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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1340/92

Transfer Application No:

DATE OF DECISION 15-10-93

Shri V.J.Chandekar Petitioner
Kum. Milka Victor Chandekar

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India through Respondent
General Manager C.Rly Bombay

Shri S.C.Dhawan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K.Verma, Member (A)

The Hon'ble Shri

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 ?

N.K.Verma
(N.K.Verma)
Member(A)

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(10)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.1340/92

V.J.Chandekar

Kum.Milka Victor
Chandekar

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Applicants

vs

Union of India
through General Mnager
C.Rly Bombay VT.

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Respondents.

Coram: Hon'ble Shri N.K.Verma, Member(A)

Appearance:

Shri G.S.Walia for the
applicant.

Shri S.C.Dhawan for the
respondents.

Dated: 15-10-93

Judgement
(Per: Shri N.K.Verma, Member(A))

In this O.A. the applicant Shri V.J.Chandekar and his daughter Kum.Milka Victor Chandekar have prayed for quashing of the impugned orders dated 20-3-92 and 30-11-92 under which the Chief Works Manager Matunga had coveyed that the applicant's request for transfer of the railway quarter to his daughter cannot be agreed to and the eviction proceedings started thereafter by the Senior Divisional Engineer Estate Officer, Central Railway Bombay V.T. They also prayed for directions to the respondents to allot the railway quarter No.RB/II/126/14 at Matunga, to the applicants, as an interim measure, ~~have~~ requested for restraining the respondents to not to evict the applicant from the railway quarter. The O.A. was heard on 29-12-92 for admission and an interim order directing the maintenance of status-quo was also issued on that date.

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The matter was admitted on 27-4-93 after a written reply was filed, the applicant counsel wished to file a rejoinder for which he was given 4 weeks time. The interim order was continued till the date of final hearing which was listed for 10-6-93. The hearing got adjourned on that date and subsequent dates on the basis of mutual consent of the counsels for both sides was fixed for 24-9-93.

2. The counsel for the applicant did not file any rejoinder although he had been given permission to do so and had plenty of time available to enable him to do so. The matter was taken up for hearing when ~~counsel for both~~ the parties made submissions at length. However before considering his arguments, learned counsel for the applicant requested short adjournment to enable him to produce authority and rulings for supporting his arguments and some judgements of other Benches. When the case was finally heard on 30-9-93, the learned counsel for the applicant submitted that since earlier submission was not to be treated as "part heard" as per the order dated 24-9-93 he made the request that case be transferred to a Division Bench. However, the learned counsel for the respondent Shri S.C.Dhawan submitted that the case was heard at length on 24-9-93 and a short adjournment was permitted only to enable Shri Walia, the learned counsel for the applicant to bring some more rulings supporting his arguments and also some judgements of other Benches. This position was reiterated during the hearing in the forenoon of 30-9-93 when the learned counsel was directed to submit further representation failing which ~~the~~ the case will be decided on its merits. Shri Walia on his part denied the recordings of the court proceedings as made on the forenoon of 30-9-93. Subsequently in the afternoon he submitted a written request that the matter may be transferred to a Division Bench as it also

involved interpretation of Article 14 and 16 of the Constitution of India and therefore a single Member Bench did not have jurisdiction in this regard. He also reiterated that the matter was listed for final hearing and since it was not a part heard case, he had rightful opportunity of having the case transferred to a Division Bench as per the orders of the Hon'ble Chairman issued on 18 Dec.1991. He also quoted the Hon'ble Supreme Court judgement dated 9-2-93 reported in 1993(2) SCC P.162 in case of Union of India vs Harnam Singh wherein the Hon'ble S.C. had inter-alia observed that "Ordinarily, keeping in view the judgement of this Court in Amulya Chandra Kalita's case (1991(1) SCC 181) (supra), we should have remanded the case to the Tribunal for a fresh disposal because of the fact that the order of the Tribunal was rendered by only one member or to have awaited the decision of some cases pending in this Court in which the validity of the order passed by single member of the Tribunal is under consideration but since we have ourselves looked into all the facts and circumstances of the case and given an interpretation to Note 5 to FR 56(m), we do not consider it expedient to adopt either of these courses. Shri Walia strongly tried to impress that in view of these observations of Hon'ble Supremest Court Single Meber Bench has no jurisdiction in the matter as it involves interpretation of the Articles 14 and 16 of the Constitution of India and the Tribunal should await the decision of the Hon'ble S.C. regarding validity of constitution of Single Member Bench. He prayed before the Single Member Bench to transferring the matter to a Division Bench

