

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 645/93

Transfer Application No:

DATE OF DECISION

31.3.93

Shri Rajkumar Pritam
Petitioner

Shri S.N.Pillai
Advocate for the Petitioners

Versus

Union of India & Anr. Respondent

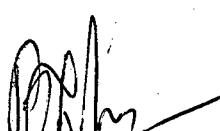
Shri S.C.Dhawan
Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri P.P.Srivastava, Member (A)

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 ?~~


(P.P.SRIVASTAVA)
MEMBER (A)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 645/93

Shri Rajkumar Pritam ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.N.Pillai
Advocate
for the Applicant

Shri S.C.Dhawan
Advocate
for the Respondents

JUDGEMENT

Dated: 31.3.95

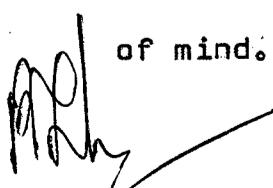
(PER: P.P.Srivastava, Member (A))

The applicant is working as a Safaiwala in grade Rs.750-940. The applicant was appointed in 1986. The applicant's father was working as a Fitter in Central Railway. At the time of retirement he was in occupation of Type-I quarter which is normally allotted to Group 'D' employee. The applicant's father took voluntary retirement w.e.f. 31.1.1990. The applicant was sharing accommodation allotted to his father since 1.7.1989. The applicant had taken sanction of the competent authority (redacted) to share the accommodation with his father. The applicant obtained sanction for sharing accommodation upto 30.6.1990. Since the applicant's father took voluntary retirement w.e.f. 31.1.1990, the applicant (redacted) applied for regularisation of quarter occupied by his father as he was satisfying all the conditions for such allotment of quarter. The applicant had applied for regularisation of the quarter on 23.4.1990

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which was disposed of by the respondents after a period of about 2 years on 21.1.1992 denying the request of the applicant for transferring the quarter in his name. Meanwhile the applicant's father expired on 15.12.1991. The respondents had taken disciplinary action against the applicant and he was removed from service w.e.f. 16.1.1991. However, he was appointed afresh in the same post w.e.f. 17.6.1991. The applicant's contention is that at the time of voluntary retirement of his father on 31.1.1990, he was entitled to transfer of quarter from his father to his own name but it has been denied to him. Meanwhile, the respondents started proceedings under P.P. Act for eviction of the father of the applicant and his family. On 30.11.1992 the applicant informed the Estate Officer that since his father/ expired on 15.12.1991, the notice cannot be issued in the name of the deceased person. However, the respondents continued the action under P.P. Act for eviction of the applicant and other members of the family of his father. Aggrieved by the order of the respondents rejecting transfer of this quarter from father to son basis vide their letter dated 21.1.1992 as well as the proceedings under P.P. Act, the applicant has approached this Tribunal for quashing the proceedings under P.P. Act as well as for directing to regularise the quarter No. K-266 which was in the name of his father to his name w.e.f. 1.2.1990.

2. The counsel for the applicant has submitted that all the conditions which are required to be satisfied for the transfer of quarter are satisfied in the case of the applicant and the respondents have rejected the claim of the applicant in a mechanical manner without application of mind. The order of the respondents dated 21.1.1992



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re-engaged, the service which the applicant has rendered before re-engagement i.e. 17.6.1991 was of no avail for him for the purpose of the benefit of allotment of quarter in his name from his father.

I am not inclined to agree with this argument. The applicant had applied, according to the respondents, on 23.4.1990 for allotment of quarter after voluntary retirement of his father on 31.1.1990. His case for allotment of quarter should be considered in terms of the conditions which were prevalent on 23.4.1990 at the time of his application. The applicant was very much in service on that date and had completed sharing of accommodation with his father for six months and was satisfying condition No. 2 which has been enumerated above.

5. As far as condition No. 8 is concerned, for satisfying condition No. 8 the applicant should have shared the quarter with his father from the date of his employment because according to this condition if an employee is already drawing HRA and if stops the same and start sharing for the purpose of completing six months of sharing then he is not entitled for allotment of quarter in his name. It was pointed out to me that this condition has become applicable with Circular which has been issued on 15.1.1990. Before the issue of this Circular, this condition was not there. Before this Circular, Railway employee should have shared accommodation with the retiring or deceased railway employee for six months before the date of retirement. Since new condition/Circular been added w.e.f. 15.1.1990, the case of the applicant should be considered in terms of the conditions prevailing

APR

(at page 13) rejecting the claim of the applicant does not bear any reasons except ~~saying~~ in a routine manner that the applicant does not fulfil the conditions laid down under Board's letter. The rejection letter even does not give a reference to Board's letter which has not been complied with.

3. Counsel for the respondents has argued that the applicant was removed from service on 16.1.1991 and has been re-engaged as a fresh entrant as a measure of compensation on 17.6.1991. Therefore the applicant does not satisfy the condition No. 2 in Railway Board's Circular No. 7/90 dated 15.1.1990. The condition No. 2 reads as under :-

"The concession of adhoc allotment would not be available in the case of a dependent who secures employment in the railway after the date of retirement of parent or during the period of re-employment."

The counsel for the respondents has also mentioned that the applicant does not satisfy the condition laid down as No. 8 which reads as under :-

"If an employee's dependent is already drawing H.R.A. and stops drawing the amount six months before the retirement of this employee concerned, the dependent is not eligible for allotment regularisation of quarter."

4. I have considered the arguments on this point of both the sides. The argument of the respondents is that once the employee has been removed from service and has been engaged as a fresh employee, his claim for allotment of quarter by virtue of his service before the date of his removal is not available. Since the case of the employee was considered on 21.1.1992 and since he had been removed before this date and thereafter

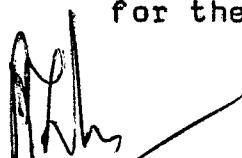


before issue of the Circular. It is a fact that the applicant was employed in 1986 and he started sharing accommodation with his father since 1.7.1989, therefore, [redacted] condition No. 8 is not satisfied in his case. But I am of the view that the case of the applicant is required to be considered in terms of the conditions prevalent before [redacted] Circular dated 15.1.1990 when this condition was not applicable.

6. I am, therefore, of the view that the applicant satisfies all the conditions which are required for regularising the quarter in his name from father to son basis on a date of voluntary retirement of his father, i.e. 31.1.1990 and his application for regularisation of quarter should have been granted by the respondents.

7. I, therefore, quash the respondents' letter dated 21.1.1992 rejecting the claim of the applicant for transferring quarter No. K-266 in his name and direct the respondents to treat the quarter No. K-266 transferred in the name of the applicant w.e.f. 31.1.1990.

8. As far as the question of action under P.P.Act is concerned, since I have held that the applicant is entitled to regularisation of quarter in his name w.e.f. 31.1.1990, the action taken under P.P.Act becomes infructuous and the same is also quashed. The counsel for the respondents had raised the question that this Tribunal is not entitled to hear the case/ action being taken by the respondents under P.P.Act. The counsel for the respondents was to produce the decision of the



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Supreme Court in this respect which he has failed to do. Therefore this Bench is bound by the Full Bench decision in Rasila Ram vs. Union of India decided on 5.5.1989. Considering all the facts and circumstances of this case, I order as under :-

- (1) The applicant is entitled to regularisation of quarter No. K-266 from 31.1.1990, the date his father took voluntary retirement. He should be charged normal rent from that date according to the rules.
- (2) All the actions taken under P.P. Act against the applicant are quashed.
- (3) There will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.