

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 522/96

DATE OF DECISION: 27/Sept-99

Shri P.M.Subbiah and others. Applicant.

Shri G.S.Walia Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S.Masurkar Advocate for
Respondent(s)

CORAM

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

Hon'ble Shri

(1) To be referred to the Reporter or not? *No*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

S.L.JAIN
(S.L.JAIN)
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:522/96

the 27th day of ^{September} August 1999.

CORAM: Hon'ble Shri S.L.JAIN Member(J)

1. P.M. Subbiah
Retired Sr.Cook
Jagjeevanram Hospital
Bombay Central
Mumbai.
2. Murugan Subaiah
Residing at
Railway Quarter No.82/1
Western Railway Colony
Matunga Road
Mumbai.Applicants

By Advocate Shri G.S.Walia.

v/s.

1. Union of India, through
General Manager
Western Railway
Head Quarters Office
Churchgate,
Mumbai.
2. Divisional Railway Manager
Western Railway
Mumbai Division
Bombay Central
Mumbai.Respondents.

By Advocate Shri V.S.Masurkar.

...2...

8/8/99

:2:

ORDER

{Per Shri S.L.Jain Member(J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for an order/direction to the respondents to regularise the Railway quarter No.82/1 Matunga Road in the name of the applicant No.2 from 1.3.1995 to release D.C.R.G.of applicant No.1 with interest as per rules there upon from the date it became due i.e. 1.3.1995 till the actual payment is made, to issue post retirement passes to the applicant No.1 alongwith costs.

2. Application claiming the above said relief is filed on 3.6.1996. Applicant No.1, the retired employee was Senior Cook in Jagjeenanram Hospital at the time of superannuation on 28.2.1995, was occupying the type II quarter being class III employee quarter No.82/1 Matunga Road. The applicant's son Murugan Sibbiah -applicant No.2 was Khalasi -Class IV employee was permitted vide letter dated 6.4.1994 to share the said accommodation. The Estate Officer held that as applicant No.2 is entitled to type I Railway quarters on out of turn basis and thereby ordered the Commercial Department by letter dated 10.10.1996 to allot a type I Railway quarter to the applicant No.2 within four months.

S.L.Jain

On this point it may be noted that the applicant No.1 superannuated in February,94 whereas the applicant No.2 was regularised only in January 95. It is the eligibility of the applicant on the date of superannuation of applicant No.1 that has to be considered. Subsequent regularisation, therefore, does not help the applicant.

Considering all facts and circumstances we are of the view that the OA is liable to be rejected and is accordingly rejected so far as reliefs (a) & (b) are concerned. Regarding relief(c) it is a distinct relief for which applicant No.1 would be at liberty to explore departmental avenues and if he therefore feels aggrieved, approach the Tribunal if so advised. There would be no order as to costs.

6. The learned counsel for the applicant relied on Civil Appeal No.1103/93 arising out of S.L.P.(C) No.17685/93 Haresh Kumar Chhaganlal V/s Union of India and others which lays down the proposition that if a Government servant resides with his father before the latter reired from service, if he was in continuous service, he was entitled under the rules to be permitted out of turn allotment. On further perusal of the said order makes it clear that the Government servant was ordered to be reinstated in service for the purpose of regularisation and retirement benefits from 27.7.1985. The reinstatement from a particular date i.e. 27.5.1985⁰ was said to be a narrow and technical outlook.

JND/...5...

7. In OA 6/98 Shri Rajesh P. Patel and others V/s Union of India and others decided on 25.6.1998, The Hon'ble Vice Chairman Justice R.G.Vaidyanatha has held in para 11 of his order, "It is therefore seen that the Supreme Court has observed that if the condition mentioned in the Railway Board circular are complete then the employee is entitled to allotment of accommodation from the retirement of his post.

On perusal of the order I do not find that the point in dispute regarding eligibility of higher type of accommodation was considered. Hence the said order do not help the applicant.

8. In OA 1138/98 in the case of Vivekanand S.Gaikwad V/s Union of India and others decided on 5.8.1999, the Hon'ble Vice Chairman, Justice R.G.Vaidyanatha has held

The object of the Railway Rules is that if the father son are residing together at the time of retirement and if he has been granted permission for sharing accommodation, then the son must get the quarter on out of turn allotment to whichever quarter he is entitled to as per his status. It may be, if we go strictly and technically by the Rules. The learned counsel for the respondents may be right that the applicant's entitlement is only for Type I quarter. It is well settled that subsequentia justice must be done by Courts and

SL-81

Tribunals and not technical justice. It is also well settled that Courts and Tribunals should take notice of subsequent events and mould the reliefs accordingly. In view of the applicant's promotion on 21.6.1997 he is now entitled to Type II quarters. It is idle to say that applicant should vacate the Type II quarter and he must go and occupy Type I quarter and give one more application for allotment and wait for his turn of allotment of Type II quarter. If the object of the Railway Circular is borne in mind, I should do substantial justice between the parties without going to technicalities. I feel that in view of the subsequent event of applicant's promotion on 13.9.1996 he should be regularised in Type II quarter which is already in his possession, since many years before and after his appointment in 1991. It is too late in the day now to direct the applicant to vacate the quarter and go and occupy Type I quarter and then apply formerly for Type II quarter, that is not the intention of the Rule.

9.....Civil Appeal No. 3496/91 arising out of S1P No.357/91 is relied by the learned counsel for the applicant which is on the facts that order for sharing was passed two months before retirement while application for the same was pending for 1 1/2 years.