Constitution under Article 14 and 16 was involved in this O.A. nor the Bench is adjudicating on the validity of any statutory provisions the learned counsel for the applicant could not get any support from the CAT ACT 1985. Applicants have appealed against the operation of impugned order and prayed for directions to the respondents to allot a railway quarter. At no time had they challenged the validity of the Rules connected with the operation of the impugned order.

(ii) As regards the point about the jurisdiction of the Single Member Bench to adjudicate on this matter, this was never moved by the applicant in this application or by the learned counsel for the applicants during the arguments and submission made before the matter was admitted or thereafter. The learned counsel for the applicants submitted to the jurisdiction, power and authority of the Single Member Bench and also obtained interim relief by way of restricting the respondent from evicting the applicant from the said quarter till the final hearing. Challenging the jurisdiction, and authority of the Single Member Bench at this stage is unwarranted and unsupported by any provisions of the AT Act.

(iii) As regards transfer of the case at this stage when final hearing had already commenced before the Bench on an earlier date the question did not arise. As per sub-para 2 of the order of Dec.18,1991 it is open to the either party to submit to the Single Member Bench before the matter is taken up for admission or for final hearing so that the matter may be placed before the Bench of two Member. If such a request is made at the outset, the Single Member can direct the case to be placed before the appropriate Bench. Once the case is admitted, no such request shall be entertained at any subsequent stage of the proceedings for admission or for final hearing as the case may be.

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for final hearing and case may not be disposed of by the Single Bench of the Tribunal. During his submissions he has also cited Hon'ble S.C.judgement quoted in AIR 1954 SC P. 340 followed by another judgement of SC in AIR 1962 S.C. 1621, and another judgement of the S.C. AIR 1978 P. 22.

3. (i) Learned counsel for the respondent Shri S.C.Dhawan contradicted the arguments made by the counsel for the applicant that the case was not part heard as it was posted on 24-9-93 for final hearing. He averred that the arguments in this case were heard for more than an hour and at considerable length and the only reason that it was given short adjournment was to enable learned counsel for the applicant to produce some rulings to support his arguments and also certain judgments of the other Benches in this regard. As for the jurisdiction of the Single Bench to hear such cases he quoted orders of the Hon'ble Chairman issued in 1988 under which it was decided that Members of the CAT were authorised as a Bench consisting of Single Member to exercise the jurisdiction any authority of the Tribunal in such cases as specified in that. The cases regarding allotment and eviction from the Government addommodation was included in the list of Single Bench Member to exercise jurisdiction and power and authority of the Tribunal. Subsequent order of the Hon'ble Chairman Dec.18,1991 permitted Members of the CAT functioning as a Bench of a Single Member jurisdiction power and the authority of the Tribunal excepting in cases which involved of any statutory provision or interpretation of any of the provision of the Constitution. This does not operate against the jurisdiction and power and authority of the Single Member Bench of the Tribunal. As no question of interpretation or any provision of the

Explanation: ① "The party not making the request at the beginning shall not be precluded from making such request when the case is taken up for final hearing"

4. Having gone through the pleadings and arguments carefully I have come to the inescapable conclusion that the matter was listed for final hearing on 24-9-93 when both parties, applicant by Shri Walia and respondents by Shri S.C.Dhawan were present. The order sheet says " The applicant's advocate prays for some time to bring forth the Rulings to support his argument and also some Judgements of other Benches.

The case is adjourned to 30.9.93. The interim order to continue till the next hearing."

