

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1232/96

Date of Decision: 16-4-99

M.K.Pillai

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

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

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

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

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 1232/96

Pronounced this the 16th day of April 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

Mohan Kumar Pillai,
R/o Western Railway
Quarter No. 184/10,
Bandra (West), Bombay.

By Advocate Shri G.K.Masand

... Applicant

V/S.

1. Union of India through
the General Manager,
Western Railway,
Churchgate, Mumbai.

2. Divisional Railway Manager,
Bombay Division, Western
Railway, Bombay Central,
Bombay.

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

The applicant was initially appointed as a casual labourer on or about 3.10.1975 in the skilled grade on Western Railway at Mumbai. Thereafter, he became surplus as skilled casual labourer and was engaged as Khalasi from 1.4.1977. He was regularised as Khalasi in 1981 and thereafter was promoted as skilled Fitter in 1985 and highly skilled Fitter in 1992. Applicant's father Shri N.R.Pillai was working in the Western Railway as Assistant Sub-Inspector of Railway Protection Force. His father voluntarily retired from service from 17.4.1980. At the time of retirement, his father was occupying Railway Quarter No. 184/10 at Bandra(West).

The applicant had made a request seeking permission of sharing accommodation with his father and the same was allowed as per order dated 30.10.1979. The applicant's case is that since he was granted temporary status from 3.2.1976, he was entitled for allotment of Railway quarter being temporary employee in terms of the provisions in Para 2312 of Indian Railway Establishment Manual (1968 Edition). On being eligible for allotment, the applicant submits that in terms of Railway Board Circulars dated 25.6.1966 and 4.2.1978, since the applicant was sharing the accommodation with his father for a period of more than six months, he was entitled for out of turn allotment of the quarter and therefore the Quarter No. 184/10 occupied by his father was to be regularised in his name. The applicant made a representation dated 3.4.1981 requesting for transfer of the quarter No. 184/10 in his name in terms of provisions of the Railway Board's letters referred to earlier. The applicant's father also submitted a similar letter dated 3.12.1980. However, the applicant alleges that the respondents did not take any action in regularisation of the quarter in his name and therefore the applicant had to seek legal remedy by filing Writ Petition No. 641/81 before the High Court at Mumbai. Against this Writ Petition, an interim stay order was granted to the applicant. The applicant further states that with the setting up of Central Administrative Tribunal from 1.11.1985, the Writ Petition should have been transferred to the Tribunal. Therefore, the applicant had a belief that the Writ Petition under reference would have been transferred to the Tribunal in due course. However,

on inquiry being made during October, 1996, the applicant was surprised to know that the Writ Petition was placed for hearing before the High Court on 9.6.1987 and the same was dismissed for default. The applicant's contention is that the claim made by him had not been disposed of by the competent court on merits and therefore he is entitled to file a fresh OA. before the Tribunal seeking the same reliefs. Keeping this background in view, the applicant has filed the present OA. on 16.12.1996 seeking the following reliefs :- (a) to hold and declare that the applicant is entitled for out of turn allotment of quarter commensurate with his status of Group 'C' employee in terms of the Railway Board letters dated 25.6.1966 and 4.2.1978. (b) to hold and declare that till such time the applicant is allotted an alternate quarter, he is entitled to occupy the Quarter No. 184/10, Bandra (West) wherein he has been staying with his father. (c) to hold and declare that the applicant is liable to pay the rent for occupation of quarter No. 184/10 as if the quarter is regularly allotted to him. Respondents be directed to recover such amount as become due from the applicant. (d) Restrain respondents from disturbing the applicant from the possession of quarter No. 184/10 till such time the applicant is allotted the quarter commensurate with his status as Group 'C' employee.

