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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1259/94  
Transfer Application No.

16.6.1995

Date of Decision : \_\_\_\_\_

Udaybhan R. Yadav

Petitioner

Mr. G.S.Walia

Advocate for the  
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. N.K.Srinivasan

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? No

L. M. S.  
V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A.No. 1259/94

Udaybhan R. Yadav

..Applicant

v/s.

Union of India & Anor.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

Appearance:

Mr. G.S. Walia  
Counsel for applicant  
Mr. N.K. Srinivasan  
Counsel for the respondents  
Mr. S.N. Pillai  
Counsel for intervenors

ORAL JUDGMENT:

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

Dated: 16.6.95

By this application the applicant seeks a direction to the respondents to allot railway quarter no. 74/7 Type II at Matunga Road to the applicant which benefit has been denied to him by the respondents.

2. The applicant was appointed to a Class IV post on 1.8.94 and was promoted as Welder(Gr.III) in 1979 and as Welder(Gr.II) from 1988. The applicant's father belonged to Class IV and was allotted quarter no. 127/11 at Mahalaxmi which was a Type I quarter comprising of only one room. The applicant's father died on 31.10.1984. The railways proceeded against the applicant by taking disciplinary action as the applicant was found guilty and was deprived of one set of passes. Proceedings were taken against the

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applicant u/s.4 of Public Premises (Unauthorised Occupation) Act for unauthorised occupation by filing suit no.29/1990. The suit was dismissed on 30th April 1992 and regularisation of the quarter was ordered. The respondents preferred an appeal before the Principal Judge of the City Civil Court and that appeal was decided in 1993. The applicant made a request on 17.8.93 for a change of quarter from Type I to Type II. In the Housing Committee Meeting a difference of opinion came as to whether the applicant should be given priority in the allotment of Type II quarter from 1.11.1984 i.e., the date on which the applicant became eligible for Type II quarters or from 17.8.93 that being the date on which the application for change over to Type II quarter was made. In the meanwhile the applicant's name was interpolated and placed at Sr.No.1 in the priority waiting list for change of quarter. Applicant by this application seeks allotment of quarter by assuming that he became eligible from 1.11.1984 and by urging that by virtue of being placed on top of the waiting list he would be entitled for Type II quarters.

3. The Ld. counsel for the respondents urged that there were no rules governing the preparation of the waiting list nor there were any administrative instructions on the subject and in the absence of any rules/instructions the only proper way of considering the priority for allotment of quarter would be the date on which request for allotment of quarter was

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made and the applicant would not therefore be entitled to be placed on the top of list by virtue of his having acquired eligibility for a Type II quarter on 1.11.1984 and his entitlement will have to be decided based on the date on which he made the application viz., 17.8.1993.

4. Shri Walia, Ld. Counsel for the applicant urged that the applicant had to suffer for no fault of his because the instructions issued by the Railway Board on 25.6.1966 regarding out of turn allotment of railway quarters were very clear and as was clarified by the instructions issued on 5.5.1983, Exhibit C, were mandatory and not discretionary. It is clear that the instructions would apply so far as the out of turn allotment of the quarter is concerned. In fact the applicant's entitlement to the allotment on out of turn basis because of his sharing the quarter with his father had been granted w.e.f. 1.11.1984 i.e., from the date after the death of his father.

5. The question however is whether the applicant would be entitled merely because of this allotment w.e.f. 1.11.1984 to priority in the matter of allotment of the quarter to which he would otherwise be entitled. It must be noted that the order of the Estate Officer in the suit no.29/90 was passed on 30th April 1992 and the railway administration was directed to regularise the railway quarter no.127/11 at Mahalaxmi, Bombay in the name of the Applicant

(Exhibit B). This is not to suggest that the order passed by the Estate Officer would decide the question of priority in allotment of other type of quarter to which the applicant might have been entitled. Mr. Walia, counsel for applicant urged that there would not have been any occasion for the applicant to apply for better accommodation unless his application for regularisation of quarter which had been allotted to his father had been allowed because that would have given him the right for betterment of accommodation. He further submitted that filling of an application for priority in allotment must be held to be discretionary because it might not be that every one who is entitled for a better type of accommodation would be compelled to shift to the accommodation of the higher type and because he was content with the accommodation, he may not ask for betterment or other type of accommodation to which he would be entitled. In that event there would be no question of considering the claim of such a person for priority in allotment. On the other hand it appears to me that it would be this very reason why the priority in the waiting list should go by the order in which the applications for allotment of quarters are made. If it is left to the Housing Committee to examine in detail what are the causes which led to the belated filing of the application and to satisfy themselves about the desirability of the allotment on priority basis, upon such an investigation, it would <sup>amount</sup> ~~about~~ to opening a Pandora's Box and investing the Housing Committee

with the work ~~and~~ adjudging on the question of priority after ascertaining the facts of each and every case. There can be no justification for adopting such a basis because the powers of adjudication have to be conferred on such a body before ~~which~~ it can be expected to undertake such a task. The better way for a body like the Housing Committee for determining the question of priority would be the order in which the applicants name appear in the original list and it should not be left open to the Housing Committee to decide the priority only because some one may have been eligible to apply earlier but had not applied or could not have applied earlier because his eligibility to apply for a better type of accommodation was in dispute. This is not to say that if the department has prescribed guidelines otherwise for giving priority by setting out certain norms, those should not be followed. The priority in accommodation, despite the order in which the names appear in the waiting list would be on the basis of the norms prescribed and those norms if prescribed shall have to be followed.

6. Shir Pillai, counsel has filed an application for intervention on behalf of Shri S.C.Kamble for intervention. It is not necessary to consider that application for intervention because the question of intervention would have arisen only if the present application were to be allowed.

*[Handwritten signature]*

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7. I see no merit in the application and it is dismissed with the clarification that the applicant's claim for priority shall be considered on the basis ~~of the date~~ on which he made the application for allotment of better quarter. There would be no order as to costs.

  
(M.S. Deshpande)

Vice Chairman

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