

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1052/93

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DATE OF DECISION 8.2.94

Shri Sampatkumar Lingam Petitioner

Shri S. Natarajan Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri V. S. Masurkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

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 ? ^M
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 ? ^M


(M.S. Deshpande)
Vice Chairman

NS/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1052/93

Shri Sampatkumar Lingam
V/s.

... Applicant.

Union of India through
The Commanding Officer,
Air Force Station
Officer in charge Civil Admn
Cottongreen, Bombay.

The Estate Manager
Government of India
Old C.G.O. Building
3rd floor, M.K. Road,
Bombay ▾

Director of Estates (Region)
Ministry of Urban Development
Government of India
Nirman Bhavan
New Delhi.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

Appearance:

Shri S.Natarajan, counsel
for the applicant.

Shri V.S.Masurkar, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 8.2.94

(Per Shri M.S. Deshpande, Vice Chairman)

The applicant seeks allotment of quarter by setting aside the order passed on 26.5.92.

2. The applicant was appointed on seasonal establishment purely on temporary basis on 21.6.88 and came to be terminated on 30.11.88. He came to be appointed on 1.12.88 as Lascar in grade 'D' post. His father [redacted] was in Railway service and was in occupation of the quarter since 1981 and retired on 31.1.89. The applicant was residing with his father since his childhood and he applied for allotment of quarter in January 1989. The Estate Manager initiated eviction proceedings against the father in 1991 and eviction order came to be passed in those proceedings. The applicant filed OA 741/91

before this Tribunal which was decided by the order dated 15.11.91 permitting the applicant to make a representation with regard to the allotment, with a direction to the competent authority to decide the case within two months with liberty to the applicant to approach this Tribunal, if he has to vacate the quarter. The applicant continued to be in occupation of the quarters persuant to the stay order passed by the Tribunal. The applicant's representation dated 30.12.91 was turned down as 26.5.92 on the ground that it was not covered under the existing orders. In August 1993 the respondents orally called upon the applicant to vacate the quarter. The applicant, therefore, applies for allotment of quarter by this fresh application. There is no appearance on behalf of respondent No.1. Respondent Nos 2 and 3 have filed a counter affidavit, that the applicant is not entitled to allotment of quarter, because he was drawing HRA from 1.6.88 to 30.11.88 and he discontinued to draw HRA only from 1.12.88. The applicant filed an affidavit today, stating that he had paid HRA in seasonal appointment from 1.6.88 to 30.11.88, but that amount came to be recovered by the department and he had not claimed HRA at that time but came to be paid that amount. The applicant filed a certificate dated 22.2.91 in support of the affidavit and that is purported to have been issued by Senior Admin. Officer, Air Force Stn. Bombay.

3. Shri Masurkar states that he is not in a position to say anything with regard to the averments made in the affidavit, because respondent No. 1 would be responsible for the payment and recovery and that he cannot state the ^{about} _{the}

authenticity of the certificate dated 22.2.91.

He however urged that the ground regarding payment of HRA to him and recovery by the department has not been raised in the appeal which the applicant has made before the competent authority after the earlier O.A. was decided by the Tribunal.

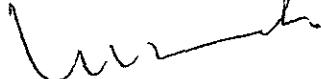
The first respondent has not put in appearance. [redacted]

The affidavit and the certificate which has been filed today, shows that the HRA which was paid to the applicant has been recovered from his salary for the period 1.6.88 to 30.11.88. It would therefore, be obvious that the applicant had not received the benefit of HRA, while he was holding seasonal appointment and that the applicant would therefore be entitled to adhoc allotment. Clause 3 of the instructions could not be applied to the applicant.

He will be governed by clause 4 and the conditions imposed on Class IV staff is that the Government servant concerned should have been residing with the retiring Government servant within a period of three years. This condition is fulfilled by the applicant. Clause 3 requires that there should be non-drawal of HRA, but as already indicated the applicant in the present case has not reaped the advantage of HRA.

4. The order dated 26.5.92 is cryptic and only says that the applicant's requests have been turned down as his case is not covered by the existing orders. As already indicated above, [redacted] the applicant fulfills the condition for adhoc allotment. Shri Masurkar urged that there is a long waiting list since 1973 and that the applicant should not be preferred for allotment of quarters which would give him any advantage over the persons who were

waiting for a long period. That position, however, would not be applicable in the present case because the Government of India have themselves provided for adhoc appointment and, as a policy, thought it fit to give priority to certain category of persons. It has to be presumed that the Government must have given a thought while indicating that adhoc allotment should be given to the categories for whom the benefit has been made available. In result, the application is allowed and the respondents are directed to give adhoc allotment of the appropriate type of quarter to the applicant within two months from the date of communication of this order. Until an appropriate quarter is allotted, he shall not be disturbed from the quarter which he is occupying. No order as to costs.



(M.S. Deshpande)
Vice Chairman

NS