

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 552/93

~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 18.10.93

Shri Jaideep Purshottamlal Bramhabhatt Petitioner

Shri L.M. Nerlekar Advocate for the Petitioners

Versus

Union of India and others. Respondent

Shri S.C. Dhawan. Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

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 ?
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.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 552/93

Shri Jaideep Purshottamlal Bramhabatt. ... Applicant.

V/s.

Union of India through
D.R.M. Central Railway
Bombay VT, Bombay.

The Senior Divisional Engineer
and Estate Officer,
Third Floor
D.R.M. 's office
Central Railway
Bombay VT, Bombay.

... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance

Shri L.M. Nerlekar, counsel
for the applicant.

Shri S.C. Dhawan, counsel
for the respondents.

ORAL JUDGEMENT.

Dated: 18.10.93

¶ Per Smt. Lakshmi Swaminathan, Member (J) ¶

Heard counsel for both ~~the parties.~~ The facts in the case are that the applicant had been appointed as Accounts Clerk in the office of the Divisional Accounts Officer, Central Railway, Bombay V.T. on 23.7.90 in Class III category on compassionate grounds after the death of his father. The father had been working as Mail Driver, Grade A, special and was allotted Railway quarter No. F - 205 A, Railway quarters at Kalyan which was a type III quarters. It is an undisputed fact that the applicant is entitled to a type II quarter.

2. Reference has been made to the Ministry of Railways, Railway Board circular dated 15.1.90. Para 2 of the circular provides that when a Railway employee who has been allotted railway accommodation retires from service or dies while in service, his son,

daughter, wife, husband or father may be allotted railway accommodation on out of turn basis provided that the said relation of the Railway employee is eligible for Railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death and had not claimed any HRA during the period. The same residence may be regularised in the name of the eligible relation if he/she was entitled for a residence of that type or higher type. In other cases a residence of the entitled type or type next below is to be allotted.

3. The learned counsel for the applicant has fairly conceded that in the present circumstances he would be satisfied if a type II quarter is allotted to him inspite of the type III quarter which he is occupying and which was originally occupied by his father. On the facts of this case, ^{it is} clear that the applicant, who is an Accounts clerk is only entitled to type II and not type III quarter in accordance with the aforesaid circular. The learned counsel for the applicant has submitted that in view of the fact that the applicant's mother is a kidney patient and requires immediate medical attention, and since there are some vacant type II quarters in the vicinity of the Railway Hospital, Kalyan the respondents may be directed to allot him one of these quarters. The learned counsel for the respondents states that they have no objection in making allotment of type II quarters to the applicant, to which he is entitled.

4. In the above circumstance the competent authority is directed to consider the applicant's request for allotment of a type II quarter near 18

: 3 :

about the Railway Hospital, if one is vacant. The applicant also undertakes to vacate the type III quarters within two weeks from the receipt of the allotment of the type II quarter. With these orders this application is disposed off, with no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

NS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CONTEMPT PETITION NO: 31 OF 1996 IN

ORIGINAL APPLICATION NO: 557 OF 1993.

Shri J.P.Bramhbhatt

...Applicant

V/s

Union of India & Others

...Respondents

REPLY ON BEHALF OF THE RESPONDENTS TO
THE REJOINDER

- 1) The Respondents submit that the Applicant was working as accounts Clerk and joined service on 19.6.90. The Respondents submit that the Applicant had applied for transfer of quarter from father to son basis and the Applicant was allotted a quarter which he did not accept as according to the Applicant he was entitled to type-II quarter and the ~~to t~~ quarter No.MA/962-B at KYN, which allotted to him equivalent to type - II. The Applicant thereafter filed the O.A. in this Hon'ble Tribunal for an order and direction for transfer of the quarter on father to son basis and challenging the action taken by the Respondents. It is pertinent to state here that Applicant's father was working as Mail Driver and was allotted quarter No. F-205-A from the pool of essential category. The Applicant was only an accounts clerk and was not entitled to quarter No.F-205-A as it is a type III quarter and the Applicant was only entitled to be granted only type II quarter and on out of turn basis the Respondents can allot a quarter of the same type lower as per Railway Board's circular dt. 24.7.1989.
- 2) ~~The~~ Respondents submit that the Respondents have had the highest regard for the orders of this Hon'ble Tribunal and had at any time any intention of either disobeying or disregard or willfully commit any breach thereof.

- 3) The Respondents submit that by order and judgement dt. 18.10.1993 this Hon'ble Tribunal had directed the Respondents to consider the Applicant's request for allotment of a type - II quarter near about the Railway Hospital if one is vacant. In the said order it is also noted that the Applicant undertakes to vacate the type-III quarter within 2 weeks from the date of receipt of allotment of type- II quarter. The Respondents submit that at the hearing of the said application, the learned counsel for the Applicant had also admitted that the quarter in occupation is a type - III quarter and that the Applicant is only entitled to type-II quarter.
- 4) The Respondents submit that the Applicant is not entitled to type D quarter and the Applicant had annexed the list of type D quarter which were allotted after the passing of the said order only to mislead this Hon'ble Tribunal and to prejudice. The Respondents submit that the type D quarters are higher type quarters and the Applicant is entitled to only type - II quarter and this Hon'ble Tribunal had already directed to allot type - II quarter to the Applicant. Therefore, the Applicant's request for allotment of type - D quarter is not justified and hence could not be considered. The Applicant's contention that type D quarters were vacant near the Railway Hospital therefore is of no consequence so far as this application is concerned. The Respondents

deny that the Applicant has been denied the benefit with ulterior motives as alleged or otherwise. The Respondents submit that the Applicant belongs to non-essential category and as stated herein above and the Respondents were looking for a quarter from non-essential pool for allotment to the Applicant and the same has been allotted to him by order dt. 30.8.95.

