

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 762/99

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15.3.2000
Date of Decision :

A.M.Kale Applicant.

Shri P.A.Prabhakaran Advocate for the
Applicant.

VERSUS

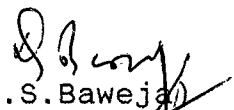
Union of India & Others, Respondents.

Shri V.S.Masurkar and Advocate for the
Shri R.K.Shetty Respondents.

CORAM :

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

- (i) To be referred to the Reporter or not ? 4
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.762/99

Dated this the 14/14 day of March, 2000.

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

Ashok M.Kale
MES-114062
Office of Chief Engineer
Navy Mumbai,
26, Assaye Building,
Colaba, Mumbai.

...Applicant

By Advocate Shri P.A.Prabhakaran

V/S.

1. Flag Officer Commanding-in-Chief,
Headquarters,
Western Naval Command
Mumbai.
Representing the Union of India.
2. Chief Engineer Navy Mumbai,
26, Assaye Building,
Colaba, Mumbai.
3. Commodore,
Naval Barracks,
INS Angre, S.B.S.Road,
Mumbai.
4. Commander,
Officer-in-Charge,
Naval Transport Pool,
Colaba, Mumbai.

... Respondents

By Advocates Shri V.S.Masurkar
for Respondents No. 1, 3 & 4
and Shri R.R.Shetty for Shri
R.K.Shetty for Respondent No.2.



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O R D E R

{Per : Shri D.S.Baweja, Member (A)}

The applicant while working under Respondent No. 2, Chief Engineer, Navy, Mumbai was allotted quarter No. T-12/6 in Talwar Camp Colaba as per order dated 2.6.1988 by the Respondent No. 1, Flag Officer, Commanding-in-Chief, Headquarters, Naval Command, Mumbai. As per moment order No.92 of April,1997 by Respondent No.2, the applicant was posted at Portblair under Chief Engineer Navy. As per extant rules, the retention of accommodation at Mumbai was permitted upto 30th June,1999, as per order dated 19.11.1997 by the Respondent No. 4, Commander, Naval transport Pool, Mumbai. The applicant reported back at Mumbai on 14.6.1999 after completion of tenure at Portblair. The applicant made a request for reallotment of the quarter to him. However, as per the letter dated 21.7.1999 from Respondent No. 4, it was advised to him that the allotment of the quarter in 1988 was temporary and applicant has no right to occupy the quarter after 30.6.1999. The applicant represented against the same on 30.7.1999. However, as per order dated 30.8.1999, the applicant has been asked to vacate the quarter within 10 days. Feeling aggrieved by this order, the present OA. has been filed on 7.9.1999 seeking the following reliefs :-

- (a) to set aside the order dated 30.8.1999.
- (b) to direct Respondent No. 3 to re-allot the same quarter in the name of the applicant.

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2. The Respondents No. 1,3 & 4 have filed the written statement. The respondents submit that the allotment of the quarter in 1988 was done on temporary basis with the undertaking that the same will be vacated whenever asked to do so. The quarter is now required for allotment to Naval Transport Pool employees who are waiting for allotment. In view of this, the applicant is not entitled for re-allotment of quarter. The applicant does not belong to the Navy Pool and he has to get the quarter from General pool for which he has to register his name with the Estate Manager. The applicant is employed under Army Unit (Chief Engineer Navy) and if at all, then the Respondent No. 2 can allot from the Army Pool of the married accommodation controlled by the Station Headquarters, Colaba, Mumbai.

3. Respondent No.2 has not filed any separate written statement. However, before the hearing the learned counsel for the Respondent No.2 stated that no separate written statement is proposed to be filed and Respondent No. 2 adopts the written statement of Respondents No. 1,3 & 4.

4. The applicant has filed rejoinder reply. While rebutting the contentions of the respondents, the applicant submits that applicant belongs to Military Engineering Services (MES) which serves Navy, Army and Air Force and belongs to category of Defence Civilians. Navy is therefore required to provide quarter to MES staff working for Navy out of Civilian quarters' pool.



4. The applicant also alleges discrimination in refusing re-allotment to the applicant as in some cases, re-allotment of the quarter has been done on the completion of tenure and two such specific instances have been cited. It is further stated that children of the applicant are studying and change of residence particularly in respect of his elder son will be detrimental at this juncture and therefore makes a prayer that he be allowed to continue in the quarter till the next academic session of year 2000-2001 to complete 10th standard of the elder son in case the applicant is not favoured with any other accommodation.