The applicant's advocate had prayed for some more time to bring forth ruling to support his arguments which had been already made before the Bench on 24-9-93. He wanted to bring some judgements of other Benches to support his argument. The concluding line of the order also indicates that some hearing was already ~~gone~~ through on 24-9-93 and the interim order was to continue till the next hearing. The case was part heard on 24-9-93, notwithstanding the protests of the learned counsel for the applicant.

5. (i) As for the contention that the Single Member Bench did not have the jurisdiction, power and authority as was made out by the counsel for the applicant by bringing in the AIR Supreme Court citations, I would unhesitatingly emphasise that as per the AT Act 1985 section 5(6) the Single Bench of the Tribunal is authorised by the Chairman to exercise the jurisdiction power and authority of the Tribunal in respect of the certain specified cases including the cases relating to allotment and eviction from the

government accommodation. There is no doubt about the Single Member Bench having jurisdiction power and authority in such cases and the orders issued therein cannot be said to be nullified in any sense of the term. In the case cited Union of India vs Harnam Singh which was decided by the Hon'ble Supreme Court in Feb. 1993 the observations of the Hon'ble S.C. have been quoted out of context. It would be worthwhile to quote the entire para 16 which is operative part of the judgement in regard to a civil appeal filed by Govt. of India against a judgment of Tribunal allowing the applicant to have his date of birth changed at very belated stage.

"Ordinarily, keeping in view of the judgement of this Court in Amulya Chandra Kalita's case (1991(1) SCC 181) (supra) we should have remanded the case to the Tribunal for a fresh disposal because of the fact that the order of the Tribunal was rendered by only one member or to have awaited the decision of some cases pending in this Court in which the validity of the order passed by single member of the Tribunal under consideration but since we have ourselves looked into all the facts and circumstances of the case and given an interpretation to Note 5 to FR 56(m), we do not consider it expedient to adopt either of these courses. In view of the interpretation placed by us, the appeal succeeds and is allowed. The impugned order of the Tribunal is set aside. There shall, however, be no order as to costs."

(ii) This order by no means is a clear directions to the Tribunal for awaiting the decision in some of the cases in the Supreme Court in which the validity of the order passed by Single Member Bench of the Tribunal

is under consideration. If one goes into the case of Amulya Chandra Kalita's case vs Union of India cited in this judgement of the Hon'ble Supreme Court granted SLP in that case with the directions " in view of the fact that sub-section 2 of section 5 provides that Bench shall consist of one Judicial Member and one Administrative Member. No provision to the contrary is shown to us. It is, therefore, statutorily recognised that every Bench of the Tribunal must consist of one Judicial and one Administrative member. It is, therefore, obvious that the Administrative member could not have heard and decided matter. In view of the above set of the law we have no hesitation in coming to the conclusion that the matter ought to have disposed of by the Administrative member alone. We therefore set aside impugned order remanded the matter to the Tribunal in accordance with law as required by the section 5(2), of the statute. However, appeal is accordingly disposed of."

5(6) Evidently the Chairman's order under section 5(6) dated 1st March 1988 was not brought to the notice of the Hon'ble Supreme Court in Amulya Chandra Kalita's case. Subsequently, an M.P. was filed before the CAT Jodhpur for setting aside judgement rendered by the Single Administrative Member of the Tribunal in the main application challenging an order of transfer of the petitioner and for posting the case for re-hearing before a properly constituted Bench in pursuance of the decision of the Supreme Court. The Tribunal in decision dated July 22, 1990 dismissed the petition pointing out that under section 5(6) of the Act the Chairman by his order 32/37/JA/2161/A dated 21st March, 1988 had authorised a single Member Bench to exercise the jurisdiction powers and authority in respect of subjects

