

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.276/1996

Dated: 31/8/2000

Shri Muthuveerappan and others	Applicant.
Shri D.V. Gangal	Advocate for Applicant.
Versus	
Union of India & Ors.	Respondent(s)
Shri V.S.Masurkar	Advocate for Respondent(s)

CORAM :

Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? yes
- (2) Whether it needs to be circulated to ~~the~~ other Benches of the Tribunal?
- (3) Library? yes

R.S.JAIN
(S.L.JAIN)
MEMBER (J)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 276 OF 1996.

Dated this _____ the 31st day of August, 2000.

CORAM : Hon'ble Shri D. S. Baweja, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

1. S. Muthuveerappan,
Secretary,
Indian Naval Dockyard
Employees' Union,
106, D.N. Road,
Bombay - 400 001.
2. S. P. Vashishtha,
Sr. Chargeman in the
Office of Naval Dockyard,
Bombay - 400 001.
3. N. K. Sharma,
H.S.K. Grade-I,
Office of Naval Dockyard,
Bombay - 400 001.
4. M. A. Qureshi,
H.S.K. Grade-I,
Office of the Naval Dockyard,
Bombay - 400 001.
5. K. Santosh Kumar,
Draftsman in the Office
of the Naval Dockyard,
Bombay - 400 001.
6. A. A. Yadav,
Tradesman Mate,
Naval Dockyard,
Bombay - 400 001. Applicants.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Vice Admiral Superintendent,
Naval Dockyard,
Bombay - 400 001.
3. N. J. Chitnis,
Commander, Manager,
Industrial Relations &
Welfare, Naval Dockyard,
Bombay - 400 001. Respondents.

(By Advocate Shri V. S. Masurkar)

J. S. D.

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O R D E R

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the Administrative Tribunals Act, 1985, seeking a declaration

(a) That the order/Notice No. 12/13 dated 30.01.1996 is arbitrary, unreasonable, completely ignoring the representation made and assurance given by the Respondents, (b) Order/Notice No. 73/93 dated 17th June, 1993 (exhibit 'D') is valid in law and binding on the respondents and the respondents be directed by a mandatory order to proceed with the preparation of Roster as per the guidelines contained therein and continue the same.

2. The applicants have filed this application based on a resolution Ex.I for and on behalf of 271 Employees who are affected by the impugned order mentioned in the list Exhibit 'J'.

3. By a Dockyard Order No. 4188 dated 24th February, 1988, guidelines governing the allotment of accomodation in Naval Civilian Housing Colony, Powai, Bandup, Bombay - 400 078 was issued by the Respondents - Annexure 'B'. By a further Dockyard Order Notice No. 61/93 dated 28th May, 1992, Exhibit-C, the criteria for allotment was changed and it was laid down that the entitlement for the types of accomodation will be determined on the basis of the pay on the date of application for accomodation as given below :

Type-I	...	Rs. 750 - 949.
Type-II	...	Rs. 950 - 1499.
Type-III	...	Rs. 1500 - 2799.
Type-IV Special	...	Rs. 2800 - 3599.

By the Dockyard Notice No. 73/93 dated 17th June, 1993, the respondents had announced the preparation of a New Accommodation Roster for the year 1993-94 for allotment of accommodation at Naval Civilian Housing Board at Powai. Referring to Dockyard Notice No. 61/93, the said Notice No. 73/93 has affirmed that the criteria to be adopted will be as per Service Seniority for direct entries in the scale - Exhibit 'D'. Pursuant to said notice No. 73/93, the respondents had by Dockyard Notice No. 106/94 dated 6th September, 1994 and 3/95 dated 12th January, 1995 had invited applications from employees eligible for Type-II and Type-III accommodation for formation of Roster for allotment vide Exhibit 'E' and 'F'.

4. The grievance of the applicant is that the Respondents have been frequently changing the guidelines for allotment of residence. The guidelines followed were initially on the basis of 'Application Seniority'. Thereafter, vide Notice No. 12/96 dated 30.01.1996 (impugned order), the criteria for allotment of residence is sought to be changed to Seniority based on the length of service irrespective of seniority in a particular grade.