2. The respondents have opposed the OA. through written statement. The respondents at the out set have stated that the present application is hit by the principles of res-judicata and therefore not maintainable. The respondents have submitted that the applicant had filed writ petition No. 641/81 for the same reliefs as prayed for through the present OA. and once this Writ petition had been dismissed for default on 9.6.1987, the applicant cannot seek the same reliefs through filing a fresh OA. before the Tribunal as the order of the Hon'ble High Court had become final. The respondents have also pleaded that in view of the matter having been already concluded before the High Court, the Tribunal has no jurisdiction to adjudicate on the same matter. The respondents have also taken a plea of limitation stating that the present OA. has been filed after a period of almost 10 years after the Writ petition had been dismissed on 9.6.1987. The respondents have also brought out that Advocate on record in the High Court as well as before the Tribunal is the same and therefore he was fully aware of the status of the writ petition filed earlier before the Hon'ble High Court. As regards the merits, the respondents admit that the applicant was allowed sharing of accommodation with his father as per order dated 30.10.1979, but the applicant is not entitled for regularisation of the quarter occupied by his father. The respondents have further stated that the applicant continued to get House rent allowance from 3.2.1976, i.e. from his date of appointment till the permission for sharing was granted and thereafter

till today. The respondents state that in terms of Railway Board's letter dated 15.1.1990, the regularisation of the quarter can be allowed only if the applicant had not claimed House rent allowance atleast six months before the date of retirement. The respondents have further added that the applicant did not meet with the requirements laid down in Railway Board's letter dated 25.6.1966 and 24.2.1978 and therefore not entitled for regularisation of the quarter in his name which he was sharing with his father before retirement. Keeping these facts in view, the respondents contend that the applicant is in unauthorised occupation of the quarter from the date of retirement of his father. The respondents have further added that the applicant has not paid any rent and the electricity charges and the respondents are entitled for recovery of penal rent at market rate for unauthorised occupation of the quarter as per the extant rules.

3. The applicant has controverted the submissions of the respondents through the rejoinder reply. The applicant has stated that filing of the present OA. does not operate as res-judicata as the order passed by the High Court was without jurisdiction after constitution of Central Administrative Tribunal from 1.11.1985. He has further added that it was obligatory on the part of the High Court to transfer the case under CAT Act. In view of this, the applicant contests the submission of the respondents with regard to the plea of jurisdiction and limitation.

The applicant maintains that no House rent allowance was paid to him since 1980 and discontinuing he had made a request for the same as per his letter dated 25.2.1980. He also maintains that he had submitted letter dated 3.4.1981 through 'Proper Channel' for allotment of quarter in his name. The applicant has also contested the claim of the respondents with regard to recovery of licence fee stating that based on his representations, the payment of House rent allowance was stopped and recovery of rent was started from the appointment of the applicant till the revision of the pay scales in terms of the 4th Pay Commission Recommendations.

4. The respondents have filed supplementary written statement in reply to the rejoinder. The respondents have submitted that the applicant does not meet with the norms laid down in Railway Board letter dated 12.5.1983 for being entitled for regularisation of quarter in his name which was being occupied by his father at the time of retirement. The respondents have also placed reliance on the judgement of the Full Bench in the case of Liaquat Ali & Ors. vs. Union of India.

5. The respondents have subsequently filed a Misc. application No. 359/98 through which prayer has been made for vacation of the interim stay order, directing the applicant to deposit the amount of penal rent and electricity charges and also making request for early hearing. Through this Misc. Application, the respondents have brought out that

on an application filed by the petitioner for restoration of writ petition, the writ petition was restored by order dated 11.6.1987. Based on this information, the respondents have contended that the writ petition was still pending and the same had been transferred to the Tribunal. The respondents, therefore, have strongly contended that the applicant has suppressed the material facts from the Tribunal at the time of filing the present OA.

6. As per order dated 19.12.1996, an interim stay order was granted laying down that the applicant would be entitled to continue in the quarter till the respondents filed their reply. Thereafter, this interim order was extended from time to time.

7. Heard the arguments of Shri G.K.Masand, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents. The material brought on record has also been carefully gone through.

8. The respondents, as brought out earlier, have strongly opposed the present OA. taking a plea that the same is not maintainable in view of the Writ Petition No. 641/81 filed by the applicant before the High Court seeking the same reliefs as prayed for through this OA. This issue will therefore be taken up first before going into the merits of the reliefs prayed for.

