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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 286/94

Transfer Application No:

DATE OF DECISION: 22.11.1994

Shri K.B.Shetty Petitioner

Shri A.I.Bhatkar Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ? NO
2. 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

DA.NO. 286/94

Shri K.B.Shetty

... Applicant

V/S.

Union of India & Ors.

... Respondents

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

Appearance

Shri A.I.Bhatkar
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 22.11.1994

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

The applicant by this application seeks refund
of the market rent that was charged ^{from} ~~to~~ him from 1.5.1989
to 16.12.1991.

2. The applicant was promoted as a Foreman of Stores
in February, 1989 and was transferred to Sunabeda which
according to him was a tenure station. On 16.8.1989
sanction was accorded by the letter Exhibit-5 for permitting
the applicant to avail of the Government accommodation for
his
bonafide use of family members on his permanent transfer
to NAD Sunabeda, that being ~~a~~ tenure posting from 1.2.1989
to 30.4.1989 or till he is posted out from Sunabeda is
declared as (un-tenured) station, whichever is earlier.
The applicant was retransferred from Sunabeda to Karanja
on 16.12.1991. However, normal rent was deducted in respect
of the quarters which the family occupied ~~upto~~ the end of
April, 1989 but from 1.5.1989 market rent came to be deducted

from his pay bill. The applicant contends that this was irregular because the letter dated 16.8.1989 referred to the Ministry of Defence's letter dated 2.3.1968 which permitted the Government servants to have married accommodation for the bonafide use of their family members in the event of their transfer to a place where there was to be a tenure posting.

3. According to the respondents, the deductions were properly made because the 2.3.1968 letter referred to only the place where there could be a tenure posting, namely, Srinagar, Jammu, Udhampur and Darjiling and Sunabeda was not one of those four places. It was pointed out during the audit that the retention of Government accommodation on normal rent was irregular and so the order was issued on 24.7.1991 (Ex-'R-2) cancelling the concession.

4. Shri Bhatkar, learned counsel for the applicant urged that once the benefit was extended to the applicant, it could not be withdrawn, but it is difficult to accept this contention because the letter on the basis of which the concession was granted to the applicant did not provide for concessional use of the married accommodation upon transfer to Sunabeda because the latter was not a tenure posting. However, since the concession was made available to the applicant, it could be availed of until it was withdrawn and that could be done only prospectively. Since the concession was withdrawn by the letter dated 24.7.1991, any rent which became payable after July, 1991, in the facts of this case, would be on the basis of market rent. This will cover the period from 24.7.1991 to 16.12.1991 when the applicant was transferred to Karanja.

5. Shri Bhatkar contended that the same benefit was extended even after the letter dated 24.7.1991 to other employees of the department and he relies on the letter dated 20.11.1991 by which one P.Satyanandam was granted this concession upon his posting at Sunabeda. It is difficult to accept the contention that mistake which came to be repeated after the audit objection was raised would entitle the applicant ~~to~~ a right to obtain a similar concession. Reference was made to the decision of this Tribunal in Amar Bahadur Mishra & Ors. vs. Union of India & Ors. DA.NO. 775/88 decided on 3.8.1994 where reliance was placed on Virendra Kumar & Ors. vs. Union of India (1981 SCC (L&S) 472), where certain persons had completed only two years of service before they were promoted to the post of Chargeman Gr.II. The Government thereafter appears to have insisted that in so far as the appellants were concerned they could not be considered for their promotion unless they completed three years of service. It was there held that there was no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Gr.II after completing two years of service, there was no reason why the appellants should also could not be similarly promoted after completing the same period of service. There it was a clear case of discrimination between two classes of persons who had put in two years of service and three years of service and the latter therefore were clearly discriminated against. Such is not the position here. Here there was a clear mistake and ~~the~~ repetition of mistake ~~the~~ would not confer a right on the applicant.

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6. In the result, the application is allowed partly. The respondents are directed to refund rent in excess of normal rent recovered between 1.5.1989 to 24.7.1991 to the applicant within two months from the date of communication of this order. The rest of the claim is dismissed. No order as to costs.


(M.S. DESHPANDE)

VICE CHAIRMAN

mrj.