

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1065/93

Transfer Application No:

DATE OF DECISION: 17.2.1995

R.N. Sarkate Petitioner
S.P.Singh

Shri B.Dattamurthy Advocate for the Petitioners

Versus

Union of India and 11 others Respondent

Shri R.K. Shetty Advocate for the Respondent(s)
Shri S.P.Kulkarni
Shri N.K. Srinivasan

CORAM :

The Hon'ble Shri N.K. Verma, 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 ?

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

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1065/93

R.N. Sarkate

S.P. Singh

... Applicants.

v/s.

Union of India and 11 others.

... Respondents.

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

Appearance:

Shri B.Dattamurthy, counsel
for the applicant.

Shri R.K. Shetty, counsel
for respondent No.1 and 2.

Shri S.P.Kulkarni, counsel
for respondent No.3.

Shri N.K.Srinivasan, counsel
for respondent No.4 to 12.

JUDGEMENT

Dated: 17.2.1995

¶ Per Shri N.K. Verma, Member (A) ¶

This is an O.A. in which the applicant who is a Secretary of the Instructional Staff Organisation of the DGE & T, Bombay Unit and another have assailed the order contained in Annexure 'A' wherein through an office order it was decided by the respondents to commence formation of a common general pool of quarters for the officers and staff of the Bombay Unit and for which one Shri Pramod Chandra Director, ATI was designated to function as Estate Officer. This order dated 8.2.93 was further reiterated by another order at Annexure 'B' dated 22.4.93 through which approval of Director General/ Joint Secretary, Ministry of Labour, Government of India, New Delhi, in regard to order of Annexure 'A' was conveyed. The applicant has prayed for quashing of these orders and prayed for suitable orders or directions to the respondents to strictly allot

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quarters earmarked for each institute to the concerned staff of that institute. They also prayed for interim order that pending final hearing and disposal of the application the respondents or their agents, or representatives be restrained from making any allotment on common pool basis.

2. Interim relief for allotment of quarters as prayed in the O.A. was granted on 8.10.93 which was modified later on 15.10.93 when one of the interveners made prayer for allowing allotment of quarter to him. He was allowed to have the order of allotment carried out provided he gives an undertaking to the effect that he will vacate the quarter as soon as he is required to do so by an order of this Tribunal after hearing on the question of interim relief. The intervener was allowed to join as respondent and filed the reply. On later stage some more interveners joined as respondents totalling 9, and each of them have filed the reply.

3. The case in short is as follows: In the campus of the Advanced Training Institute, there are separate quarters for the officers and staff of the Advanced Training Institute, Regional Directorate of Apprenticeship Training, Regional Vocational Training Institute and Vocational Rehabilitation Centre. The allotment of quarters located in this campus are being regulated according to the quarter Allotment Rules notified under Ministry of Labour, Government of India, No. DGET-26(7)/80-TA-II dated 23.2.82, Annexure 'C'. The quarters were allotted to the staff of the aforesaid units from quarters earmarked for the unit on the basis of seniority of the applicants in their respective units. The allotment was decided by a quarter allotment committee comprising of the senior

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most officer of the unit as Chairman, Heads of the office located in the unit and the co-opted member representing the staff Association of the units concerned, in terms of the Government of India Allotment Rules notified at Annexure 'C', and it is collectively marked as Annexure 'C', O.M. dated 18.11.95. However in the month of February 1993 the Deputy Secretary of the DGE & T's office visited Bombay and issued the impugned order at Annexure 'A' while in camp at Bombay regarding creation of common pool for all quarters and designating Shri Pramod Chandra, the Director, Advanced Training Institute to function as Estate Officer for all the residential quarters in the ATI Campus. The applicants have assailed the order on the ground that staff quarters were constructed exclusively for the staff of the various institutes and allotments were being made on the basis of seniority in the respective groups of a particular institute out of the quarters available in that unit. This arrangement was working satisfactorily over the years. They further pointed out that formation of Common General Pool cannot be for the benefit of the various groups of staff who comprise both the transferable and non-transferable categories. Besides the impugned orders have been issued without proper application of mind and apparently to favour some groups of staff in other institute like the Vocational Rehabilitation Centre whose employees are not transferable. They also alleged bias on the part of Deputy Secretary, D.G.E & T who hurriedly passed the impugned order while in Camp at Bombay without clearance of the Head of the Department and approving formation of Common General Pool on the ground that a Common Pool exists in Madras, Kanpur and Hyderabad which is not correct. The applicants further stated that the impugned orders are ex-facie arbitrary and unjustified and made without