9. As per the details furnished in Para 5.10 of the OA., the applicant has submitted that he had filed Writ Petition No. 641/81 seeking the reliefs detailed in this para. An interim stay order was granted against the same. The applicant has further submitted that he was under the belief that with the setting of Central Administrative Tribunal from 1.11.1985, in terms of Section 28 of the Act, the High Court was divested of jurisdiction and therefore the Writ Petition would have been transferred to the Tribunal and will be taken up for final hearing as per turn. The applicant has further stated that while checking up the position in October, 1996, he came to know that the Writ Petition No. 641/81 had been placed before the Hon'ble High Court on 9.6.1987 and the same had been dismissed for default. After learning this, the applicant submits that he filed the present OA. for seeking the same reliefs as prayed for in the Writ Petition on the ground that the claims of the applicant had not been agitated upon by any competent court. Based on these submissions of the applicant, an interim stay order was granted on 19.12.1996 directing the respondents from not disturbing the possession of the Railway quarter occupied by the applicant till the respondents file the reply. With this position of the Writ Petition indicated by the applicant in the OA., the respondents have filed written statement opposing the maintainability of the present OA. However, the respondents have come up with the different position

subsequently through a Misc. Application No. 359/98 bringing out that a notice was given by the Advocate of the Petitioner to the Government counsel dated 10.6.1987 stating that he will be making application for restoration of the writ petition on 11.6.1987. The respondents have further brought out a copy of the letter from the Government Advocate stating that as per order dated 11.6.1987, the writ petition had been restored. With these details, the respondents make out a case that the Writ Petition was still pending and transferred to the Tribunal and inspite of this, the applicant has filed a fresh OA. seeking the same reliefs as claimed in the Writ Petition. In continuation of these details, the respondents during the hearing also made available one more letter dated 13.2.1992 from the Advocate of the Petitioner dated 13.2.1992 wherein certificate had been given that the Writ Petition is still pending before the High Court. As brought out by the respondents, it is noted that the Advocate on record both in the High Court and before the Tribunal in the present OA. is the same. From these facts, it appears that the Writ Petition had been restored by the Hon'ble High Court as to but there were no further details/whether the same has been transferred to the Tribunal after restoration. The learned counsel for the applicant as well as that of the respondents were asked to check up further position with regard to transfer of the Writ Petition. The learned counsel for the applicant after checking up the records of the Tribunal made a statement during the hearing that the Writ Petition under reference had

not been transferred to the Tribunal. The learned counsel for the applicant also submitted that he was not sure about the position with regard to restoration of the writ petition as it is a very old matter and therefore he wanted to check up the position with the High Court. After checking the position with the High Court, the learned counsel for the applicant during hearing made available a letter dated 3.11.1998 wherein it has been indicated that there was no order of the restoration of the Writ petition as well as for transfer of the Writ petition to the Tribunal. With this status being furnished by the High Court, it is to be taken that the Writ petition had not been transferred and therefore it stands dismissed for default as per the order dated 9.6.1987. Keeping this background in view, we will now take up the objections raised by the respondents about the maintainability of the present OA. and the contentions made by the applicant to meet with the objections of the respondents.

10. The applicant has filed the present OA. taking a plea that the writ petition No. 641/81 had been dismissed for default as per order dated 9.6.1987 and therefore the claims prayed for through writ petition had not been adjudicated upon by any competent court on merits. The respondents, on the other hand, have contested this contention of the applicant stating that order dated 9.6.1987 of the Hon'ble High Court has become final as decree in the year 1987 and therefore the Tribunal has no jurisdiction

to set aside the decree as an appellate court. After careful consideration of the matter, we are not inclined to up-hold the submission of the applicant. Once the Writ Petition had been dismissed for default, the course open to the petitioner was to make an application for restoration of the same. In case, no such application is made, then such an order becomes final. The matter cannot be agitated again for seeking legal remedy for the same reliefs as prayed for in Writ Petition by filing fresh application before the Tribunal until and unless a liberty was granted to agitate the matter afresh after the Writ Petition was dismissed for default. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti & Ors., 1997 SCC (L&S) 565. In this case, the petition^{er} had withdrawn the petition but at the time of withdrawal, no liberty was granted to file a second writ petition for the same reliefs. The petition again challenged the matter through a writ petition seeking the same reliefs but the High Court dismissed the same stating that it attracts the principle of constructive res judicata and, therefore, not maintainable. The Hon'ble Supreme Court has up-held the decision of the High Court that the writ petition was not maintainable by applying the principle of law in view of the fact that the writ petition was withdrawn without any permission of the court with liberty to file a second writ petition. Though in the present OA. the situation is not identical but the same principle of law is involved. Here, the writ

