

(12)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**BOMBAY BENCH**

O.A. No. 703/90 198  
~~xxxxxx~~

DATE OF DECISION 15th October 1991

NAVAL ARMAMENT DEPOT ENGINEERING SUPERVISORS' ASSOCIATION & ONE ANOTHER Petitioner

MR. D V GANGAL Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ANOTHER Respondent

MR. V S MASURKAR Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

MGIPRRND-12 CAT/86-3-12-86-15,000

*U*  
( U C SRIVASTAVA )  
Vice Chairman

Erik/

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PREScot ROAD; BOMBAY-400001

O.A. No.703/90

1. Naval Armament Depot  
Engineering Supervisors'  
Association - through  
Shri G. Jeyakumar  
President  
having their office at  
102/1 NAD Quarters  
NAD Karanja  
AT & POST KARANJA (URAN)  
Dist. Raigad  
P.I.N. 400704
2. Shri M Kumar  
Foreman of Factory  
N.A.D. - Karanja  
Quarter No.131/3  
Karanja (Uran)  
Dist. Raigad-400704

..Applicants

V/s.

1. Union of India  
through Flag Officer  
Commanding in Chief  
Western Naval Command  
Shahid Bhagatsingh Road  
Bombay 400023
2. Senior Officer  
Commodore Bashin  
AT & POST KARANJA (URAN)  
Dist. Raigad-400704

..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.  
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE

Mr. D V Gangal  
Advocate  
for the applicants

Mr. V S Masurkar  
Counsel  
for the respondents

JUDGMENT:  
(PER: U C Srivastava, Vice Chairman)

DATED: 15/10/91

This is an application by one M. Kumar  
Foreman of Factory, Naval Armament Depot, Western  
Naval Command along with Naval Armament Depot  
Engineering Supervisors Association through its  
President G. Jeyakumar, who is also an employee  
have approached the tribunal praying that the seniority

position for Type-III quarter published in temporary establishment order dated 1.1.1989 and 24.9.1989 is illegal, ultra vires and arbitrary and be quashed, and respondents be directed to fix seniority for Type-III quarters depending upon continuous officiation by an employee, in a pay range of Rs.1500 in the order of crossing the said pay range and it be directed that the respondents should follow the judgment of the Central Administrative Tribunal, New Bombay Bench dated 21.3.1990. By way of an amendment they have prayed for quashing and setting aside and declaring the SRO 308 dated 17.10.1978 and permanent establishment order dated 8.10.982 as ultravirous and illegal. Thus they have prayed for quashing of the statutory rules in which the criteria for allotment of the quarters has been laid down.

The dispute is in respect of Type-III quarters which are allotted to Engineering Supervisors. It has been stated that the employees become eligible for Type-III quarters if they cross the pay limit of Rs.1500. The grievance is that employees who crossed the pay limit recently or any time in their career, are granted the benefit of seniority from the date of appointment, for example if an employee who is appointed in the year 1960 who gets promotion as Foreman of Factory and gets basic pay beyond Rs.1500 then although he is not promoted in 1990 he will be given seniority position for the type-III quarters from 1960, another employee who is promoted to the post of Upper Division Clerk say in 1982 and has crossed Rs.1500 in 1982 cannot be relegated in the position of seniority to an employee who gets promotion to the post of Foreman of Factory or who crosses the pay range of Rs.1500 in 1990. In view of such anomaly some employees and the union of the Machine Tool Prototype Factory,

Ambernath approached this Tribunal and the Tribunal vide its judgment dated 21.3.1990 held that the criterion of eligibility will continue to be the same criterion viz., the date on which an employee enters at the minimum of the pay range, but seniority for purpose of allotment must be drawn on the criteria contained in the letters referred to above after excluding the criterion of total length of regular service. In other words the seniority should be fixed on the basis of the length of service within the relevant pay range. Where the length of service within the pay range is equal seniority should be fixed on the basis of higher pay. In cases of equal seniority despite these factors, seniority may be fixed on other relevant criteria which may be applicable equally to all the persons within the same pay range as may be determined by the Director General of Ordnance Factories. One such criteria adopted in the past including the impugned list dated 4.1.1988 is the date of priority on date of birth. The Tribunal quashed the seniority/priority list of 4.1.1988 but at the same time directed that the allotment already made in favour of persons at Sr.No. 1 to 19 shall not be disturbed, and the opposite party shall prepare a fresh list of allotment of quarters in the light of the observations made in the body of the judgment, particularly paras 40 and 41. The Tribunal in that same case has noticed that there was no fixed criteria was laid down in the matter of allotment and the criteria has been changed from <sup>time</sup> to time. The Tribunal also noticed that there was no <sup>any</sup> statutory rule in this regard. In this background the Tribunal gave its decision referred to above and quashed the seniority based <sup>changed</sup> on the criteria which was challenged before the Tribunal in the afore mentioned case.

