

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 567/93

~~Transfer Application No:~~

DATE OF DECISION 9.2.1994

Shri B.V.Khandized & Anr. Petitioner

Shri P.G.Lad Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri J.G.Sawant 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 ? *NO*


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 567/93

Shri Bharat Vithal Khandizod & Anr. ... Applicants
V/S.

Union of India & Ors. ... Respondents

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

Appearance

Shri P.G.Lad
Advocate
for the Applicants

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 9.2.1994

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

This is an application for a direction to the respondents for allotment of Railway quarter to the applicant No. 1 and payment of gratuity to Applicant No. 2. Applicant No. 1 is the son of Applicant No. 2 who was employed in the Central Railway on 20.6.1987. He had been continuously staying with his father in Railway Quarter which was allotted to the latter until his retirement on 30.11.1989. On 4.4.1989 the applicant No. 1 made an application informing the respondents that he had wrongly received the House Rent Allowance from 20.6.1987 though he was residing with his father because he was ignorant of the Railway rules. On 8.7.1989 Applicant No. 2 made an application for permission to share the accommodation ^{with} his son. On 1.8.1989 the applicant No.1 made an application in the prescribed proforma for permitting him to share accommodation. On 30.11.1989 the respondents passed an order stopping the payment of HRA to applicant No.1

and recovery for overpayment made from 20.7.1987 in suitable instalments and the certificate to that effect was also issued on 29.8.1990. Since the applicant was not allotted the railway quarter after the retirement of his father, he filed the present application for a suitable direction. By the interim order passed on 20.1.1993 a direction was issued to the respondents not to evict the applicant No. 1 from the accommodation till his application for allotment was disposed of.

2. On behalf of the respondents Shri Sawant, learned counsel urged that applicant No. 1 had been in occupation with his father from 8.7.1989 to 30.11.1989, i.e. for a period less than six months as required under the instructions and has suppressed the facts that he has been sharing the accommodation with his father and had availed of the House Rent Allowance throughout until an order came to be passed for recovery and therefore the applicant could not be entitled to allotment of quarters. Reference was made to this letter dated 11.2.1982 issued by the Ministry of Railways (Ex.R-1) by which it was clarified that there was no question of refund of the House Rent Allowance if the Railway servant has been sharing accommodation for satisfying the condition of six months stay for being eligible for allotment of Railway quarters out of turn. It was clarified that a specified relative who had been sharing accommodation with the retiring or deceased employee was not eligible for house rent allowance and therefore the question of refunding the house rent allowance does not arise and in such a case the employee will not be eligible for allotment of Railway quarters on out of turn basis in terms of Railway Board's letter dated 27.2.1971.


W. S. Sawant

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By the letter dated 7.3.1989 it was made clear that if an employee had been drawing House Rent Allowance suppressing the fact that he was sharing accommodation allotted to his father/son/husband, wife, no out of turn allotment should be made to him even if he was prepared to refund the House Rent Allowance. It is clear that under the instructions applicable to the applicant since he had been sharing accommodation with his father, he was not eligible for House Rent Allowance and he had been drawing the amount though he was residing with his father. The permission to share the accommodation had been granted only for four months and the applicant was therefore ineligible for allotment of Railway quarter. It is, therefore, clear that the first applicant is not entitled to the allotment of Railway quarter on out of turn basis.

3. With regard to the claim for payment of gratuity, it is obvious that the gratuity payable to Applicant No. 2 upon his retirement should have been paid but since an injunction was obtained, the applicant No. 2 would be liable to pay the normal house rent in respect of the railway quarter until he vacates the possession. The respondents are directed to pay the balance from the amount of gratuity to the Applicant No. 2 after deducting normal house rent to-date if it has not been paid so far. This concession, however, will not apply for the period for which the applicant would be in occupation hereafter and the respondents will be at liberty to recover the house rent that may become payable as per rules.

4. With these directions the application is disposed of.


(M.S.DESHPANDE)
VICE CHAIRMAN