petition had been dismissed and the court had not granted any permission or liberty to file second writ petition. With such a status of dismissal order, the matter gets concluded until and unless the dismissal order was recalled and the writ petition was restored. The applicant not agitated the matter again for seeking the legal remedy for the same relief. As we have held earlier, the writ petition No. 641/81 was not restored by the Hon'ble High Court as the impression was given by some correspondence brought on record by the respondents. Keeping these facts in view, we have no hesitation to hold that for the claims made in the Writ petition No. 641/81, after its dismissal, a fresh OA. could not be filed after several years seeking the same reliefs. Any fresh OA. seeking the same reliefs as claimed in the writ petition dismissed for default will attract the principle of res judicata.

11. The applicant has repelled the contention of the respondents with regard to the OA. being hit by principle of res-judicata by advancing another argument in the rejoinder reply stating that the order passed by the Hon'ble High Court dismissing the writ petition was without jurisdiction after constitution of Central Administrative Tribunal from 1.11.1985. The applicant has further contended that it was obligatory on the High Court to transfer the writ petition to the Tribunal under Section 28 of the ~~AT~~ Act. We are not impressed by the arguments of the applicant keeping in view the principle of law.

It is acceded that under the provisions of AT Act, 1985, the writ petition pending before the High Court should have been transferred to the Tribunal. The Hon'ble High Court, however, passed the order dismissing the writ petition for default. Even if such an order was passed without jurisdiction, the applicant could have sought the legal remedy of getting the writ petition restored or by approaching Division Bench in appeal or by approaching Supreme Court and then getting the writ petition transferred to the Tribunal. But once the order had been passed by the Hon'ble High Court without jurisdiction, such an order even though may be void will have to be got declared as a void order from the competent court. The petitioner cannot sit back and make a presumption that since the order is passed without jurisdiction, the same does not become operative. Even the void order remains operative till it is declared so by the competent court. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Ashok Kumar, 1991 SCC (L&S) 1083, wherein the Hon'ble Supreme Court while dealing with the void order has observed in Para 10 as under :-

" 10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for."

In the present case, the petitioner, i.e. the applicant while filing the fresh OA, has assumed that the order passed by the Hon'ble High Court was without jurisdiction and therefore he is free to agitate the matter for seeking the same relief by filing a fresh OA, before the Tribunal without getting the order passed by the High Court set aside by approaching Single Judge for restoration or in appeal to Division Bench or Supreme Court. Keeping the principle of law laid down by Hon'ble Supreme Court in focus, we are unable to support the contention of the applicant that he is free to agitate the matter afresh as the order passed by the Hon'ble High Court dismissing the writ petition was without jurisdiction.

12. The respondents have also taken a plea of limitation stating that the applicant has filed the present OA, after almost 9 years after the writ petition was dismissed by the Hon'ble High Court. Keeping in view what has been deliberated above, the question of limitation does not arise as we have held that with the dismissal of the writ petition, the matter stood concluded. In view of this, it is not considered necessary to go into this aspect.

13. We have concluded above that with the dismissal of the writ petition filed before the Hon'ble High Court, the filing of the present OA, will be hit by the principles of res-judicata and therefore the present OA. is not maintainable. In view of this, we refrain ourselves from going into merits of the reliefs claimed through the present OA.

14. In the result of the above, we hold that the present OA. is not maintainable before the Tribunal and therefore the same stands dismissed. The interim order dated 19.12.1996 stands vacated. No order as to costs.

D.S. Bawej
(D.S. BAWEJAI)

MEMBER (A)

R.G. Vaidyanatha
16.4.99
(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.