

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 236/93

~~Transfer Application No.~~  
~~XXXX~~

Date of decision 23.7.1993

Shri Totaram & Anr. Petitioner

Shri G.S.Walia Advocate for the Petitioner

Versus

Union of India & Anr. Respondent


Shri V.Narayan Advocate for the Respondent(s)

Coram :

The Hon'ble Shri V.D.Deshmukh, Member (J)

The Hon'ble Shri

1. ~~Whether the Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? yes
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 ? no

  
(V.D.DESHMUKH)  
MEMBER (J)

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 236/93

Shri Totaram & Anr. ... Applicant

V/S.

Union of India & Anr. ... Respondents

CORAM: Hon'ble Member (J) Shri V.D.Deshmukh

Appearance

Shri G.S.Walia  
Advocate  
for the Applicant

Shri V.Narayan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 23.7.1993

(PER: V.D.Deshmukh, Member (J))

The application is admitted and I heard the learned advocate Mr.G.S.Walia for the applicant and Mr.V.Narayan for the respondents. The applicant has filed this application claiming that the respondents be directed to regularize the railway quarter No. 120/18 Kherwadi, Bandra (East) Bombay, in the name of the applicant No. 2 w.e.f. 1.10.1986.

2. The applicant No. 1 is the father of Applicant No. 2. The applicant No. 1 was allotted the quarter in dispute. The applicant No. 1 retired w.e.f. 30.9.1986. The applicant No. 2, the son joined the railway service on 1.2.1984 as a casual labour/substitute Bungalow Peon. As per the Office Memorandum (Ex.'B' to the application) the applicant No. 2, having completed more than 4 months continuous service, was granted temporary status w.e.f. 1.6.1984. It is contended that the applicant No. 2 applied for permission to share the accommodation with his father on 27.5.1985 and he also expressed his willingness to forego the House Rent Allowance. The permission was not granted because he was a substitute employee.

3. The applicant No. 2 claims that being a son of the applicant No. 1, he is entitled to regularisation of the railway quarter out of turn basis after he had shared the accommodation for a period of more than six months before the applicant No. 1 retired. The contents of Para 5 of the written reply filed by the respondents show that admittedly the applicant No. 2 was employed on 1.2.1984 and was residing with the applicant No. 1. As the applicant No. 1 retired w.e.f. 30.9.1986, it is obvious that the applicant No. 2 was sharing the accommodation with the applicant No. 1 for more than six months.

4. "Substitutes" are defined in Para 2315 of the Indian Railway Establishment Manual and as per the definition, they are the persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. Para 2318 of the said Manual provides that the substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. My attention has also been drawn to Para 2511 in the Manual which provides for the rights and privileges admissible to casual labour who are treated as temporary after completion of six months' continuous service. This Para provides that casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Manual. Para 2312 in Chapter XXIII of the Manual provides that subject to the availability of accommodation, a temporary railway servant is eligible for allotment of the same and to pay rent therefor in the same way as a permanent railway servant would. The net result of all these provisions in the various paras in the Manual is that the casual labour or a substitute <sup>if continuously</sup> ~~is~~ employed

for four months/<sup>or more</sup> gets the temporary status and gets all the benefits which are available to temporary servants under Chapter XXIII including the benefit of the allotment of the accommodation.

5. The applicant relies upon the judgement of the then New Bombay Bench of this Tribunal in OA.271/86 decided on 26.11.1987, VITHALRAO ARJUN KALE & ANR. vs. UNION OF INDIA & ORS., and on the judgement of this Bench of the Tribunal in OA. 314/90, MRS. PREMA PAUL & ANR. vs. UNION OF INDIA & ORS. decided on 12.2.1992.

<sup>the</sup> The various provisions in the Indian Railway Establishments Manual <sup>were</sup> ~~have~~ taken into consideration and it was found that the casual labour and the substitute <sup>who</sup> ~~could~~ <sup>been</sup> have ~~granted~~ temporary status would be entitled to regularisation of the quarters. Both these judgements also took into consideration the Railway Board Circular dated 29.8.1986 which provided that the orders contained in the Railway Board's letter dated 19.12.1981 were confined only to such of the wards of the railway employees who were regular employees and the casual labour and the substitutes with or without temporary status were excluded from the advantage of the Circular dated 19.12.1981. These contentions of the respondents were rejected in both the above decisions. Both the decisions are based on consideration of the relevant provisions of the Indian Railway Establishments Manual and the earlier precedent.<sup>s</sup>

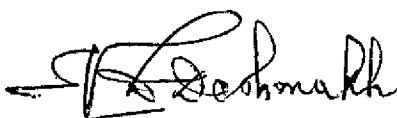
6. In the present case the respondents relied upon the Circular dated 11.4.1983. Clause (iii) in the last para of the Circular provides that the concession of out of turn allotment can be extended to a dependant relative only if he is in regular service and has been sharing accommodation for a period of 6 months during regular service. The emphasis is put on the condition that the ward of the earlier employee must be in regular service. However, this very contention

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had been rejected in reference to 1983 Circular in both the decisions discussed above and it has to be rejected for the same reasons. It has also been pointed out that so far as the judgement in OA.271/86 is concerned, the SLP No. 10795/88 was rejected by the Hon'ble Supreme Court and it is stated that the judgement of this Tribunal in OA.314/90 had been implemented by the Western Railway.

7. In the present case, the applicant No. 2 was given the temporary status w.e.f. 1.6.1984 and as he was admittedly sharing the quarter with the applicant No. 1 for more than six months, he shall be entitled to regularisation. The applicant No. 2 claims regularisation w.e.f. 1.10.1986, i.e. the next date after the retirement of applicant No.1.

8. In view of the above discussion, the application is allowed and the respondents are directed to regularise the Quarter No. 120/18 Kherwadi, Bandra (East), Bombay in the name of applicant No. 2 w.e.f. 1.10.1986. The respondents shall be at liberty to recover House Rent Allowance from the applicant paid to the applicant subsequent to 1.10.1986. No order as to costs.

  
(V.D.DESHMUKH)  
MEMBER (J)

mrj.