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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 760/92

Transfer Application No:

DATE OF DECISION:

22-10-99

Shri. Umashankar Tiwari Petitioner

Shri. G.S. Walia Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri. J.G. Sawant Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 760/92

Shri. Umashankar Tiwari ... Applicant

Vs.

1. Union of India through
General Manager
Central Railway, Bombay VT.

2. Chief Workshop Manager
Central Railway,
Parel Workshop, Bombay. ... Respondents

CORAM : 1. Hon'ble Shri.B.S.Hegde, Member (J)
2. Hon'ble Shri.M.R.Kolhatkar, Member (A)

APPEARANCES

1. Shri. G.S.Walia, Counsel
for applicant
2. Shri. J.G. Sawant, Counsel
for Respondents

JUDGMENT

DATED : 27-10-94

(Per. Shri.M.R.Kolhatkar, Member (A))

This application is under Section 19 of the Administrative Tribunals Act and the issue involved is regarding entitlement of the applicant for allotment of a particular type of Railway Quarters as an essential category. The applicant was appointed as a Khalasi in 1973 which is a Group-D post and he was promoted as a Gr.III Fitter in Group-C post on 1.8.1978. Subsequently, the applicant was promoted as Fitter Grade-II and Fitter Grade-I. Posts of Fitter Grade-III, II & I are all Class-III posts and accordingly they are entitled to type-II quarters.

This is shown in Exhibit 'A' (Extract of Railway Board's Letter dated 5.6.1981) on the subject of entitlement of quarters. The applicant states that he joined the Territorial Army in 1975. He was allotted Type-I quarter in 1981. Thereafter, the applicant submitted an application on 18.12.1981 for allotment of railway quarter of Type-II to which he is entitled being a Group-C employee. At Exhibit 'B', is letter dated 15.3.1982 from the Railways informing the applicant that his name has been registered here for RB/II type quarters, Essential against Sr.No. 259 in the Waiting List, and that he would be considered for allotment of accommodation according to his turn. At Exhibit 'C' is the reminder sent by the applicant dated 2-12-1987 regarding allotment of railway quarters RB/II stating that some of his juniors have been allotted RB/II type quarters. The applicant states that on 29/7/91 (Exhibit 'D') the respondents issued a Waiting List for allotment of railway quarters as on 30.6.1991 but his name did not figure in the same. The applicant therefore by his letter dated 25-6-1992, at Exhibit 'E', made a representation stating that his name has not been shown in the waiting list, inspite of the fact that his name was shown earlier at Sr.No. 259, and requesting that his name should be interpolated with reference to his original waiting list number. The contention of the applicant is that the applicant was always entitled to Type-II quarter and his name ought to have been included in the waiting list issued under letter dated 29.7.91, that the deletion of his name from the said waiting list is illegal, discriminatory and malafide and the applicant seeks a direction to the respondent to interpolate the applicant's name in the waiting list in accordance with further the date of application and direction to the respondents to

allot type-II quarter to the applicant.

2. In the reply, the respondents have stated that the applicant is a Fitter which is not classified as an essential category but he was treated as essential category on account of his joining Territorial Army. The applicant has since been discharged from the Territorial Army and therefore his name was not included in the waiting list for allotment of RB/II quarters for essential staff in the circular dated 29.7.1991. The respondents have pointed-out that although the waiting list was issued on 29.7.1991, the applicant sent his representation on the same almost after one year i.e. on 25.6.1992. Regarding the applicant's contention that some of his juniors have been allotted quarters, the respondents have stated that the quarters have been allotted to such persons either because they belong to essential category or on medical grounds or as a special case. There are two such cases where the precise nature of the case is not clear namely Amritpal Singh, who was allotted quarters in 1991 of RB/II type on out-of-turn basis and J.S. Veerkadya who was allotted RB/II quarter in 1989 as a special case. All other allotments of quarters on out-of-turn basis are properly explained as being on medical grounds or under special circumstances like demolition of house, being in-charge of water supply, being physically handicapped and other cogent grounds.

3. In his rejoinder, the applicant has cited the case of three employees, namely

- (i) Shri. D.V. Singh
- (ii) Shri Harishankar Kewat
- (iii) Shri. P.K. Bansal

who have been discharged from the Territorial Army but who have been allotted railway quarters on out-of-turn basis. In fact in the case of one employee, RB/II quarters were allotted after the filing of the rejoinder by the applicant on 22.4.1993.

4. In their sur-rejoinder, the respondents have stated that in the case of these employees, no intimation was received that they have been discharged from the Territorial Army and that further action to delete the names of persons who have been discharged from Territorial Army would be initiated.

5. The applicant rests his case on the ground that once he joined the Territorial Army in 1975, he became entitled to allotment of quarters in accordance with the relevant Railway Board instructions. In 1978, he was promoted as Group-C employee. He was therefore entitled to Type-II quarters and his right to allotment of type-II quarters crystallised on that date. The fact that initially the respondents had allotted type-I quarter to him does not take away his entitlement for type-II quarter nor the fact that he was subsequently discharged from Territorial Army take away his vested right to entitled type quarters as an essential category. Thus, though he was discharged from Territorial Army, he was entitled to continuance of his name under essential category in accordance with the original waiting list number.

6. The relevant Railway Administration instructions as contained in Circular dated 11.12.1980 from General Manager Central Railway are reproduced below :

Sub : Welfare of T.A. Personnel
Allotment of Railway Quarters.

