

(47)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

[REDACTED]
[REDACTED] BOMBAY BENCH

O.A. No. 660/91
~~Tax No.~~

198

DATE OF DECISION 1.6.92

Shri Dinesh Kumar Dube Petitioner
Shri Om Prakash Dube

Shri G.R. Menghani Advocate for the Petitioner(s)

Versus

Union of India through the Respondent
General Manager, Central Rly.
and two others.

Shri P.R. Pai Advocate for the Respondent(s)

CORAM :

The Hon'ble ~~Mr.~~ Ms. USHA SAVARA, Member (A)-

The Hon'ble Mr.

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

No

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

Usha Savara
(USHA SAVARA) 1.6.92
MEMBER (A)

(88)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 660/91

Shri Dinesh Kumar Dube.

Shri Om Prakash Dube.

... Applicants

V/s

Union of India through the
General Manager, Central Railway
Bombay VT and two others.

... Respondents.

Coram: Hon'ble Ms. Usha Savara, Member (A)

Appearance:

Shri G.R. Menghani for
the applicants.

Shri P.R. Pai for
the respondents.

JUDGEMENT

Dated:

¶ Per Ms. Usha Savara, Member (A) ¶

The Applicant No.1 is the son of applicant No.2, and the application has been filed praying for a direction to the respondents to allot to applicant No.1 a quarter of the type to which he is entitled, on out of turn basis, in terms of Railway Board's letter dated 25.6.66 (Ex.A), to direct the respondents not to evict the applicant from quarter No. F-9, Parel and to charge rent in accordance with rules from applicant No.1 and to quash the eviction order passed on 17.1.91. It is also prayed that all terminal benefits be released to applicant No.2 including free railway passes.

Shri Om Prakash Dube retired from service as Asstt. Security Commissioner, Central Railway on 28.2.89. He had been allotted quarter No. F-9, at Parel. Shri Dinesh Kumar Dube was living with his father and having the railway accommodation of his father. He had been working ~~xxx~~ as Khalasi in the Fitting shop since January '84. He requested the A.C.M.E. for registering his name for allotment of quarter on father- to- son basis and to stop payment of HRA to him by letter dated 1.3.89, that is

immediately after retirement of his father. He mentioned therein an application dated 4.10.88, but no copy of that application has been annexed. Applicant No.1 made another application on 2.11.89 for allotment of quarter on the ground of his mother being heart patient and his younger brother having had open heart surgery, and also, in view of the fact that he himself was a handicapped person- being deaf and dumb(Annex. D). The Estate Officer No.2 passed eviction order against the applicant/ against which an appeal was preferred in the city Civil Court, but the same was dismissed directing the respondents to inform the son about the decision of his representation and granting him one month's time to vacate the quarter. He was informed about the decision of the respondents by their letter dated 5.9-91, that his representation had been rejected in July 1990 since he had been drawing HRA till the date of retirement of the applicant No.2, which disentitles him to allotment of a quarter according to the rules.

The facts of the case are not disputed. There is no doubt that Shri Om Prakash Dube, who was the original allottee of Quarter No.F 9, retired on 28.2.89. The first application of Dinesh Kumar was allegedly made on 1.3.89, but the respondents deny receiving it. There is no doubt, and it is not denied that applicant no.1 has been in receipt of HRA, all along; even after he received permission for sharing accommodation, he failed to inform his Controlling Authority to stop payment of HRA. It is also not denied that the applicant No.1 is not entitled to this type of accommodation, and he is eligible for a lower type of quarter according to his status. Shri Menghani learned counsel for the applicants prayed that the applicant be allowed to continue in this quarter and the respondents be directed to allot him a quarter of the type he is entitled to considering the fact that the applicant No.1 is handicapped and both his mother and his brother are

(10)

heart patients. He also offered to refund the entire amount of HRA that has been paid to him. He further prayed that the applicant be not treated as unauthorised offupant and penal rent be not charged for the last three years as that would place an unbearable burden upon the applicant. Finally, he prayed that the terminal benefits alongwith free railway passes be released. to applicant No.2.

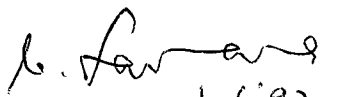
Shri P.R. Pai , learned counsel vehemently ~~contested~~ the applicant's claim. He clarified that the Railway quarter in question belonged to the R.P.F. Pool, whereas the applicant No.1 was working under Chief Works Manager, Matunga. Therefore, he was not entitled to continue in the quarter. Besides, the applicant had drawn HRA even after he received permission to share accommodation. The letter dated 1.3.89 had never been received by the respondents, but the learned counsel could not produce the relevant records in support of this claim despite various opportunities having been given for this purpose. In view of this, an adverse inference has to be drawn and the benefit of doubt has to be given to the applicant No.1.

Taking into consideration the peculiar circumstances of the case, I am constrained to quash the order of eviction dated 17.1.91. The respondents are directed to allot ~~the~~ ^{to} the applicant a quarter of his entitled type withingⁱⁿ three months, but the applicant will vacate the present quarter as soon as he is allotted the quarter to which he is entitled. Though the applicant has been continuing to stay in the quarter because of the interim order dated 8.10.91, there was no order regarding the charges to be recovered from him. Accordingly to prayer 'C' of the relief clause, it was prayed by the applicant that charges be



recovered from the salary of the applicant No.1 in accordance with rules. Since the quarter was allotted to applicant No.2, and he was responsible for paying the charges, I think, it would be fit and proper that the charges be recovered from his terminal benefits in accordance with the rules, and the balance be paid to him within 3 months. The respondents will also release the post retirement railway passes to the applicant No.2 as it has been held by the Full Bench Judgement in the case of Wazir Chand Vs. U.O.I. & ors. that disallowing of one set of post retirement passes for every month of unauthorised retention of railway quarter is unwarranted. Since applicant No.1 has been staying with applicant No.2 even after he was employed, the entire HRA paid to him will be recovered by the respondents.

With these directions, the application is disposed of finally with no order as to costs.


(USHA SAVARA)
MEMBER (A)

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