5. The grievance is sought to be attacked on the ground that vide Exhibit 'E' and 'F' the respondents have represented and assured that the applicants and others will be placed in Roster for allotment of residences on the basis of Dockyard Notice No. 73/03, hence they cannot be permitted to go back on their representation/assurances. Further, it is challenged on the ground that the said impugned Notice No. 12/96 and 13/96 are arbitrary, unreasonable, null and void, also against the Administrative guidelines, is in violation of Article 14 and 16

of the Constitution of India in as much as it adopts two different criteria for fixing the date of priority for allotment of residence quarters for civilian employees of Naval Dockyard at Bombay. The classification made therein is arbitrary, unreasonable, unfair, grossly unjust. The type of accommodation entitled to by an employee is commensurate with his status and seniority in the grade held by him. Hence, all priority of allotment should be considered and construed in confirmity with the grade in which he is initially posted without considering the length of service in the Government. As such change in the guidelines is arbitrary, unreasonable exercise of power. Hence, this OA for the above said relief.

6. The respondents resisted the claim of the applicants and stated that the Dockyard Notice No. 12/96 dated 30.1.1996 is strictly as per the law and as per existing government order SRO 308/78. There are 1204 residential quarters Type I, Type II and Type III for Naval Dockyard workers at Kanjurmarg Bombay for allotment of quarters to the workers of the Dockyard. The accommodation Rules to be followed for allotment of the government quarters pertaining to the defence civilians are laid down in SRO 308/78 (Exhibit - AI.) As per the SRO the basic pay is the factor only to decide the eligibility of the type of the quarter, but the criteria for the allotment is to be the seniority in the service and not the seniority of the basic pay. Accordingly in 1988 Dockyard Memo No. 04 of 1988 (Exhibit - AII) was issued laying down and amplifying the rules of allotment in accordance with SRO 308/78.

7. In 1993 the team of representatives of the Workers approached the administration for amending the criteria for allotment of accommodation from date of seniority in service to

the date of basic pay by citing some judgement of Hon'ble CAT pertaining to the department of Central Excise. Accordingly after the discussions with the representatives of the workers, the criteria for allotment of accommodation was changed from the date of seniority in service to the date of basic pay vide Dockyard Memo No. 73/93 dated 17.6.1993 (Exhibit - AIII).

8. In 1995, the representatives of the workers having realised that the revised accommodation Rules issued in 1993 were not beneficial particularly to the workers, who joined in the lowest ranks, again came up and requested the administration to revise the accommodation Rules as per the existing government orders i.e. SRO 308/78. The workers also accommodation whether to be the date of seniority in the service or the date of basic pay for the Defence Civilian has already been gone into in OA 703/90 filed by Naval Armament Depot Engineering Supervisors Association by CAT Bmbay where SRO 308/78 was applicable and has upheld the criteria of date of seniority is to be the factor for allotment of accommodation laid down in SRO 308/78 as valid. The relevant extract of order in OA 703/90 is reproduced as under:

"Looking from the angle obviously there is no question of fundamental right involved in this case but the question is whether the criteria which has been laid down is unreasonable or arbitrary. Obviously some certeria has to be laid down in the rules and the permanent establishment order framed under this authority cannot be said to be unreasonable or arbitrary as it has given due effect to the seniority and length of service. Perference is given to a person who is in continuous service for several years and the moment he enters

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service on a particular date he gets right in the manner of allotment of quarters on those who enter the service thereafter and the criteria cannot be said to be unreasonable or arbitrary but the same can be challenged to be unreasonable if not arbitrary, as a length of service would go by in the allotment of quarters as one who is waiting for his turn to come for longer years is deprived of accommodation in preference to a new comer. In our opinion the criteria so laid down is not unreasonable or arbitrary and accordingly the SRO 308 and the permanent establishment order cannot be held to be illegal or violative of against public policy or arbitrary and unreasonable.

