

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

231
Original Application No. : 607/93.

XXXXXXXXXXXXXXXXXXXX

Date of Decision

26-08-97

Shri H. A. Khan & Another,

Petitioner/s

Shri G. S. Walia,

Advocate for
the Petitioner-

Versus

Union Of India & Others,

Respondent/s

Shri S. C. Dhavan,

Advocate for
the Respondent

Coram :

HON'BLE SHRI. B. S. HEGDE, MEMBER (J).

HON'BLE SHRI. M. R. KOLHATKAR, MEMBER (A).

- (1) To be referred to the Reporter or not ? ✓
(2) Whether it needs to be circulated to other X
Benches of the Tribunal ?

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA

607, 93

✓
Hon'ble ~~Vice Chairman~~ / Member (J) / Member (A) —
may kindly see the above Judgment for
approval / signature.

MR K. K. J.
V.G. / Member (J) / Member (A) (K/S)

22/8/97

Hon'ble Vice Chairman

Hon'ble Member (J) ✓

Hon'ble Member (A) (K/S)

Agree Prayda

N R Kolhatkar

promoted on 26 8 97.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 607/93.

Dated this Proclaimed the 26th day of August, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

1. H.A. Khan,
Retired Motor Man,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Mansur Ahmed Khan,
Electrical Lineman,
Metropolitan Transport
Project, Central Railway,
Mankhurd
Under Dy. C.E.E. (C) MTP
Mankhurd, Central Railway,
Bombay.

... Applicants

C/o. G.S. Walia, Advocate,
High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Bombay - 400 001.

(By Advocate Shri G.S. Walia).

VERSUS

1. Union Of India through
General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Divisional Railway Manager,
Central Railway,
Bombay V.T., Bombay-400001.
3. Dy. Chief Electrical Engineer,
Metropolitan Transport Project,
Central Railway, Mankhurd,
Bombay.

... Respondents.

(By Advocate Shri S. C. Dhavan)

: ORDER :

PER.: SHRI M. R. KOLHATKAR, MEMBER (A)

In this O.A., the applicant no. 1 is a retired Motorman from Central Railway, who superannuated on 31.10.1992. The applicant no. 2 is his son, who has been working as Skilled Lineman Grade-III in the Central Railway since 08.05.1990. The applicant no. 2 was given permission to share the railway accommodation allotted to his father and it is contended that applicant no. 2 did not draw H.R.A. for about 13 months prior to the date of superannuation of his father. The applicants are impugning the letter dated 20.11.1992 Exhibit 'E', by which the request of Applicant No. 2 for transfer of railway quarter allotted to his father in his name, has been turned down. The same reads as below :-

"We have examined your request for allotment of quarter on father to son basis. It is found that your son does not qualify the conditions laid down by the Railway Board for transfer of quarter on father to son basis. It is noted that your son was appointed on 08.05.1990 and he continued to get HRA upto September 1991. It was only when you were nearing to retirement i.e. 31.10.1992, he has stopped claiming HRA indicating sharing accommodation with you. Also the subject record reveals that he has been sharing accommodation with you even prior to September, 1991.

As per conditions laid down, your son should have not claimed the HRA right from the date of joining the service."

2. The applicants have contended that the request for regularisation has been wrongly turned down and that it is contrary to the provisions of the Railway Board order dated 25.06.1966 and that the applicant no. 2 has been sharing the accommodation with his father for a period of ^{more than} six months, for which period H.R.A. has

not been claimed. The H.R.A. for the earlier period, though it might have been paid to the applicant, was inadvertent and can be recovered. In this connection, the applicant no. 1 in his affidavit, after the pleadings were complete, has stated that he had given in writing that H.R.A. which has been paid to his son may be deducted from the date of his appointment and that such orders have been passed by the respondents in various ^{other} cases though not in this case ^{which is discriminatory.} In this connection, two such cases namely; the case of Shri Ajay Rastogi and Shri Bhima Yadav Nirbhavne, have been quoted. In these cases, while granting permission for sharing, it was ordered that over payment of H.R.A. should be recovered.

3. It is further contended that the applicant no. 2 is posted at Mankhurd and the Railway Quarter is at the Tribunal should hold that in any case, Byculla and therefore the condition that the applicant should not have drawn H.R.A. is not applicable, as the applicant no. 2's posting is at a different station from the station at which the Railway quarter is situated.

