

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1037 /1994

Date of Decision:

16-08-96

Shri H. M. Nimal & Another

Petitioner/s

Shri G. S. Walia,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri N. K. Srinivasan,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. KOLHATKAR, MEMBER (A).

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 1037/94.

Dated this Pronounced, the 16th day of August, 1996.

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

1. H.M. Nimal

2. Bhushan Nimal

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

... Applicants

(By Advocate Shri G.S. Walia).

VERSUS

1. Union Of India through
General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020.

2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
BOMBAY - 400 008.

3. Chief Workshop Manager,
Mahalaxmi Workshop,
Western Railway,
Mahalaxmi,
BOMBAY - 400 008.

... Respondents.

4. Sr. Divisional Engineer
(South)/Estate Officer,
Western Railway,
BOMBAY - 400 008.

(By Advocate Shri N.K. Srinivasan).

: O R D E R :

In this O.A. under Section 19 of the Administrative
Tribunals Act, the facts are as below :

The applicant no. 1 is the father of applicant no. 2. Applicant No. 1 retired from Railway Service on 31.08.1993. The applicant no. 2 is stated to have been appointed as Trade-Apprentice on 16.07.1989 and was absorbed in the railways as Khallasi by letter dated 09.06.1993 at exhibit 'A'. It appears that he took charge on 03.07.1993 at exhibit 'B' and on 09.08.1993 he forwarded an application for permission to share the accomodation in occupation of his father at quarter no. 147/4, Western Railway Colony, Santacruz, Bombay, being a type-II quarter. There was no reply. However, eviction proceedings were initiated against the applicant no. 1 and eviction order was issued on 21.09.1994 vide exhibit 'F' page 26. The applicants continued in the quarter ~~stay~~ of orders by way of interim relief passed by this Tribunal on 23.09.1994. The relief sought by the applicant is to stay the order of eviction and to declare that applicant no. 2 is entitled for regularisation of quarters originally allotted to applicant no. 1 and to direct the respondents to release the D.C.R.G. of applicant no. 1 and two post retirement passes. There are two subsequent developments. First of all, the General Manager passed an order on 12.01.1995 vide page 50 that a type-I railway quarter may be allotted to Applicant No. 2 on out of turn basis and that pending allotment of type-I quarter, occupation of type-II quarter should be treated as per rules. Secondly, the applicant no. 2 has since been selected for a Group 'C' post of the Ticket Checker vide order dated 19.07.1995. Therefore, so far as the quarters are concerned, the relief sought by the applicant is to regularise type-II quarters at Santacruz in favour of Applicant No. 2.

2. The railways have opposed the O.A. According to them, as per rules the applicant no. 2 is not entitled to regularisation of the quarters on father to son basis because the conditions of the relevant rules have not been fulfilled, namely; the applicant no. 2 was not sharing accommodation for a period of six months during regular service before the date of retirement of his father. He had hardly worked as a regular railway servant for two months when his father retired. Thus, the essential condition of sharing the accommodation for six months is not fulfilled. So far as the reliefs relating to D.C.R.G. and post retirement passes are concerned, the respondents contend that they are not permissible as part of the O.A., as they amount to multiple reliefs and the question will be considered only after the applicant vacates the quarter.

3. The applicant relies on this Tribunal's judgement in O.A. No. 841/94 decided on 24.01.1995 - W.A. Madan & Another V/s. Union Of India & Others. That was a case in which the father and the son belonged to different railways and this Tribunal taking account of Railway Board's circular dated 02.01.1981 which permits inter-railway exchange of quarters for purposes of regularisation so long as other terms and conditions are fulfilled. This Tribunal therefore directed regularisation of the quarters on the exchange basis and it also took note of the latest development, namely, that the son in the meantime ^a had been promoted as Group 'C' employee and was therefore entitled to type-II quarters. Therefore, the respondents were directed to regularise type-II quarters in the