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taking consensus of the Heads of other offices/institutes and all the staff associations involved. The Deputy Secretary had only gone by the opinion and the demands of the Central Staff Association of the D.G.E.& T to the detriment of the interest of other officers and staff.

4. In their written reply the respondents have taken the preliminary objection that the issue involved is one of policies whether the quarters should be allotted on this basis of or on the basis of, separate pool for each of the four units or not, in which this Tribunal cannot interfere having regard to the decisions of Supreme Court in the case of Indian Railway Services Mechanical Engineers Association and Others and Indian Railway Traffic Services Association and Others V/s. Union of India reported in 1993-II L.L.J 539 and DEOD HQRS case. Quarter allotment is a management function, therefore, the Hon'ble Tribunal was precluded from entertaining this application. They have also stated that the quarters of Regional Directorate of Apprenticeship Training and Regional Vocational Training Institute were common pool previously for a very long time. The system of common pool was introduced as there were problems in the earlier system to transfer within units like vacating a quarter, but not getting a quarter in the other institute or getting a quarter not suitable to officer who is a heart patient or is suffering from hypertension etc. The respondents have further submitted that the order issued by the then Deputy Secretary on 8.2.93 was subsequently approved by the Director General & Joint Secretary and this order became valid. The Director General and Joint Secretary are empowered for de-centralisation of work relating to the appointment of Estate Officers under

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the Public Premises (Eviction of un-authorised Occupants) Act 1971 and the decision issued by the Deputy Secretary was communicated to all the Institutes and Central Staff Services Association of DGE & T. The Director of ATI was appointed as Estate Manager by the competent authority. The allotment of quarters thereafter been made on the basis of common priority list approved by the Quarter Allotment Committee in its meeting held on 21.5.93. The priority list was got approved on the basis of the Quarter Allotment Rule.

Respondent No.3 in his reply supported the case of the applicants on more or less similar line. The private respondents numbering 9 agreed with the reply filed by the official respondents and urged that the application be dismissed.

5. During the course of arguments, Shri Dattamurthy, counsel for the applicants stated that the Quarter Allotment Rules framed on 25.2.82 are still continuing without any modification. This Rule was issued after proper consultation with the Finance Branch of the Ministry of Labour as also the Ministry of Works and Housing which is the modal Ministry for construction of Government accommodation and residential quarters. The impugned orders at Annexure 'A' and 'B' have been issued without any concurrence of the Finance Ministry and the Ministry of Works and Housing. It is a simple office order which was given an approval of the Competent Authority postfacto. Shri Dattamurthy also brought to my notice that common pool system is not in vogue at Madras, Kanpur and Hyderabad as averred by the respondents. He was not contesting the right of the Administration to lay down policy decision. Shri Dattamurthy argued only on the short question that to bring about any change.

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the competent authority to adopt

in the Quarter Allotment Rules by a proper procedure.

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In the instant case the procedure was not followed.

The Deputy Secretary while on Camp at Bombay had issued orders unilaterally without taking into confidence the concerned officers/Ministry and even staff Association of the various branches.

6. Shri R.K. Shetty, counsel for the respondents reiterated that the Tribunal and the Court are not supposed to interfere with the administrative action as long as the statutory limits referred to in Supreme Court decision already referred to by him in the written reply are not exceeded. In any case, the order issued in 1982 was only a draft of Quarter Allotment Rules, susceptible to modification at any time as has been done now. No dis-advantage of any kind has accrued to any official because of these modified Rules. There is no evidence in the submission made by the applicant that any particular person or individual was favoured or denied the allotment of quarter. Even applicant No.2 has already been allotted the quarters.

Respondent No.3 was also allotted quarter under the Tribunal's order and there was no intention on the part of the official respondents to evict anybody from the quarters allotted and occupied by them.