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including posting and transfer. Accordingly the O.A. on the question of " transfer" was agitated before the single Member Bench and was disposed of on Nov.1989, much before the present decision of the Supreme Court. The Jodhpur Bench of the Tribunal rejected the miscellaneous petition considering the present decision of the Supreme Court as per in curiam and hence not applicable to applications made subsequently. In a very detailed and learned judgment, Jodhpur Bench assailed the petition in as much as the applicant had not challenged the decision of the Single Member nor did challenge the Notification of the Chairman delegating the powers to Single Member. In regard to the contention that the decision of the Supreme Court being declaratory in nature and binding on all Courts under Art. 141 of the Constitution and that the Single Member Bench should await the outcome of the several cases pending in the Supreme Court, from it would be pertinent ~~to~~ the judgment of one Bench at New Bombay on M.P. No. 287 of 1990 in O.A. No.162 of 1989 disposed of on 5-6-1990. The Bench observed "In this case, the applicant has not filed any SLP in the Supreme Court. On the contrary he has chosen to file a Misc. Petition for ignoring the order passed by the Single Member Bench and for posting the matter before a Division Bench for fresh disposal.

"In this case, the applicant has not filed any SLP in the Supreme Court. On the contrary he has chosen to file a Miscellaneous Petition for ignoring the order passed by the Single Member and for posting the matter before a Division Bench for fresh disposal."

" As observed earlier, from the records, the applicant had not raised any objection with regard to the jurisdiction of the learned Single Member nor did

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challenge the Notification of the Hon'ble Chairman issued under Rule 5(6) of the Act referred to above. He submitted himself to the jurisdiction of the Single Member and wanted a decision on merits. Therefore, we are of the view that it would not be open to the applicant to raise ~~these~~ legal objections now. Our view is supported by the decision of the Supreme Court in M/s Pannalal Binjraj vs. Union of India(A.I.R.1957 S.C.397). In that case under Section 5(7A) of the Income Tax Act(1922) the Commissioner of Income tax was authorised to transfer the case of an assessee from one Income-tax Officer to another. Under the said powers, the cases of certain assessee~~s~~ were transferred. The assessee~~s~~ appeared before the I.T.O. to whom the cases were transferred. In Bidi Supply Co. vs Union of India(AIR 1956-SC-479) the Supreme Court struck down Section 5(7A) of the Act which enabled the Commissioner of Income-tax to transfer the case of an assessee from one I.T.O. to another. After the decision of the Supreme Court, certain assessee~~s~~ filed Petitions 225 to 229/1956 etc. and challenged the assessment on the ground that the cases should not have been transferred. The Supreme Court negatived the plea on the ground that the cases should not have been transferred. The Supreme Court negatived the plea on the ground that they have acquiesced in the jurisdiction of the Income-tax Officer to whom the cases were transferred and therefore they would not be entitled to any relief. The relevant portion of the judgment of the Supreme Court reads as under:

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"There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases

being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred.

It was only after our decision in Bidi Supply Co. vs. The Union of India (B) (Supra) was pronounced on 20th March, 1956, that the petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April, 1956, ~~that the petitioners woke up and asserted their alleged rights, the Amritsar group~~

N.W.H. on 20th April, 1956, and the Rachur group on the 5th November, 1956. If they acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Art.32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court. (vide Halsbury's Laws of England', k. Vol. II 3rd Ed. p. 140 para 265; Rex. v. Tabrum; Ex parte Dash (1907) 97 L.T.551 (U) O.A.O. K Lakshmanan Chettiar vs Corporation of Madras ILR 50 Mad. 130 (AIR 1927 Mad. 130 (v).)

5(vi) Even though the above case was a Writ Petition filed under Art. 32 of the Constitution, the same principle will apply to a Writ Petition filed under Ar.226 of the Constitution of India, in the High Court and to a proceeding filed before the Central Administrative Tribunal, it being a substitute of the High Court. The bar of plea of want of jurisdiction on the ground of acquiescence has also been applied by the Supreme Court as a general principle in the following cases:

- (1) Dr.G.SARANA vs UNIVERSITY OF LUCKNOW AND OTHERS
- (2) I.L.HONNEGOUDA vs THE STATE OF KARNATAKA AND OTHERS
- (3) OM PRAKASH SHUKLA vs AKHILESH KUMAR SHUKLA
- (4) SRIMETHY SWARNA LATHA vs. UNION OF INDIA.

Therefore, the decision of the Supreme Court is applicable in all fours to the facts of the present case. Here also the applicant did not challenge the decision of the Single Member nor did he challenge the notification of the Hon'ble Chairman delegating the powers to a Single Member.