J.L.S/

10. In OA 1138/98 in the case of Vivekanand S.Gaikwad V/s Union of India and others , subsequent ^{evenis} ~~question~~ deserves a consideration and an extremely narrow view of the Rules should be avoided in such matters. A view ~~was~~ taken in OA 8/95 in the case of Surendrasingh J.Solanki and others V/s Union of India and others decided on 5.12.1995 is extremely narrow view in view of the judgement of the Apex Court in Civil Appeal No. 3496/91 arising out of SLP 357/91 deserves ^{no} ~~any~~ consideration.

11. The respondents have further relied on the order passed by the Tribunal in OA 6/98 Shri Rajesh P.Patel and others V/s Union of India and others decided on 25.6.1998 by Hon'ble Vice Chairman Shri R.G.Vaidyanatha for the proposition that relief of regularisation of accommodation and D.C.R.G. benefits are not consequential to each other and the present OA suffer with the Theory of misjoinder of parties and cause of action. In the present case applicant has sought the following reliefs:

a) This Hon'ble Tribunal will be pleased to order and direct respondents to regularise the said Railway quarter in the name of the applicant No.2 from 1.3.1995 and charge the normal rent accordingly.

b) This Tribunal will be pleased to order and direct respondents to release DCRG of Applicant No.1 with interest as per rules thereupon from the date it became due i.e. from 1.3.1995 till the date of [✓] actual payment.

8/81

- c) This Hon'ble Tribunal will be pleased to order and direct respondents to issue post retirement passes to the applicant No.1
- d) Any other or further orders to this Hon'ble Tribunal may deem necessary in the circumstances of the case may be passed.
- e) Cost of this application may be provided for.
- f) Joint application may be allowed to be filed.

12. The said reliefs are modified in rejoinder in para 7 and the claim made is entitled ^wto the Railway quarter or any equivalent type of Railway quarter.

13. The contention of misjoinder of parties and misjoinder of reliefs was dealt with in para 6 and 7 of the order and it has been held as under:

In my view the two reliefs are interdependent. However, if first applicant's prayer is rejected then the second applicant would not be entitled to gratuity. If the first applicant is granted the relief prayed for, the withholding the gratuity of the second applicant for not vacating the quarter does not arise. Since both the reliefs are interrelated and granting of relief to second applicant depends upon granting or

J.S. 1

refusal of the prayer of the first applicant. I hold that the joint application filed by the father and the son and the reliefs is perfectly maintainable. Point(i) is answered accordingly.

Hence the argument of the learned counsel for the respondents in this respect fails.

14. The learned counsel for the respondents relied on 1997 AIR SCW 1404 Amitabh Kumar and another Vs Director of Estate and another which lays down the proposition that unauthorised occupation after expiry of period of adhoc allotment -a liability to pay penal rent arises. On a careful consideration of the said authority I find that Adhoc Allotment Rules in respect of allotment of quarters to Government servants and memo issued No.12035 dated 9.11.1987 was subject of consideration. In the present case neither the Adhoc Allotment Rules nor the instructions as stated above is subject of consideration. Hence the said authority does not help the respondents.

15. The learned counsel for the respondents further relied on 1998(1) SLR 353 Harish Chander V.s Chandigarh and others. The proposition of law laid down is in respect of "Government Residential (Chandigarh Administration General Pool) Allotment Rules 1996 which is not the subject of consideration before me. Hence the said authority also does not help the respondents.

16. The learned counsel for the applicants relied on 1996 SCC (L&S) 521 Savita Samvedi (Ms) and another Vs. Union of India and others deals with gender discrimination has no bearing in the present case.

SCM

:10:

17. Applicant No.1 was occupying quarter No.82/1 Western Railway Colony, Matunga Road, Mumbai-400019 as SeniorCook in Jagjeevanram Hospital. Applicant No.2 is now posted as Ticket Collector and entitled to type II quarter. As the quarter occupied by applicant No.1 is of different department and applicant No.2 is working in different department, the situation has to be met out by following procedure as mentioned in the circular E-0/58/0 dated 5.5.1983 Exhibit F para 3 of the circular.

The issue has been examined and it has been decided that whenever a quarter is regularised in the name of a dependent of retired/deceased Railway servant, the first quarters of the same type falling vacant in the department where the dependent is working should be released to the concerned department in lieu of the quarter allotted to the dependent. To ensure this, it would be preferable if special notes are kept of such quarters so that balancing of such quarters is not lost sight of.

18. During the pendency of OA, applicant No.2 is promoted and posted as Ticket Collector 'Group C' employee, entitled to Type II Railway quarter. Earlier to it, he was 'Group D' employee and entitled to Type I Railway quarter, hence the Type II Railway quarter can be regularised in his name only from the date earliest when he was promoted and not earlier to it.

S.S.P.

...11...

:11:

19. In the result the result OA deserves to be allowed and is allowed. Quarter No.82/1, Western Railway Colony, Matunga Road, Mumbai-400019, be regularised in the name of applicant No.2, from the date when he is promoted as Ticket Collector 'Group C' employee, DCRG of applicant No. 1 be released alongwith interest at the rate of 12% per annum from 1.3.1995 till date of actual payment and post retirement passes be issued to applicant No.1. As applicant No 2 was not entitled to occupy the quarter, it is now ordered to regularised in the name of applicant No.2. It is ordered that parties to bear their own costs.

(S.L.JAIN)
(S.L.JAIN)

MEMBER(J)

NS