

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
-----

Original Application No: 1061/93  
-----

Transfer Application No:

DATE OF DECISION: 25-1-95

Mahabala Bhandari Petitioner  
Ganesh N. Bhandari

Shri. G.S. Walia Advocate for the Petitioners

Versus  
-----

Union of India & Ors. Respondent

Shri. A.L. Kasturey Advocate for the Respondent(s)

CORAM :  
-----

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

The Hon'ble Shri

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).

J\*

8

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. 1061/93

1. Mahabala Bhandari
2. Ganesh N. Bhandari .. Applicants

Vs.

Union of India & Ors. .. Respondents

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

APPEARANCES

1. Shri. G.S. Walia,  
Counsel for applicants
2. Shri. A.L. Kasturey  
Counsel for respondents

JUDGMENT

DATED : 25-1-85

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

In this application under Section 19 of the Administrative Tribunals Act, the applicant No. 1 is a retired cook of Railways and father of applicant No.2 and who superannuated on 30.4.1984. Applicant No. 2 is a Khalasi in the Railways. Applicants have sought a declaration that the Applicant No. 2 is entitled for the allotment of Railway Quarter No.84/18, Type-I at Matunga Road, Western Railway Colony originally allotted to the Father or any other suitable type of Railway quarter from 1.5.84 and ask the respondents to allot or regularise the said quarter in the name of applicant No. 2 from 1.5.1984. A direction to pay DCRG to Applicant No. 1 with 18% interest and a declaration that applicant No. 1 is entitled to post-retirement

9

-2-

passes and <sup>that 1</sup> the said passes cannot be withheld  
<sup>are</sup> also sought for.

2. The facts of the case are that Applicant No. 1 prior to his retirement from 30.4.1984, had applied for sharing of Railway quarter with his son vide letter dated 1.7.82, at page 13. It was stated that his son is working as Khalasi in Carshed, Electric Department, Western Railway. There was also a letter from his son dated 1.7.1982, at page 14, to the respondents that he be permitted to share the accommodation with his father. Permission in terms of these applications was issued on 28.12.82 which inter-alia mentioned that if the principal allottee is required to vacate the quarter for any reason, the sanction to the sharing of accommodation will automatically stand cancelled. It was also stated that the sharee, namely Applicant No. 2 would not be entitled to HRA with effect from 24.12.82. On 16.1.1984, applicant No. 2 applied for regularisation of the quarter in his name as his father, applicant No.1 would be retiring from service on 30.4.1984. A reminder was sent on 1.5.84, at page 17. It is not clear what action the respondents took in the meanwhile, but subsequently on 16.1.1990 vide page 18, the applicant again applied for regularisation of the quarters stating that his services have been regularised with effect from 28.5.1989. It appears that a reply was sent to the applicant on 26.06.1990, which is at Exhibit 'R/IV' to the written statement, stating that regularisation of the quarter cannot be accepted as Applicant No. 2 was not regularised as Khalasi on the day his

father retired from service i.e. 30.4.1984. It is not clear what further action the applicant took but the respondents appeared to have proceeded to evict the applicants under P.P.Act and on 19.9.93, at page 19 of the application, the applicant was asked to vacate the quarters within seven days. <sup>It was</sup> on receipt of this communication that the applicant approached this Tribunal and relief of non-vacation was initially granted on 8.10.93 which continued till final hearing.

3. Respondents have challenged the application at the threshold on the ground of limitation. According to them the applicant No. 1 retired on 30.4.1984 and the request for regularisation made by the applicant No. 2 was turned-down as far back as on 26.6.1990, however the applicant chose to approach the Tribunal only in September 1993. The applicant says that the application is not barred by limitation because the impugned order is dated 11.9.93 by which the applicants were required to vacate the quarters. Only thereafter the vacation proceedings were started and which order is challenged. Therefore the application is within the period of limitation.

