

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.210/2000

Friday, this the 15th Day of September, 2000

Shri A.B. Mishra Applicant.

(Applicant Shri G.S.Walia, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri S.C. Dhawan, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? Yes

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

(3) Library. No

B.N. Bahadur
Member (A)

sjk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.210/2000

DATED: Friday, this the 15th DAY OF SEPTEMBER, 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri A.B.Mishra
Chargeman "A", RF & P Office
Central Railway Workshop
Parel, Mumbai -400 012

Residing temporarily at
205, Greenath Dham Appts.
R.N.P.Park,
Bhayander (E)
Dist: Thane.

..... Applicant

(By Shri G.S. Walia, Advocate)

vs.

1. Union of India, through
The General Manager
Central Railway
Head Quarters Office
Mumbai C.S.T.
Mumbai 400 001.

2. The Chief Workshop Manager,
Central Railway,
Parel Workshop,
Parel,
Mumbai- 400 012.

Respondents

(By Shri S.C.Dhawan, Advocate)

ORDER

(Per: B.N.Bahadur, Member (A))

The Applicant in this case, Shri A.B.Mishra, seeks the reliefs for a direction to Respondents either to allot a Type III Railway Quarter to him, or, in the alternative, pay him House Rent Allowance at market price to the Applicant.

b.s

..2/-

2. The facts of the case, as relevant, and as brought out by the Applicant, are that that he had been duly registered for allotment of Type III Railway Quarter below one Shri M.M.Dutta in the Waiting List (copy appended at Ex. A.1). Before, however, his turn could come, he was removed from Service on 16.9.1995. The Applicant challenged his removal in O.A. 1008/96 and this O.A. was allowed vide judgement dated 16.6.1999 by the Tribunal. He was accordingly reinstated in Service vide Respondent's order dated 4.11.1999. The intervening period from 16.9.1995 to 4.11.1999 has been treated as one under suspension. Applicant further states that he is still under suspension, since a fresh Disciplinary Enquiry has been ordered against him (Ex.A.2).

3. The contention of the Applicant further, is that even his juniors have been allotted accommodation, and but for his removal he would also have been allotted accommodation. He claims that there is no Rule under which such allotment cannot be made during period of suspension. Applicant has clarified that he is receiving subsistence allowance and that some of the employees junior to him on Waiting List dated 21.9.1995 are again likely to be given accommodation ignoring his claims. It is with these grievances that the Applicant is before the Tribunal seeking the relief as described above.

4. The Respondents have filed a reply resisting the claim of the Applicant. It is averred that ever since 16.9.1995, when the Applicant was removed from Service by way of punishment after Enquiry, he ceased to be a Railway Employee. Hence, his name was removed from the Waiting List. He has not made a fresh Application for allotment of a Quarter after the setting aside of the Order of Removal by this Tribunal.



...3/-

No further right accrues to the Applicant in the present situation, except subsistence allowance and in any case his old seniority in the Waiting List cannot hold in the present state of his deemed suspension. No Type III or Type II Railway Quarters are vacant at Parel, either.

5. I have heard Learned Counsels on both sides. The learned Counsel for the Applicant, Shri G.S.Walia, argued the case at length taking me over the facts and averments in the Application, first. Apart from the reiteration of the grounds taken in the Application, learned Counsel argued that in the present situation of deemed suspension, the Applicant continues to be a Railway Servant. He continues to get subsistence allowance. Further there was no Rule which says that a person under suspension is barred from Govt. accommodation. He highlighted the point that Govt. servant's placed under Suspension continued to retain their accommodation. He sought to take support from the case decided by Supreme Court in the matter of *Regional Director, ESIS (1997 SCC L&S 1842)*. The other case cited in of applicant's case support by Learned Counsel was that of *Star
Shanti Builders vs. Narayan..[1991 SCC 520]*. He also referred to para 5 of the Guidelines for allotment of Railway Quarters in Parel Workshop to reiterate that allotment has to be strictly as per Registration Order.

6. Learned Counsel for the Respondents Shri S.C.Dhawan, also argued the case at length, and first took me up over the facts and contentions taken in the Written Statement of Respondents and first made the point that liberty was granted to Respondents by this Tribunal to conduct the Enquiry ahead and this is a technical reason for the quashing of the Order of Removal. The

...4/-



Applicant is under deemed suspension. He further argued that no right accrues for allotment of Railway Quarter, and that this was merely a welfare scheme. A house is allotted by Govt. so that its employees can discharge duties more efficiently. And since the applicant was not on duty this purpose did not exist in his case.

7. Shri Dhawan further made the point that the right to allotment of Railway Accommodation will accrue to the Applicant only on exoneration. He also contended that the housing attached to the Parel Workshop is allotted to the Workshop employees with a view to ensuring that such employees are kept close by, since this is an essential service. In any case, no quarters are vacant and guidelines cannot be quoted as if they were statutory Rules.