Ref : This office letter of even No. dated 1.9.1980

In partial modification of this office letter of even No. dated 1.9.1980 wherein the policy regarding the allotment of Railway Quarters to TA personnel was laid down, it has now been decided that para 2 of the abovequoted letter should be treated as cancelled and the following should be substituted as para 2 :

2. a) All the Railway personnel serving in the Railway TA Groups should be treated as 'Essential' Staff for the purpose of allotment of Railway Quarters on the Railways.

(Auth : Ministry of Railways letter No. E(ML) 74.ML 3/34 dated 6.6.1974)

b) As an incentive to be offered to men to join the TA some of the smarter men who show leadership and enthusiasm in TA should be allotted quarters out of turn, by fixing a quota of 10% (Ten per cent) for unhoused TA Men subject to a minimum of 5 at bigger stations. Board desired that all officers concerned with allotment of Railway Quarters should bear this in mind. (Auth : Ministry of Railways letter No.E(ML) 72.ML.3/47 dated 8.8.1974.

c) Allotment of Railway Quarters on cur of turn basis should be done only after is duly recommended by the C.O of the Group. For this purpose, TA personnel applying for Railway Quarters or out of turn basis should route their applications through the C.O of the Group concerned.

2. Receipt of this letter may please be acknowledged.

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The question to be decided is whether the applicant even after discharge from the T.A retains his right to be shown in the waiting list as an essential category. The instructions in terms say that the railway personnel serving in the T.A Group should be treated as essential staff. The applicant therefore was essential staff from 1975 upto 1984 when he was discharged from T.A. The applicant was shown in the waiting list in 1981 when he was still in the Territorial Army. On 4.9.1984, he ceased to be in the T.A. The contention of the applicant that his entitlement as an essential category crystallised and cannot be taken away, cannot be accepted in terms of

the plain words of the Circular. After discharge of an employee from T.A, he no longer remains an essential category and cannot claim the right to be included in the waiting list as an essential category employee for allotment of quarters.

7. The next contention of the applicant is that in O.A. 502/87 decided on 22.9.1987, New Bombay Bench has interpreted 1985 instructions of the Railway Board and had held that when an applicant is allotted a lower type of quarter to which he is not entitled, he does not lose his entitlement to the category of quarters to which he entitled under the Rules. We have seen the judgment in O.A. 502/87. In that judgment there was no dispute that the applicant [redacted] belongs to essential category being Chargeman Grade-I. In para 17, it has been observed that the applicant has established his claim for allotment of a RB/III quarter on the basis of his being the topmost in the waiting list and in view of the fact that at least one RB-III quarter is lying vacant to be allotted to someone, as yet. The Tribunal did not accept respondents' contention that with allotment of RB-I type quarter, applicant loses his claim to RB-III type quarter and ruled that allotment of a lower type of quarter can never cause removal of an applicant's name from the waiting list for quarters to which he is normally entitled. The Railway Board's orders dated 15/5/85 regarding guidelines for allotment of quarters and the waiting list have not been produced before us. But the ratio of OA 502/87 (Mr. Parasram Singh Vs. Union of India & Ors.) does not help the applicant as in that case, there was no dispute that the applicant belongs to essential category.

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8. Next, we come to the question that some employees have been allotted quarters, apparently by mistake because the Railways had not corrected the record relating to discharge [redacted] of certain employees from the Territorial Army, in particular, ~~the allotment in favour of H.S.Kewat having~~ [redacted] taken place on 11.5.1993 i.e. after the date of re-joinder of the applicant, namely 22.4.1993. According to us, the Railways are competent to make allotment on out-of-turn basis in accordance with the Rules and after following the due procedure. If some allotments have been made for special reasons which are not very clear or if some allotments have been made on the basis of they are expected to correct mistakes, but records which are not up to date, that does not give a inclusion on waiting list and right to the applicant to claim allotment of quarters not to which he is entitled, not belonging to essential category.

9. We therefore conclude that various contentions raised by the applicant do not help him and we, therefore dispose of this O.A by passing the following order :

O R D E R

✓ Application is dismissed. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P.99/95 in O.A.760/92.

Umashankar Tiwari ... Applicant

v/s.

Union of India and Others ... Respondents

CORAM: Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

APPEARANCE:

Shri G.S.Walia, Counsel
for Applicant.

Shri J.G.Sawant, Counsel
for Respondents.

TRIBUNAL'S ORDER ON REVIEW PETITION

NO.99/95 in O.A.No.760/92.

DATED : 5-10-95

(Per Shri M.R.Kolhatkar, Member (A))

In this review petition against the judgement dated 27/10/94, the original applicant who has filed the review petition has sought review of our judgement on the main ground that the applicant had got allotment of quarter of type-I in 1981 and he was entitled to type-II quarter and the mere fact that the applicant initially got allotment of a quarter of type-I though he was entitled to quarter of type-II and that he had left territorial army should not lead to the consequence of the deletion of his name from the waiting list for type-II quarter for the essential category staff. The next contention is that any type of incentive once granted on fulfillment of the requirement of the term, cannot be withdrawn later. Applicant has alleged that the exclusion of his name was not done by Competent Authority but by an employee who was prejudiced against him and who did not take similar action in respect of other employees discharged from territorial army. It is further urged that the exclusion of the name of applicant was not intimated

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to the applicant and thereby his right to get his name registered in non-essential category is also infringed amounting to violation of Principles of Natural Justice.

2. We have considered the submissions in the review petition, some of the submissions are in the nature of new grounds not earlier urged. The review petition however does not bring out that there has been any error apparent on the face of the record in our judgement or any other satisfactory reason in terms of rules under order 47 of CPC. We therefore find the review petition to be without merit and therefore dismiss the same. We do so by circulation as is provided under the rules.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)
MEMBER (J)

abp.