4. On merits, the applicants have referred to Railway Board Instructions dated 25.6.1966 at page 22 to the application which lays down the conditions of regularisation of allotment of railway quarters in the name of dependents of railway servants who retire<sup>s</sup> from or dies while in service. The conditions to be fulfilled are :

- (i) the said relation should be a Railway servant eligible for railway accommodation ;
- (ii) the said Railway servant should have stayed together with the allottee 6 months before the date of retirement or death of the allottee.

5. According to the applicant, there is also implied a third condition which is in addition to these two that the applicant should not be drawing HRA. According to the applicant, ~~he~~ fulfills all the three conditions and therefore he is entitled to the relief. According to the respondents, however, the applicant does not fulfill conditions of being an eligible railway employee. In support of their claim, the respondents have enclosed Circulars dated 11.4.83, 29.8.83 and 2.3.1971 which show that casual labourer and substitutes with or without temporary status are excluded from the regularisation. According to the respondents, on the material day, namely 30.4.1984 the Applicant No. 2 was working as a substitute and therefore he was not entitled for regularisation. According to them, the actions of withholding DCRG and post-retirement passes are also in accordance with Railway Board circular dated 24.4.1984 which is enclosed with the written statement.

6. The applicant has relied on a large number of judgments <sup>purport to</sup> in cases which support his case that a substitute of temporary <sup>status</sup> is entitled to regularisation on father-to-son basis.

7. It may well be that the case law which interprets the Railway Board instructions may support the applicant.

12

-5-

However, the point raised by respondents regarding limitation is of some importance because the time gaps are too long. The cause of action arose on the date of retirement of the father, Applicant No. 1, namely 30.4.1984, however the applicant did not approach a Court or Tribunal for the redressal of grievance within three years thereof as per the Law of limitation then applicable. We note that the applicant No. 2 applied for regularisation on 16/1/1990 which is enclosed with the application. Respondents have pointed-out that the negative reply was given to the applicant on 26.6.1990 but the fact of this reply has been suppressed by the applicant. He has approached this Tribunal on the ground that he has impugned the order dated 11/9/1993 by which the applicant was required to vacate the quarters. But the order dated 11/9/93 ~~is~~ relied on the negative reply sent to the applicant, namely dt. 26.6.1990. Under section 21 of Administrative Tribunals Act, the applicant ought to have approached the Tribunal within one year from the receipt of this letter but he did not approach the Tribunal for reasons best known to him. That letter not having been challenged, has become final. Subsequent letter dated 11.9.93 which threatens action under PP Act, being based on a letter which was final cannot therefore be challenged by the applicant. We are ~~not~~ clear that, not only the application ~~is~~ hit by limitation, but the facts of the case clearly bring out that the applicant had not approached the Tribunal with clean hands. First of all, he has suppressed the fact of receipt of the negative reply dated 26.6.1990.

13

-6-

Secondly, he appears to have carried-on till 11.9.93 perhaps hoping to stay for the maximum period of time. Whatever the calculations of the applicant, the facts clearly bring out that equity does not favour the applicant apart from the application being hit by limitation.

8. We are, therefore, not inclined to go into the merits of the case of the applicant namely, whether a substitute employee who has attained temporary status is entitled to regularisation of quarter on father-to-son basis. We reject the application for regularisation as being hit by limitation.

9. So far as further reliefs relating to payment of DCRG and issue of passes are concerned, those amount to multiple reliefs and are therefore hit by the bar to multiplicity of reliefs created by A.T.Procedure Rules apart from bar of limitation. The applicant has merely stated that DCRG and the passes have been withheld. No details of representation made by him in this regard are given. The cause of action clearly arose on 1.5.1984 and <sup>is stale</sup> ~~it has~~ it has not been shown that right to sue has ~~been~~ <sup>accrued</sup> accrued as a result of filing of representation and/or rejection of representation and that the applicant has applied to us within the limitation period created by Section 21 of the A.T. Act.

*A* 10. We therefore dispose of this O.A by passing

14

the following order :

O R D E R

O.A is dismissed. No orders as to costs.

*M.R. Kolhatkar*

---

(M.R. KOLHATKAR)  
MEMBER (A)

J\*