must submit an application within one year thereof or within six months of the constitution of the Tribunal (viz. within 6 months of 1.11.1985) whichever is later. The applicant has lost the right to question the order dtd.23.9.1985 by the end of September 1986. Hence we see no reason to give an opportunity to permit the applicant to amend the application. Since the applicant has not questioned the order dtd.23.9.1985 and since no valid reasons have been set forth or <sup>adduced</sup> ~~advised~~ as to how the order of eviction dtd.1.9.1989 is illegal (which alone is the order impugned) it follows that the present application is both not maintainable and is also liable to be dismissed as being without merits. It is accordingly dismissed. However ~~th~~ since the housing problem at Bombay is very acute we would accede to the request of Shri Nerlekar and give the applicant one month's time to vacate the quarter. The order of eviction dtd.1.9.1989 shall not be implemented till one month from the date of this order.



( M.Y. PRIOLKAR )  
MEMBER(A).



( D. SURYA RAO )  
MEMBER(J).