

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION OA 879/2000

DATE OF DECISION: 11th Feb, 2002

All India D.G.O.A. Group B Gazetted Officers Applicant.
Association through General Secretary.

Shri s.P. Saxena Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri R.R. Shetty for Shri R.K. Shetty. Advocate for
Respondents

CORAM

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 other Benches of the Tribunal? *no*
- (3) Library. *yes*

S.L.Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:879/2000

the 11th day of FEBRUARY 2002

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

1. All India D.G.Q.A. Group B
Gazetted Officers Association
AUNDH Chapter, CQAE(EE)
AUNDH CAMP, Poona
Through its General Secretary
Shri K. Vidyadharan

2. K. Vidyadharan Foreman
(Group B Officer) CQAE (EE)
AUNDH CAMP, Poona

3. G.D. Mittal, Foreman
(Group B Officer) CQAE (EE)
AUNDH CAMP, Poona.

...Applicants.

By Advocate Shri S.P. Saxena

V/s

1. Union of India through
The Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Director General of
Quality Assurance, DGQA
(ADM/RMD/CW)
Ministry of Defence
New Delhi.

3. The Controller
CQAE (EE)
AUNDH CAMP, Poona.

...Respondents

By Advocate Shri R.R. Shetty for Shri R.K. Shetty.

O R D E R

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

This is an application under Section 19 of the Administrative Tribunal's Act 1985 for the declaration that the non-consideration of the applicants for allotment of Type IV quarters by Respondent No.3 is illegal and contrary to Rules with

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a direction to the same to consider the applicant's case for allotment of Type IV quarters on their merit and if found eligible they should be allotted type IV quarters as and when the same is available or falls vacant.

2. Type I, II, III, and IV and V etc. of the Government quarters constructed by respondents in the campus of CQAE (E) are available as per the eligibility for appropriate type of quarter as per Rules, called " Rules for Allotment of Residential Accommodation to Civilians serving in DGQA Establishments at stations other than Delhi and New Delhi Area 1995". Applicant No.2 and 3 who are eligible for type IV quarter, applied for the same vide application dated 11.3.1999 (Exhibit A-2) and 10.3.1999 *respectively* followed by applicant No.2's reminder dated 14.6.1999, representation dated 4.8.1999 applicant No.3's representation dated 9.8.1999 which were replied by respondent No.3 by letter dated 20.8.1999.

3. The reply is that no action can be taken on their application in view of the rejection of Writ Petition No. 2797/84 filed by L.K. Sharma V/s Union of India. The copy of the said decision was not shown or made available to the applicants in the office by respondent No.3 even after their demand.

4. Applicant No.2 submitted an application dated 24.8.1999 and respondent No.3 replied that copy of the Court Judgement is not available in their office vide their letter dated 15.9.1999.

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5. Applicant No.2 and 3, not satisfied with the reply of respondent No.3 approached respondent No.2 by applications dated 28.9.1999, 20.11.1999, 20.1.2000, 16.3.2000 and 20.7.2000 and 6.10.1999 (only by applicant No.2), but no reply was received. Agrieved by the same applicant No. 2 and 3 filed the OA ^{adding} including applicant No.1 " All India DGQA, Group B Gazetted Officers Association, Aundh Chapter, CQAE(EE), Pune through its General Secretary.

6. The defence raised by the respondents is that type IV quarters has been specifically constructed for the JSO and the applicants here are not JSO hence there is no question of considering the case of the applicants for Type IV quarters.

7. The applicants are residing in type III quarters which are allotted to them.

8. The respondents have placed on record the copy of Writ Petition No. 2797/84 filed by Lalit Kumar Sharma v/s Union of India and others but not the order / judgement passed therein. Even during the course of the arguments both the parties were asked to obtain the copy from Hon'ble High Court of Bombay and place the same before the Tribunal but none of the parties placed the said order / judgement on the record.

9. SRO IE Gazette Notification regarding DGQA quarter allotment Rules 1995 clearly states that the said Rules do ~~not~~ apply to the residential quarters specifically constructed for Civilian in Defence Services. The said rules are in force since 1995.

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10. The defence raised by the respondents is that the said type IV quarters are not constructed specifically for Civilian in Defence service. As such the matter was adjourned from time to time to place on record the documents, which are in possession of the respondents that type IV quarters has been specifically construction for the JSO. It is true that the applicants are not JSO. The respondents have placed^m on record the proceedings of RECCE SITING CUM COSTING BOARD. On careful perusal of the same it is suffice to mention that regarding[!] type IV quarters which are in existence, there is nothing on record which suggest that the said quarters are specifically constructed for Civilian in Defence service or they are constructed for JSOs. Thus it is a case where neither the applicants have placed on record the facts which suggests that type of quarters for which they have filled the applications for allotment were specifically constructed for Civilian in Defence service.

11. It is suffice to state that the applicants have not pleaded even in their OA that type IV quarters for^{which} they have applied are specifically constructed for Civilian in Defence Service.

12. In such circumstances the ^{primary} burden of proof for providing the said fact lies on the applicants that they are entitled for the said relief. It is true that respondents have also failed to produce the record which may lead the Tribunal to draw an adverse inference against the respondents but adverse inference can be drawn only when it is established that the respondents are in possession of such record. In such circumstances the applicants who failed to dis-charge the said burden of proof are not entitled to any relief.

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13. In the result the OA has no merit. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

AS?

(S.L.Jain)
Member(J)

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dt. 11.7.2002
Order/Judgement despatched
to Applicant/Respondent (s)
on 15.2.2002.

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