- 5) The Respondents submit that it is pertinent that the Applicant has filed this application only after the Respondents have written a letter dt. 19.6.96 calling upon the Applicant to take possession of the quarter allotted to him and vacate the possession of the Qtr. No. F-205-A, which clearly shows that the intention of the Applicant was to stick on to the higher type of quarter and not to comply with the undertaking given by him to this Hon'ble Tribunal. The Respondents submit that the Applicant has referred to number of other allotments which are mainly to the essential category staff for which there is a separate pool. The Respondents submit that allotment of such quarters to the category of employees who are essential from their pool cannot imply in any manner that the Respondents were trying to wilfully or ~~deliberately~~ disobey the orders of this Hon'ble Tribunal or commit any breach thereof. The Respondents submit that in the said order this Hon'ble Tribunal has not given any time limit for complying with the orders and the Respondents have not disturbed the possession of the Applicant in the quarter in which he was residing which was of a higher type Qtr. and to which the Applicant is not entitled. The Respondents submit further that even today the Applicant is

trying to content that he has not been served with the original copy of the allotment letter even though he was in possession the duplicate copy of the said allotment letter as far back as on 3.4.96. The Respondents submit that even assuming that the original letter was not served on the Applicant as contented by him, after receiving the duplicate copy thereof, it was his duty in view of the undertaking given to his Hon'ble Tribunal by him to vacate the type III quarter within two weeks from the date of receipt of duplicate copy of the allotment order. The Applicant is willfully committing breach of the undertaking given to this Hon'ble Tribunal and are making excuses for not vacating the quarter. The Respondents submit further that what was required to be done was that the Applicant should be allotted a quarter for which is entitled to as per the directions of this Hon'ble Tribunal. This Hon'ble Tribunal did not direct that first available quarter was to be allotted to him. Therefore, the grievance of the Applicant that the some other employees have been allotted quarters is not of any consequence to this application and the Applicant has brought out this as a means for prolonging his stay in the type III quarter for which he is not entitled and are making false excuses to justify his action which is clearly breach of the undertaking given by the Applicant to this Hon'ble Tribunal.

6. In view of the facts and circumstances stated hereinabove, the Respondents state that the Applicant who had in contempt of this Hon'ble Tribunal by doing the breach of the undertaking given by him to this Hon'ble Tribunal

...5...

should be called upon to purge himself of the said contempt by immediately handing over the possession of the quarter No.F.205.A to the Respondents. The Respondents submit further that by reason of the action of the Applicant, the Respondents are suffering in as much as the Respondents cannot allot the second quarter which is allotted to the Applicant and is lying vacant from 30.8.95 and also thereby depriving the other railway employees from being allotted the same to them.

7. With reference to the affidavit dated 15th December 1996 The Respondents state that the allotment of the quarter is dated 30.8.95. However the duplicate copy of the said order was furnished to the applicant when the applicant was called upon to take possession of the said quarter and vacate the higher type quarter in his possession as more particularly, set out in the reply and here in above.

8. The Respondents deny that the said quarter No.RB.II. 1013.13 at Kalyan was allotted to the applicant during the pendency of the contempt petition as alleged or otherwise. The Respondents deny that the said quarter is at present occupied by the one Rijaz Ahmed as falsely alleged or otherwise. The Respondents state that the said quarter No.RB.II,1013.13 at Kalyan is vacant since August 95, till date and the statement of applicant that the Quarter has already been occupied by one Shri Riyaz Ahmed, is wrong. A certificate from concerned IOW(M) stating that the said quarter is lying vacant and not occupied by any other, is enclosed herewith and marked Ex-I. Apart from the above the administration has

...6...

initiated further action and have sealed the said quarter on 24.12.96 to double ensure that it could not be occupied by any other person ~~un~~ unauthorisedly. ~~A~~ certificate to this effect is also enclosed herewith and marked as Ex.II. On reporting of the applicant to IOW.M. the key of the said room will be handed over to him.

Ex.II

9. The Respondents submit that the applicant has never approached the competent authority to take possession and occupy the said quarter at any time. The Applicant is making false statements knowingly and only with a view to misled this Hon'ble Tribunal with malafide intention of keeping on holding to the higher type of quarter.

10. In the facts and circumstances of this case, this Applicant may be dismissed and the Applicant be called upon to immediately hand over the vacant possession of the quarter No.F.205.A to the Respondents and such further action may be taken against the Applicant for breach of the undertaking given by him as may be deemed fit by this Hon'ble Tribunal.

VERIFICATION.

I, Mrs.Alka A.Misra, Senior Divisional Personnel Officer, Central Railway, having my office at Mumbai CST, do verify and state that what is stated in the foregoing paragraphs (except the legal submissions) is based on the records maintained in the office and I believe the same to be true.

No material facts have been suppressed.

Place: Mumbai CST.

Date : 22.1.97

S.C. DHAWAN)
COUNSEL FOR THE RESPONDENTS.

FOR AND ON BEHALF OF RESPONDENTS

SENIOR DIVISIONAL PERSONNEL OFFICER (PERSONNEL)

100/100/100

BOMBAY-V. J. T.