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Obviously because of paucity of accommodation for all the employees belonging to every category accommodation cannot be allotted at one and the same time. The allotment of quarters can be made as and when available for allotment and for allotting the quarters some criteria that is why has to be laid down and the criteria has been laid down as to how the priority has to be maintained or seniority has to be given in the matter of allotment of quarters. As the statutory rules framed under Article 309 of Constitution of India are not immune from challenging, but the same can be challenged on the ground of <sup>being</sup> violative <sup>and 19 of the</sup> of Article 14 of the Constitution of India or ~~that they are arbitrary.~~ As has been observed in the case of R. Prabha Devi & Others V. Government of India, Ministry of Personnel & Training, Administrative Reforms & Ors. Civil Appeal Nos.2040-2042 of 1987 decided on 8-3-1988 in which what was laid down earlier has been restated in the following words. In the said case the scheme of seniority of employees viz., direct recruits and promotees was dealt with. In the said case they laid down that the rule making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. In this connection reference may be made to the case of Ganga Ram V. Union of India, (1970) II S.C.W.R.221(224) - Mere production of inequality by the operation of such rules is not enough to attract the constitutional inhibition, provided the classification is reasonable, and founded on intelligible differentia which bear a reasonable relation to the object sought to be achieved. In the case of Govind V. Chief Controller, A.1967 SC 849 - Except where the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable.

The Tribunal in that case noticed that there was no fixed criteria which was laid down till then and the criteria has been changed from time to time. The Tribunal also noticed that there was no statutory rules framed in this behalf. In this background the Tribunal give its decision referred to above and quashed the seniority list on the matter of allotment of quarters based on <sup>changed</sup> the criteria which was challenged before the Tribunal in the aforementioned case.

The respondents have pleaded that as per para 2(i) of SRO 308, the priority date of an officer in relation to Type 'C' accommodation is the date from which the officer has been continuously in service under the Central Government, and based on SRO the para 13 of Permanent Establishment order No.29/82 is issued which says that the seniority in the roster of the individual in respect of Type C accommodation will be date from which the individual has been continuously in Central Government service, including the period of foreign service. The eligibility for type C accommodation is as laid down in para 4 of SRO 308 and the employee becomes eligible for type C accommodation when he starts drawing his pay within the pay range of Rs.500-990 (Pre revised)/Rs.1500-2800 (Revised). Therefore, an individual can become eligible for type C accommodation when he starts drawing pay of Rs.500 (pre-revised) but the seniority in the roster will be determined from the date of his continuous service in the Central Government. Thus the respondents have pleaded that the allotment of type-III accommodation is as per statutory rules and SRO 308 issued by the Government of India under Article 309 of the Constitution of India, and under this SRO priority date for allotment of type B, C & D residences is the date from which the officer is on continuous service under Central Government shall be the priority date. The said rule provides as

under:

Type of Residence      Category of Officer of his monthly emoluments as on the first day of the allotment of year in which the allotment is made.

- A      Upto Rs.259/- \*
- B      Rs.260 to Rs.499/-
- C      Rs.500 to Rs.999/-
- D      Rs.1000 to 1499/-
- E      Rs.1500 and above

\* Pre-revised scales

This SRO was issued on 17-10-1978 and it seems this SRO was not brought to the notice of the Tribunal earlier and that is why the Tribunal had observed that there are not statutory rules in this behalf. This SRO and permanent order have been challenged by the applicants on the ground that the note to SRO is to the effect that while granting a quarter the previous continuous service would be counted is absurd as the period of services in the relevant pay range has to be counted and not the period of service in the last lower grade. Since it has been once fixed and decided that the scale of pay would be the deciding factor in allotting a quarter it would be quite contrary to consider the entire previous service including the service in the last lower grade. The SRO and the permanent Establishment order are ultravirous and against public policy. During the course of arguments it was contended that the same is violative of Article 14 of the constitution of India. The SRO 308 which is framed under Article 309 of the Constitution of India residences have been classified and the criteria of allotment of residences has been provided. Based on the SRO 308 the Naval Armament Depot issued under its authority provides for seniority of individual for allotment of quarters in para 13, a reference to which has already been made.

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Looking from this angle obviously there is no question of fundamental right involved in this case but the question is whether the criteria/laid down is unreasonable or arbitrary. Obviously some criteria has to be laid down and the criteria laid down in the rules and the permanent establishment order framed under this authority cannot be said to be unreasonable or arbitrary as it has given due effect to the seniority and length of service. Preference is given to a person who is in continuous service for several years and the moment he enters/a particular date he gets right in the matter of allotment of quarters on those who enter the service thereafter and the criteria cannot be said to be unreasonable or arbitrary. But the same can be challenged to be unreasonable if not arbitrary, as the length of service would go by allotment of quarters as one who is waiting for his turn to come for longer years is deprived of accommodation in preference to a new comer. In our opinion the criteria so laid down is not unreasonable or arbitrary and accordingly the SR0308 and the Permanent Establishment order cannot be held to be illegal or violative of against public policy or as arbitrary and unreasonable.

In the circumstances the application deserves to be dismissed and accordingly the same is dismissed. However, we make it clear that if as a result of dismissal of this application if some persons are to vacate the quarters reasonable time of say at least 3 months should be given to them for vacating the premises. There would be no order as to costs.

M.Y. PRIOLKAR  
MEMBER (A)

U.C. SRIVASTAVA  
VICE CHAIRMAN

15-10-91