

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 271/93

~~Transferred Application No:~~

DATE OF DECISION 9.2.1994

Shri L.B.Angchekar

Petitioner

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 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 ? *No*
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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(8)

DA.NO. 271/93

Shri Laxman Bhiwa Angchekar

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri G.S.Walia
Advocate
for the Applicant

Shri A.L.Kasturey
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 9.2.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents to regularise the Railway Quarter No. 189/1 at Khar East, Western Railway Colony, Bombay in the name of the applicant.

2. The applicant was appointed as a Labourer ^{and} ~~who~~ was regularised in 1975. He was occupying the Railway Quarter along with his father until the father's retirement on 31.10.1983. The applicant's father made an application on 12.4.1975 for permission for sharing accommodation with his son and the latter endorsed that application by making a similar ^{request} ~~application~~ on the same application. They were informed by the respondents by the letter dated 10.12.1975, that is ^(nearly) after 8 months that they should advise the respondents about the date ^{from} ~~on~~ which the permission was requested. The applicants repeated the request by sending letters dated 29.4.1977, 1.2.1979 and by an application on prescribed form on 11.9.1980. The applicant thereafter sent on 19.2.1982

another letter requesting the respondents to consider his case. No replies were sent to the later communications. Proceedings were initiated by the respondents for the eviction of the applicant's father before the Estate Officer and thereafter the applicant approached this Tribunal by this application for a direction to the respondents as stated above and for interim relief against eviction. The interim relief against eviction was granted by the order dated 23.4.1993 and has been continuing since then.

3. The respondents' contention is that the particulars as required about the date from which the permission to share the accommodation was sought ^{were} ~~was~~ ^{supplied} ~~replied~~ and the later communications were not received. It is urged that since the applicant had been drawing the House Rent Allowance (HRA) continuously and the permission to share the accommodation with his father not granted, the applicant was not entitled for regularisation of quarter.

4. One of the submissions of the learned counsel for the respondents was that since the application was not made by the applicant earlier in the prescribed form, the applicant was not entitled to get any relief. This was, however, not the stand taken by the respondents in their reply to the application Ex. 'A' dated 12.4.1975. The advice was sought in respect of date from which permission to share accommodation was to be granted. It is difficult to believe that the respondents had not received the later correspondence, Ex. - 'D', 'E' and 'F' because there is an endoresement on the letter dated 1.2.1979 which according to the applicant was the acknowledgement of the letter dated 1.2.1979. Since the matter was already before the respondents and they had taken nearly 8 months for replying to the first request made by the applicant and had kept the matter pending without

any order refusing to grant the permission, it is difficult to believe that the later correspondence which was in the shape of reminders had not been received. It was open to the respondents to refuse the permission because their communication had not been answered or because the application had not been in the proper proforma. This was not done. Since the application had been kept pending all the time, the respondents cannot now make a grievance that the later communications had not been received and that the application was not in the proper proforma.

5. The next submission on behalf of the respondents was that the applicant had been all along receiving the House Rent Allowance. In the Board's letter dated 25.6.1966 on the subject of regularisation of allotment of Railway Quarter, the only requirement for allotment on out of turn basis was that the relation should be ^{ca}dependant Railway servant eligible for Railway accommodation and should have been sharing accommodation for at least six months before the date of retirement or death. Those instructions did not require that the dependant who wanted to share the accommodation should not receive the house rent allowance before qualifying for the accommodation. It was only by the Railway Board's letter dated 15.1.1990 that by introducing clause 8 a condition was imposed that if an employee's dependent was already drawing H.R.A. and stops drawing the amount six months before the retirement of that employee concerned, the dependent was not eligible for allotment regularisation of quarter. In the present case the application was made when the 1966 instructions were in force. The position with regard to the instructions dated 15.1.1990 was, however, clarified by the Railway Board's letter dated 4.12.1992 which mentioned that :-



"The said employee, who has been sharing accommodation with the retiring or deceased employee, is not eligible for HRA. It should be ensured that no out of turn allotment of accommodation is made to such employee in case he/she has been drawing HRA by suppressing the fact he/she was sharing the accommodation allotted to his/her father/son/husband/wife."

In the present case the applicant had been receiving the HRA. He had been making applications for permission to share the accommodation and there is no question of suppressing the information. When he received the permission to share the accommodation, the payment of HRA would have been stopped. There is no suppression of the fact for asking permission to share and factual allotment.

6. Shri Walia for the applicant relied on the observations of the Supreme Court in Gangaram M. Gupta & Anr. vs. Union of India & Ors. Civil Appeal No. 3496 of 1991 arising out of S.L.P.No. 357 of 1991 decided on 3.9.1991 to the effect that the respondents have kept the application for sharing pending for more than one and a half year and that the employee's case was covered by the Railway Board's instructions because the Circular issued by the Railway Board categorically indicates that a related person sharing the accommodation with the allottee relation for more than six months prior to retirement would be entitled to allotment of the accommodation. Here the applicant's application kept pending for more than 9 years without any order and there was no justification for the respondents' silence and I find this is a fit case where the permission for sharing should have been granted and since the applicant ^{had} ~~would have~~ satisfied the requirements, he should have been allotted the quarter in question."

7. Shri Kasturey brought it to my notice that an order was passed on 22.6.1993 against the applicant's father directing eviction. The proceedings were on the basis that no cause had been shown by the applicant's father against the initiated action of eviction. This Tribunal had passed an interim order on 23.4.1993 restraining the respondents from evicting the applicant and that order still subsists. Nothing turns therefore upon the order passed by the Estate Officer on 22.6.1993 requiring the applicant's father to vacate the quarter.

8. In the result, the application is allowed but subject to the condition that the applicant refund the entire amount of House Rent Allowance from May, 1975 to-date and shall not receive the House Rent Allowance hereafter since he is already occupying the quarters. The applicant shall be allowed to pay the amount due in instalments of Rs.250/- p.m. which may be deducted from his pay hereafter. The respondents are directed to regularise the quarter in the name of the applicant.


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.