In the circumstances the application deserves to be dismissed and accordingly the same is dismissed. However, we make it clear that if as a result of dismissal of this application if some persons are to vacate the quarters reasonable time of say at least 3 months should be given to them for vacating the premises. There would be no order as to costs."

9. After long discussions with the elected representatives of the workers it was decided to revise the accommodation rules on the same lines as was done in 1988 as per the guidelines laid down in SRO 308/78 i.e. the date of seniority to be the main factor for allotment of quarters to various categories of civilian personnel of Dockyard Notice No.12/96. The criteria for allotment of government accommodation to the defence civilian is governed by SRO 308/78 and accordingly the accommodation Rules have been issued and amplified keeping in view the guidelines

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laid down in SRO 308/78 in Dockyard Notice No.12/96. The revised orders as per SRO 308/78 have been issued at the request of the representatives of workers. In fact it was the elected representatives of the workers, who have been requesting the administration to review the rules of the allotment of accommodation, but this time prior to the issuance of Dockyard Notice 12/96, it was made clear that since these orders are in accordance with SRO 308/78 no further proposal for change would be entertained. The accommodation rules issued vide Dockyard Notice 12/96 are almost the same as was done in 1988 both being in accordance with SRO 308/78. The amendment of the accommodation rules in 1993 was done at the request of the representatives of the workers who in 1995 brought out that the revised rules issued in 1993 are neither beneficial to a large number of workers nor in accordance with government orders and hence should be revised as per SRO 308/78 and which has accordingly been done and is fully valid and in accordance with the existing government orders. The quarters are very limited as the quarters are vacated only by the retiring/death cases cases. The applications for allotment of accommodation are invited every two years giving the seniority criteria of those who are likely to be considered during that period. After the revision of rules vide Dockyard Notice 12/96 the applications had been invited for Type I having seniority upto 31.12.1988, Type II upto 31.12.1980 and Type III upto 31.12.1980 (Exhibit A - V). The applications have been received from all the eligible workers and allotment of accommodation has also started as per the existing government orders and the revised rules issued vide Dockyard Notice 12/96 and which is functioning well. Exhibit - H filed by the

applicant does not give the correct picture and is misleading. The basic pay is relevant only to the eligibility to the Type of accommodation will have to be made as per the date of seniority in the service. The representation made by the applicants dated 6.3.1996 is under examination. The application is premature as fresh roster has now been made and is in vogue, the old roster automatically becomes infructuous.

10. The learned counsel for the applicant relied on an order passed by this Bench on 5.11.1992 in OA 48/92 in the case of Shri Bhagat Ram Dogra Vs. Collector of Central Excise, Bombay - I wherein the validity of letter F.No.1/Admin (II)1/91 dt. 18.1.1991 was assailed by the Excise Officers in the pay scale of Rs.1500/- to Rs.2800 which was quashed. Para 3 of the order is as under :

"It is further submitted that by these guidelines the respondents have adopted two different criteria to decide the date of priority for allotment of residential quarters. For Type - I/A, Type - II/B and Type - III/C the criteria is the date of appointment in the service, but for Type IV/D and V/E, the criteria remains the date of crossing the particular pay scale in the qualifying grade and emoluments drawn on 1.1.1991 (para 5 of Ex. 'G'). The result of this change in criteria was that many employees, who were entitled to residential quarters according to their seniority in the qualifying grade and pay scales as per rules, were superceded by their juniors in their grade as they had been appointed in the service earlier. It was also clarified that the Department of Customs is also covered by the Allotment Rules of 1964, as it also falls under the Ministry of Finance. No different criteria has been adopted by Customs, and they have followed the correct allotment rules for fixing seniority of Type-III/C quarters as per S.R. 317-P-8 mentioned earlier."