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6. In view of the pronouncements of the Supreme Court and this very Bench, it does not lie in the mouth of the counsel of the applicant to contest the jurisdiction of the Single Member Bench or to request that this Bench may await the decision of the Supreme Court in regard to the other cases quoted in the Govt. of India vs Harnam Singh case. The present application was filed on 29-12-92 before a single Member of this Bench which also gave interim relief. At no point of time had the applicant or the learned counsel for the applicants made out a case for imperative requirement of matter being adjudicated by a Division Bench. The order dated 8th Dec. 1991 issued by the Chairman of the CAT Principal Bench, New Delhi clearly stipulates that if a request is made that the matter be taken up for admission or on final hearing before a Bench of two members, the single member shall direct that the case be placed before the appropriate Bench of two members. The same instructions also says that once the case is taken up no such request shall be entertained in any subsequent stage of the proceedings for admission or final hearing as the case may be. The applicant nowhere mentioned that this matter necessarily was to be heard by a Bench consisting of two Members and the learned counsel for the applicant never made this point even at the stage when the matter was taken up for final hearing on 24-9-93. The order dated 24-9-93 undeniably records a hearing which was given a short

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adjournment at the request of the learned counsel for the applicant. The above order made in presence of the counsel for both the parties clearly establishes that matter was taken up for final hearing on 24-9-93 which was not conclusive, with the directions that the case is adjourned to 30-9-93 which was given as the next date of hearing. If it was a ~~case~~ of simple adjournment there was no need to add these words "next hearing." The word next hearing comes naturally as corrolary to the "part heard" inconclusive hearing which took place on 24-9-93. Under the circumstances, it is felt that the submissions, representations and objections made by the learned counsel for the applicant is not relevant and not supported by either facts of the circumstances of the case. These objections were therefore ~~overruled and~~ the learned counsel for the applicant was asked to continue with the arguments to which he stated in the negative. Resultantly, the counsel for the Respondent was given the chance for making his submissions.

7. The facts of the case are that the applicant No.1 Shri V.J.Chandekar a retired railway official was in occupation of a Quarter No.RB.II/Matunga, Central Railway, Bombay, by virtue of his being a railway servant. He retired after attaining the age of superannuation with effect from 30-9-91. The applicant No.2 who is his unmarried daughter, was appointed as a Senior Clerk in Railways on 31-12-91. The applicant No.1 after his retirement prayed for permission to continue in the quarter for a maximum period 8 months, which was granted to him on the condition that from 1.6.91 to 30.9.91 he will pay normal rent and for further period of 4 months from 31-1-92 onwards on the basis of special licence fees

(i.e. double of the normal rent) with advise that on expiry of the above period the first applicant will be treated as unauthorised occupent and will be charged damage/market rent as per the railway rules. The applicant made an application dated 8-2-92 to the railway authorities for transfer of allotment/regularisation of the above mentioned quarter to his daughter serving in the Railways and staying in the accommodation, according to the prevalent Railway rules. The respondent No.1 Chief Personnel Officer of the railways forwarded facts of the case to the DRM(P) Bombay vide his letter dated 16-3-92. However, the DRM under his impugned order dated 28-3-92 rejected the request on the ground that the daughter had been appointed in the Railway after the retirement of the applicant No.1. The applicant No.2 thereafter made an application 22-4-92 for transfer of the quarter in her own name, when the request of applicant No.1 had already been rejected subsequently eviction proceedings were commenced by the respondent under memo dated 30-11-92.

Q. In this O.A. filed on 29-12-92 applicants have prayed for quashing order dated 20-3-92 rejecting the request of the first applicant, and eviction proceedings of dated 30-11-92 and also prayed for directing the respondent to allot railway quarter as an interim measure. The matter was heard at length on 24-9-93, but inconclusively. Learned counsel for the applicant wanted some more time for producing documents the case was adjourned to 30-9-93. The matter was again taken up on 30-9-93. The learned counsel for the applicant was not able to bring any of the rules and or the judgements of other Benches in support of his arguments. He made submission in regard to non-jurisdiction of the single Member Bench

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to adjudicate on this matter.