4. The respondents have opposed the D.A. They have firstly raised the preliminary objection that the application is bad for misjoinder and causes of action and misjoinder of parties. So far as the applicable rules are concerned, the circular dated 25.06.1966 on which the applicants have relied, is stated to have been superseded by a subsequent circular dated 15.01.1990. In this circular, the relevant condition regarding not claiming the H.R.A. during the relevant period ^{appears which} did not find place in the earlier circular. Note (viii) under para 3 of the circular states that "if an employee's dependent is already drawing HRA and stops drawing the amount six months before the retirement of the employee concerned, the dependant is not eligible for allotment/regularisation of quarter." According to the respondents, the

regularisation was rightly rejected because the applicant no. 2, although ^{he} was sharing the quarter with the Applicant No. 1 from 08.05.1990, continued to draw H.R.A. from the date of employment right upto September 1991, and stopped drawing the same a few months prior to the date of superannuation ^{and} therefore, the note 8 under para 3 of the O.M. dated 15.01.1990 referred to above, squarely applies to the facts of the case. The respondents further contend that the issue is no longer res-integra keeping in view the binding ratio of the Full Bench judgement of the Tribunal in Liaquat Ali Khan & Another V/s. Union Of India & Others reported at 1995 (2) ATJ 161, which laid down that regularisation of accomodation is not a matter of right, but it is ^a matter of concession. The Learned Counsel for the Respondents contended that the Division Bench in the case of Shivram Ganu Wagherkar & Another V/s. Union Of India & Another in O.A. No. 882/93 decided on 31.01.1996 has also considered the various cases on the point and interpreted the very circular dated 15.01.1990 and in terms of this judgement, the O.A. is liable to be dismissed.

5. As we are required to interpret the circular dated 15.01.1990, the para 2 and notes under para 3 are reproduced below :

"2. When a Railway employee who has been allotted railway accomodation retires from service or dies while in service, his/her son, daughter, wife, husband or father may be allotted railway accomodation on out of turn basis provided that the said relation was a railway employee eligible for railway accomodation and had been sharing accomodation with the retiring or deceased railway employee for atleast six months before the date of retirement or death and had not claimed any H.R.A. during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible 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.

Note: (i) Orders regarding non-drawal of house rent allowance are applicable only in cases where the dependent is employed in the station where the railway employee has been allotted railway accommodation.

(viii) If an employee's dependent is already drawing HRA and stops drawing the amount six months before the date of retirement of this employee concerned, the dependent is not eligible for allotment/regularisation of quarter."

6. The Learned Counsel for the applicant contends that what is required to be interpreted is the term "during the period" occurring in para 2 of the circular. Para 2 states that the sharing of the accommodation had to be at least for six months before the date of retirement and the H.R.A. should not be drawn during the period. The term 'during the period' is to be interpreted in the context of the term 'at least six months' occurring in the earlier sentence. In this connection, he relies on the judgement of the Tribunal decided by a Single Bench ^{on 31.05.1994} in O.A. No. 901/92 ., Paras Ram Singh & Another V/s. Union Of India & 2 Others in which a reference has been made to "the rule of last antecedent", page 251 of G.P. Singh on Principles of Statutory interpretation. According to the Learned Counsel for the applicant, para 2 is a primary rule and Note 8 under para 3 is to be considered as an ancillary rule and therefore, the note cannot govern the interpretation of para 2. The Note refers an employee's dependent, who is earlier drawing H.R.A. and ^{stops} drawing the H.R.A. for six months to ensure technical compliance with the rules but this note cannot govern the interpretation of rule under para 2, which does not imply any such condition.

accomodation in Mumbai, Mankhurd and Byculla are required to be treated as part of the same station of posting rather than different stations.

11. The Counsel for the applicant would argue that the Hon'ble Supreme Court in the judgement in Hareesh Kumar Chhaganlal V/s. Union Of India & Others [Civil Appeal No. 1183 of 1994] have deprecated the tendency of the Central Administrative Tribunal to take a narrow view ^{which} is not justified in the facts and circumstances of the case. He also relies on the judgement of the Supreme Court in Gangaram M. Gupta V/s. Union Of India & Others in Civil Appeal No. 349 of 1991 decided on 03.09.1991. We have considered this judgement and in our view, the ratio of this judgement does not apply to the facts of the case. Lastly, other judgements relied by the Counsel for the applicant are -

- (i) Surendra Singh J. Solanki & Another V/s. Union Of India & Anr.
O.A. No. 8/95 decided on 05.12.1995.
- (ii) D. R. Gaikwad & Another V/s. Union Of India & Others.
O.A. No. 1345/92 decided on 25.10.1993.
- (iii) Laxman Bhiwa Angchekar V/s. Union Of India & Others.
O.A. No. 271/93 decided on 09.02.1994.
- (iv) D.N. Waghmare & Another V/s. Union Of India & Others.
O.A. No. 403/96 decided on 25.06.1997.

We have considered all the judgements. We wish to make it clear, that it is not a question of Liaquat Ali Khan's judgement and Shivram Ganu Wagherkar's judgement over-ruling earlier Single Bench decisions. In our view, the question essentially turns on interpretation of circular of the Railway Board dated 15.01.1990 as clarified by the subsequent circular dated 04.12.1992.

On a correct interpretation of this circular, we have no doubt that the respondents rightly rejected the request of the applicants and the O.A. has no merit. The O.A. is, therefore, dismissed with no order as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).

os*