8. I have seen all the papers in this case including the Rejoinder and Case Laws cited. The arguments made by learned Counsels on both sides have been carefully considered.

9. In the first place, I note that it is true that on his removal from service the Applicant had at that time lost all rights and even name could not be considered for allotment of Quarters. Now, as per O.A. decided by this Bench of the Tribunal dated 16.6.1999, No.1008/96 his removal was set aside. What I have to examine here is the question as to what is the effect of the Order of the Tribunal made in the aforesaid O.A. vis-a-vis the relief sought for allotment Railway Quarters. As a result of the decision of this Tribunal, the applicant has been reinstated, and has been placed on deemed suspension. He is not physically in service but is well and truly under suspension. He is also admittedly being granted a subsistence allowance.



10. The Respondents have been provided liberty to conduct the enquiry afresh in accordance with the Orders of the Tribunal. But irrespective of what the decision in the further Enquiry may be, it is true that the master-servant relationship has been established for the time being until terminated by a future Order. In this regard, we have to be appropriately guided by the ratio of the decision taken in the case of *Regional Director ESIS, vs. Popular Automobiles [1997 SCC L&S 1842]* cited by the Learned Counsel for the Applicant. It is held that Employer-Employee relationship is not extinguished during suspension. Therefore, an employee will not lose the right to consideration for allotment of Govt. accommodation during suspension. It must, therefore, follow that the Applicant will need to be considered in accordance with the date on which he originally applied.

11. Learned Counsel for the Respondent had argued that the entitlement to Govt. Housing did not come as a right and that this is a Welfare Scheme. True as this may be, it cannot be an argument that any action of allotment of accommodation cannot be questioned or that the allotment of accommodation process is not subservient to any Rules or principles of natural justice. Hence, this argument about the entitlement deemed only a welfare measure cannot be allowed to operate against the Applicant's claims. It is also not acceptable, as argued by Learned Counsel for Respondents that the right to allotment of accommodation will accrue to the Applicant only on his exoneration. It is to be noted here that in the *Order in D.A. No.1008/96* delivered in 16.6.1999, the Applicant has been ordered to be reinstated and also declared to be entitled to full backwages from the date of

.6/-



removal from service till the date of reinstatement. It cannot be said that this is of no consequence, vis-a-vis the claim for the quarters.

12. In view of the above discussions, the Applicant cannot be denied his entitlement to eligibility for allotment of Railway Quarters as per his Application made initially and his Registration at that stage. The O.A. therefore, has substance and Applicant deserves to be provided relief.

13. The O.A. is therefore, hereby allowed. It is held that the Applicant is eligible for the allotment of Railway Quarters, as per normal Rules. He should be provided Quarters as per priority available to him with reference to the priority date of original Application made by him before his dismissal came about. There will be no orders as to costs.

B.N.Bahadur

(B.N.Bahadur) 15/9/2000.

Member (A)

sjk

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P. 26/2001 TN
ORIGINAL APPLICATION NO:210/2000

DATED:8.6.2001

The applicant is a Railway employee and was removed from service in disciplinary proceedings. Subsequently he was re-instated by an order of this Tribunal dated 16.6.1999 in OA 1008/86. On being re-instated the applicant moved the respondents for allotment of Railway quarter on the basis of original date of registration. As the original date of registration was not acceptable to the respondents, the applicant came before this Tribunal in OA 210/2000. The OA was disposed of with the following observations.

"The OA is therefore, hereby allowed. It is held that the Applicant is eligible for allotment of Railway Quarters as per normal Rules. He should be provided quarters as per priority available to him with reference to the priority date of original Application made by him before his dismissal came about"

The applicant got information that three Type III quarters are vacant at Parel. The applicant made a representation for allotment of one of the quarter. As the applicant was not allotted the quarter despite being in priority, he has moved this application on the ground that there is wilful dis-obedience of the order passed in OA 210/2000 and therefore proper action be taken.

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taken against the respondents by punishing them in accordance with law. Respondent No. 3 has filed his reply to the application and has stated in para 2 that the respondents have complied with the orders of this Tribunal by allotting the Railway quarter No. RB/III/116/10 at Kurla, but as that quarter was not vacant it was cancelled on 9.5.2001 and another quarter No.RB/III/116/7 at Kurla vide order No.E5/228/Qtr. dated 9.5.2001. The learned counsel for the applicant also conceded that the applicant has been allotted quarter and he has no grievance now. Considering the circumstances and the fact that the order of the Tribunal had been complied by the respondents, though belatedly, we do not consider it to be a fit case to take action against the respondents. Notice issued to the respondents is dis-charged. C.P. stand disposed of accordingly.

B.Bahadur

(B.N.Bahadur)
M(A)

B.Dikshit

(B.Dikshit)
VC

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