9. I have given careful consideration to the submissions of the learned counsel for the applicants during the hearing and the facts in the application and the points made by the counsel for the respondents during the arguments made on the two dates. Learned counsel for the respondent refuted the entire case of the applicants on the rulings of the railway which says that a quarter allotted to a Railway servant can be regularised on father to son~~ward~~ basis at the time of retirement/death of a railway employee only when such person had been sharing accommodation with the deceased/retiring railway official while in service. In support of this argument he had produced Railway Board's letter dated 15-1-90 wherein in para 2 "When a Railway employee who has been allotted railway accommodation retires from service or dies while in service his/her son daughter, wife, husband or father may be allotted railway accommodation on out of turn basis provided that the said relation was a railway employees eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for atleast six months before the employees retirement/death and had not claimed any HRA during the period." The applicant No.2 who is daughter of the applicant No.1 joined railway service 7 months after the retirement of the applicant No.1. The applicant No.1 retired on 31-5-91 and the applicant No.2 got appointed as a Senior Clerk on 31-12-91. Hence the question of allotment of quarter to the applicant No.2 did not arise. The question of her having not drawn HRA for the six months and that she was sharing the quarter with the applicant No.1

does not arise. Admittedly there was no sharing of the quarter by the applicant No.2 while the applicant No.1 remained in active service. In the representation dated 22-4-1992 she had admitted that she was residing with her ~~father~~ in that quarter since the same was allotted to him in August 1967. She started residing in that accommodation as a railway servant only with effect from 31-12-91 by which time the applicant No.1 was a retiree with permission to continue in the occupation of the railway quarters as matter of concession and not as a matter of right. Even if the applicant No.2 was not in receipt of HRA for the period of six months, this does not help the applicant since the extended period of 4 months had already expired on 30-9-91. The period of 4 months beyond that was special dispensation to the applicant No.1 to permit him to continue on the basis of special license fee and on special ground by the railway authorities. The applicant No.2 had only done one months service in the railway when that extended period finally expired on 31-1-1992. Non-drawal of HRA cannot be treated as sharing accommodation with the ~~father~~. Since the railway rules did not permit any regularisation or any out of turn allotment of quarter to wards of the retired/deceased employee of the railway, there was no way that the railways could permitted regularisation of the quarter from father to daughter. Hence the applicants were asked to vacate the quarter and the eviction proceedings had to be commenced in Nov.92.

10. The learned counsel for the applicants stated that during arguments on 24-9-93 that there was a kind of discrimination in this case against the wards or relative

of the railway employee who obtained appointment in the Railways vis-a-vis those who got appointed in relaxation of Recruitment Rules on compassionate ground. A railway official who is the ward/son/relative is entitled for out of turn allotment of a railway quarter if the allottee railway official dies in harness/on duty provided that ward or near relative is appointed within a period of 12 months from the date of death if the quarter had not been vacated already. It was submitted that the circumstances of the retirement and death cannot be distinguished for the purpose of allotment and regularisation of railway quarter. It was submitted by the learned counsel for the applicant that if a person who was appointed on a compassionate ground within a period of 12 months ~~he~~ can be given regularisation of railway quarter, then there is no reason as to why such benefit to the wards to those employed after the retirement of the father cannot be given, within a period of 12 months. This was allegedly a clear case of discrimination. Learned counsel for the applicant submitted that there were certain judgements of other Benches where the position has been assailed and the benefits of the regularisation of the allotment given to the applicant. He promised that he would bring certain judgements of other Benches of the Tribunal in which this discrimination has been ordered to be removed. Besides he averred that this discrimination in the Railways is violative of Article 14 & 16 of the Constitution of India. However, learned counsel for the applicant was not able to bring any authority or any such judgement of any of the Benches on the date of final hearing on 30-9-93. Article 14 talks of equality wherein ~~intelligible~~ / ~~reasonable~~ classifications have been permitted as per various judgements of the Hon'ble Supreme Court. Railways

have two categories of out of turn allotment.