5. The Respondents No. 1,3 & 4 have filed the additional written statement to counter the averments made in the rejoinder reply and reiterating the stand taken in the written statement. It is stated that staff of MES who are working for Navy are not entitled for the allotment of the quarter from Naval, Civilian quarters' pool. The applicant has failed to register his name with Estate Manager in 1988 and has now only registered his name.

6. I have heard the arguments of Shri P.A.Prabhakaran, learned counsel for the applicant, Shri V.S.Masurkar, learned counsel for Respondents No. 1,3 & 4 and Shri R.K.Shetty, learned counsel for Respondent No. 2.

7. The controversy involved in the OA. is in a narrow compass. The applicant is a civilian employee of MES working under Chief Engineer Navy. The applicant was allotted quarter from the Naval pool as per the letter dated 2.6.1988 at Annexure-1. The applicant also gave an undertaking for this allotment which is brought on the record by the respondents with written statement. Based on these documents, the Respondents No. 1, 3 & 4 contend that the allotment of the quarter was as a temporary arrangement subject to being vacated when required for service requirements. It is further stated that the quarter is now required for the staff of the Transport pool as a number of drivers are waiting for the accommodation. With these submissions, Respondents No. 1, 3 and 4 have taken the stand that re-allotment of the quarter after completion of tenure at Portblair is not possible. The grounds taken on the other hand to meet with the stand of the respondents by the applicant are :- (a) MES is serving Army, Navy and Airforce and are part of Defence Civilians. There cannot be discrimination in the matter of allotment of quarters between Naval Civilians and MES civilians. (b) The period of retention of the house for posting at Portblair which was restricted upto 30.6.1999 has been extended for a period of ^{three}~~two~~ years as per the O.M. issued by Government of India based on 5th Pay Commission recommendations and the applicant is entitled for retention of the house beyond 30.6.1999.

After careful consideration of the rival contentions, I am not persuaded to accept the stand of the applicant. Firstly, the matter with regard to allotment of quarters to MES staff by

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Navy at par with navy Civilian staff is a matter of policy and is within the competence of the concerned authorities. The applicant has neither brought the relevant rules on the record nor the rules have been challenged. The plea of discrimination can be made only if the existing rules are challenged and the same are declared invalid. O.M. brought on record at Annexure-2 from pages 103 & 104 of C-61 (Swamy's Compendum of Government orders on Fifth Central Pay Commission report is ^{as} of no help to the applicant. Applicant's tenure was over before 30.6.1997 and he cannot get benefit of retention of house for the extended period.

8. The respondents have brought out that the applicant is entitled for the quarter from the general Pool and he has to register his name with the Estate Manager. This is also clear from the undertaking brought on the record with the written statement. There is no denial of this by the applicant. However, the applicant has not registered his name at any time in 1980 and as brought out by the respondents, ~~that~~ name has been registered now only after filing of the OA. From the allotment order dated 2.6.1988 and the undertaking given by the applicant, it is quite clear that the house was allotted as a temporary measure subject to being vacated when required by the Navy for service requirement. If the navy now requires quarters for thier own civilian staff who are waiting for the quarters, then the action to get the quarter vacated cannot be faulted with. In view of this, refusal to re-allot the house after completion of

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the tenure on the ground that the Navy Civilian staff of Transport Pool are waiting for quarters cannot be questioned by the applicant and seeking a legal remedy for the same. In the light of this fact situation, I am unable to find any merit in the OA.

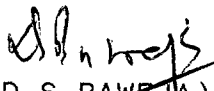
9. The applicant in the rejoinder reply has made a plea of discrimination stating that in two cited cases, the re-allotment had been granted after completion of the tenure period at Portblair. The applicant has not furnished the details of their original allotment orders. It is also not stated whether they were allotted quarters after the applicant. In the absence of these material details, the plea of discrimination cannot be looked at and therefore deserves to be rejected.

10. The applicant in the rejoinder has made a plea that at least the quarter may be allowed to be retained for the academic year of 2000-2001 to complete the 10th Standard of the elder son. Keeping in view the long stay of the applicant in the quarter under reference and to enable him to find alternative accommodation, I am inclined to allow this request for completion of studies upto 10th standard.

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11. In the result of the above, the OA. is without merit and the same is dismissed accordingly. However, it is provided that the applicant will be allowed to continue in the quarter under reference upto 31.3.2001. The applicant will vacate the quarter on 31.3.2001 without any further notice. Interim stay order dated 8.9.1999 stands modified accordingly. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)

mrj.