On perusal of the above order we find that criteria for Type-I/A, Type-II/B and Type-III/C is the date of appointment in

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service, but for Type IV-B and V/E the criteria is crossing of particular pay scale in the qualifying grade and emoluments drawn on 1.1.1991. The criteria was held to be violative of Article 16 of the Constitution and the object of the scheme of allotment i.e. equitable distribution of quarter of Type - I/A, Type-II/B and Type - III/C. It is further observed in para 8 as under :

"In the circumstances, the criterion set out in circular dt. 18.1.1991 is found to be invalid as it is in violation of Article 16 of the Constitution. It defeats the object of the scheme of allotment viz. equitable distribution of quarters of Type I/A, Type II/B and Type - III/C. There is no quarrel with the criterion of "eligibility", which is the date of entry at the minimum of the pay range, but actual allotment depends upon seniority. The respondents must find a criterion applicable to all the employees equally within the appropriate pay range; they cannot be permitted to adopt a criterion, which will apply to only some of the persons in the pay range and not to others, like total length of service rendered in different capacities."

On a further perusal we find that S.R. 317- P.3, S.R. 317 P-8, Rule 317 of the Supplementary Rules called the Department of Revenue and Company Law Allotment Rules 1964 were subject of consideration.

ii. The learned counsel for the applicant relied on an order passed in O.A. 366/89 and 343/89 in case of Pratiraksha Mazdoor Sangh Trade Union and Ors. Vs. Union of India through Ordnance Factory Board and Others, Shri Toney & 42 Others Vs. The General Manager, Machine Tool Prototype Factory, Department of Defence Production, Ambernath decided on 21.3.1990. On perusal of para 40 the ratio is as under:

"We have found that the decision contained in letters dt. 22.9./4.10.1979 that in case of common date of eligibility total length of regular service shall be the basis of the

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seniority is illegal. Since the seniority list dt. 4.1.1988 was prepared on that basis it must be held to be illegal.....The decision contained in letter dt. 21.6.1988 and 16.3.1989 that the new seniority list on the basis of pay ranges as revised after the recommendations of the IVth Pay Commission be prepared with reference to 1.7.1987 as date of eligibility is illegal in its place appropriate date ought to be 1.1.1986. A new seniority list should be required to be prepared."

Para 42 :

"The criterion of eligibility will continue to be the same criterion, namely the date on which an employee enters at the minimum of the pay range, but seniority for purpose of allotment must be drawn on the criteria contained in the letters referred to above after excluding the criterion of total length of regular service. In other words the entire seniority should be fixed on the basis of length of service within the relevant pay range is the length of service within the pay range is equal seniority should be fixed on the basis of higher pay. In cases of equal seniority despite these factors, seniority may be fixed on other relevant criteria which may be applicable equally to equally to the persons within the same pay range as may be determined by the Director General of Ordnance Factories. One of such criteria adopted in the past including the impugned list dt. 4.1.1988 is the date of priority on date of birth."

12. The learned counsel for the respondents relied on an order passed in OA No.403/90 in case of Naval Armament Depot and Ors. Vs. Union of India through Flag Officer, Commanding-inChief, Western Naval Command, Bombay and Ors. decided on 15.10.1991 and the ratio of the same has been extracted above in para 8 of this order.

On perusal of the same we find that validity of SRO 308 is held to be legal and not violative of public policy or arbitrary or unreasonable.

Rule 6(1) of S.R.O. 308 which is applicable in the present case is as under :

"6. Allotment of residences and offers:- (1) Save as otherwise provided in these rules a residence

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on falling vacant will be allotted by the Allotting authority preferably to an applicant desiring a change of accommodation in that type and if not required for that purpose to an applicant without accommodation in that type having the earliest priority date for that type of residence subject to the following conditions:-"

On perusal of the same we find that criteria is "having the earliest priority date for that type of residence" which is being followed in para 5(a) of the order after laying down eligibility in para 3 of the orders.

Relying on an order passed in OA 703/90 (Naval Armament Depot Engineering Supervisors Association), we find no arbitrariness, unreasonableness, invalidity in the order/Notice No.12/13 dt. 30.1.1996.

12. In the result, the OA deserves to be dismissed as lacks of merit and is dismissed accordingly with no order as to costs.

PL Jain
(S.L.JAIN)
MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

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