(i) In case of retiring/deceased railway official the accommodation can be allotted on out of turn basis to ward/sons/relative provided that such a person is a railway employee eligible for railway accommodation and who had been sharing accommodation with the retiring/deceased railway employee at least for 6 months before the retirement or death and had not been claiming any HRA during the period. The next category comes in regard to wards/relatives of retired/deceased employees who are appointed in relaxation of recruitment rules on compassionate grounds and are in actual occupation of the quarter allotted to such retired/deceased official and had shared the accommodation with the allottee for at least six months while he was in service. These classifications are intelligible/reasonable covered by the judgements of the Hon'ble Supreme Court and have not been sought to be assailed in this O.A. The provision of the out of turn allotment rules have not been challenged before the Tribunal as discriminatory or violative of Art. 14 and 16. In the prayer made in para 8 of the O.A. the applicant prayed for (i) quashing the impugned order after considering its legality, validity and constitutionality and (ii) the order to direct the respondents to allot the Railway quarter No.RB/II/126/14 Matunga. Clearly the Railway rules on the subject of out of turn allotment have not been questioned. Only the application of those rules has been agitated before this Tribunal. The learned counsel cannot bring in any new grievance for adjudication and relief, at this stage. Hence

this plea has to be turned down and rejected. The impugned orders can not be assailed on grounds of legality, validity, and constitutionality.

11. The other relief of considering and directing the respondents to allot the Railway quarter, can not be granted under the prevalent Railway rules which are valid and in operation. In the note(ii) under this rule 2 issued in January 1990 in regard to regularisation of allotment it is stipulated that the concession of ad-hoc allotment would not be available in the case of dependents who secure employment in the railway after the date of retirement of parent or during the period of re-employment. There is no special provision for out of turn allotment of quarter to the wards/sons/relatives of the deceased railway official who are appointed on compassionate grounds within a year of their appointment if they had not been sharing the accommodation during the life time of the deceased official for atleast six months. The learned counsel for the applicant was not able to substantiate his pleadings and submission that separate provisions existed to permit out of turn allotment to wards/relatives appointed on compassionate grounds and regularisation of quarters held by retired/deceased Railway officials within 12 months of retirement/death.

12. In the conspectus of circumstances, the application fails and is dismissed. Interim order granted earlier, restraining the respondents to commence ~~with~~ eviction proceeding is vacated. There shall be no order as to costs.

N.K.Verma
(N.K.Verma) 15X1993
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P. NO. 116/93

in

OA. NO. 1340/92

Shri V.J.Chandekar & Anr.

... Applicants

V/S*

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri N.K.Verma

Tribunal's Order by Circulation

(PER: N.K.Verma, Member (A))

Dated: 27 January 1994

This is a review petition against the judgement of this Bench delivered on 15.10.1993 under which the prayer made in the OA. was not found acceptable. The OA. was dismissed with directions of vacation of the interim order granted earlier restraining the respondents to commence eviction proceedings. In this R.P. the applicant has prayed for review of the judgement and order dated 15.10.93 and the matter for hearing before a Division Bench and direct the respondents to transfer the aforesaid quarter in the name of the applicant, and or maintain Status quo till the hearing and final disposal of the application.

2. I have carefully gone through the contents of the R.P. In Para 4 of the application it has been submitted that there is error apparent on the face of the records in as much as constitutional validity has not been dealt with on the ground that the same was not specifically pleaded. In the subsequent paragraphs the question of admissibility of transfer request of the matter from a Single Member Bench to a Division Bench has again been argued out, besides dwelling upon the fact whether the matter was "part-heard" when such a request was rejected by this Bench. The submissions made in these paragraphs do not

N.K.Verma

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indicate any error apparent on the face of records. All the points raised herein were dealt with at length in judgement dated 15.10.1993. No new facts have been brought out to enable any review of this judgement.

3. In view of this, I find there is no merit in this petition. The Review Petition is dismissed.

N.K. Verma
(N.K. VERMA)
MEMBER (A)

mrj.