In this connection a chart of position of staff quarters at ATI, RDAT, RVTI and VRC was also submitted by the respondents which indicates that the level of satisfaction of the staff quarters was very high in this department. The ATI has 176 staff with 149 quarters for allotment to them. The RDAT/RVTI have 58 staff for which 45 quarters are available. The VRC has 28 staff in position with 24 quarters. The only problem according to this chart is that VRC

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does not have a single type IV quarters whereas other units have got adequate number of type IV quarters. It was only in the interest of giving maximum satisfaction to all eligible officers of the various units that the policy of Common General Pool was thought of and implemented by the impugned orders.

7. Shri S.P. Kulkarni, counsel for respondent No.3 has produced another chart wherein it was shown that VRC has got three officers who are entitled to type IV/V quarters, whereas none exists for allotment to them. He states that there are certain other institutes where the number of quarters of the proper type is in excess of the number of officers e.g. in ATI there are 26 quarters for a staff strength of 22. Similarly in this very institute there are 36 type III quarters for a staff strength of 34. Similar situation also exists in RDAT. Shri Srinivasan who appeared for the other respondents states that type III quarters are less in number in VRC and RVTI units in relation to the staff strength whereas these quarters were excess in ATI and RDAT.

8. I have given careful consideration to the arguments of both the parties. The main ground of the argument advanced by the learned counsel for the applicant was in relation to improper modification of Quarter Allotment Rules issued in 1982. The contention of learned counsel for the applicant seems to be quite reasonable in view of the fact that the Rules provides that any administrative order in force cannot be jettisoned on the fragile argument that it was only draft Rule and no gazetted Rule. The covering letter does not speak of Draft Quarter Allotment Rules.

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As matter of fact the subject matter given in the covering letter says " Quarter Allotment Rules - issue of revised rules." The content of the letter are reproduced below:

" I am directed to state that the question of amendment of the existing Quarter Allotment Rules had been engaging attention of the Government for quite some time. Keeping in view the various suggestion on the subject and in consultation with the Associate) Finance, the Rules have since been revised and a copy of the revised Quarter Allotment Rules is enclosed for your information and guidance.

These rules will take effect from the date of issue."

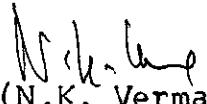
In the body of the Rule the heading is Draft Quarter Allotment Rule. A typographical error or a clerical error continued for such a long time cannot be construed that the Rules prescribed and in force for 11 years continued to be Draft Quarter Allotment Rules. Even if it was considered as Draft Quarter Allotment Rules, the final Rule should have been issued taking into account the order issued by the Dy. Secretary while on Camp in Bombay. The casual manner in which the subject matter has been handled by the DGE & T and the respondents does not lend credibility to the averments made in this regard. The Rules issued in 1982 were Revised Allotment Rules and they had force of executive instructions issued by the Government. These Rules could be modified by the Government in consultation with the Ministry which controlled this matter. In so far as this submissions are concerned it is felt that the O.A. is bound to succeed.

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9. However the other prayer made in the O.A. relating to directions to the respondents to continue with the system of allotment of quarters earmarked for each institutions to the concerned staff of that institute, no valid reason was advanced by the learned counsel for the applicant. The system once brought into use cannot be made irrevocable and unalterable. Each system requires to be modified or altered on the basis of feed back or other related problem thereon. If the administration has found that a common general pool will be in the larger interest of the staff and officers of the various institutions located at Bombay under the DGE & T, Government of India, such a decision cannot be agitated before this Tribunal, as arbitrary and malafide.

10. In view of the above the O.A. succeeds partially. The impugned order dated 8.2.93 and 22.4.93 are quashed in their present format. However, the respondents are at liberty to notify the Quarter Allotment Rules as modified according to their policy decision in consultation with the relevant Government departments as was done in the case when the orders was issued in February 1982. The prayer made in regard to retention of old system is disallowed. The respondents are at liberty to take any further decision in the matter as prescribed by the guidelines and allot the quarters accordingly.

There will be no order as to costs.


(N.K. Verma)
Member (A)