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possession of the father in favour of the son, who even though at the time of application was only entitled to type-I quarters, became entitled to type-II quarters later on. For this purpose, the Tribunal had relied on the decision of Jodhpur Bench in O.A. No. 276/92 decided on 20.10.1992 Anil Shanker v/s. Union Of India, in which the facts were similar. I am bound by my own judgement in W.A. Madan & Another v/s. Union Of India and it has not been pointed out to me that the said judgement has been set aside in the S.L.P. or otherwise it does not lay down good law. From the side of the respondents, there has been some shifting of the stand in as much as the earlier stand that the applicant no. 2 is not entitled to regularisation of quarters on father to son basis no longer holds good in view of the orders of the General Manager dated 12.01.1995 directing out of turn allotment of type-I quarters in favours of Applicant no. 2. The respondents however contend that the applicant ought to have shifted to type-I quarter allotted to him and then apply for change from type-I to type-II quarters, which would be considered in due course. This contention of the respondents is hyper technical. The counsel for the applicant urges that the matter needs to be looked into essentially from equitable point of view and also keeping in view the ratio of the cases in W.A. Madan & Another v/s. Union Of India & Others, Anil Shankar v/s. Union Of India & Others and the ratio laid down in Savita Samvedi v/s. Union Of India [1996 SCC (L&S) 521] note the head of which judgement reads as below :

"Government accomodation - Railway Quarters - Regularisation - out of turn allotment - eligibility - Provision in Railway Board Circular dated 27.12.1982 restricting the eligibility of married daughter, of the retiring official, only to cases where such official has no son or the daughter is the only person prepared to maintain the parents and the sons are not in a position to do so, held, suffering from gender discrimination - Hence, in order to cure the infirmity, ready down from its initiation as postulating the married daughter as one of the eligibles subject, inter alia, to the twin conditions that she is a railway employee and the retiring official opts for regularisation in her favour - Constitution of India, Arts. 15(1) & (3) and 14 - Interpretation of statutes - reading down."

in the circumstances,

4. I am inclined to hold that the applicant no. 2 is entitled to the relief of regularisation of type-II quarters at Santacruz in his favour and in this view of the matter, the order of eviction has to be set aside.

5. So far as the payment of D.C.R.G. is concerned, the applicant relies on the ratio of Full Bench judgement in Wazir Chand V/s. Union Of India & Others reported at Page 287 of Bahri Brothers Edition of Full Bench Judgements, Vol.II, in which it is laid down that withholding of entire amount of gratuity of a retired railway servant so long as he does not vacate the railway quarter is legally impermissible and also disallowing one set of post-retirement passes for every month of unauthorised retention of railway quarter is also unwarranted. So far as the payment of gratuity is concerned, the respondents may pay the same to him after adjusting regular rent on account of type-II quarters at Santacruz

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to the extent that it not been recovered so far.

Regarding interest, I consider that the applicant is not entitled for payment of interest on D.C.R.G., as the regularisation would take place in terms of ^{to-day's} judicial orders.

So far as post-retirement passes are concerned, the same may be released in favour of the applicant no. 1 from 1996 onwards on the footing that the applicants are no longer in unauthorised occupation of the quarters.

6. The O.A. is disposed of in above terms. There would be no order as to costs.

MR Kolhatkar

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 21 of 1997

IN

ORIGINAL APPLICATION NO. 1037/1994.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

H.M.Nimal, & Another.

... Applicants
(Original Respondents)

V/s.

Union of India & Ors.

... Respondents
(Review Petitioners).

ORDER ON REVIEW PETITION BY CIRCULATION Dt. 20.2.1997.

(Per Shri M.R.Kolhatkar, Member(A))

In this Review Petition filed by the original respondents against the Judgment dt. 16th August, 1996 it has been contended that the said Judgment suffers from an error apparent on the face of record and is therefore liable to be reviewed. The Judgment was received by the respondents on 22.8.1996 and the Review Petition is required to be filed within a period of 30 days and thus there is a delay of four months and 8 days in filing the Review Petition. The Respondents have filed M.P. 78/97 for condonation of delay. In this M.P. ^{departmental} they have explained the procedure of filing the R.P. which is time consuming and have also relied on the Supreme Court Judgment reported in JT 1996(7) SC 204 in the case of Special Tahasildar Land Acquisition V/s. K.V.Ayisumma where the Hon'ble Supreme Court has stated that the delay may be condoned in the interest of justice to correct the mischief of successful management of delay. Considered the M.P. The delay condoned. M.P. allowed.

2. On merits, the contention is that the Tribunal erred in assuming that the applicant was appointed as Trade Apprentice on 16.7.1989 and was absorbed in the Railways as Khalasi, which is factually incorrect because the Respondents have pointed out in the written statement that the applicant was for the first time appointed to Group 'D' post of Khalasi on 9.6.1993. This contention in the Review Petition is not borne out by perusal of the Judgment. In para 1 of the Judgment the contention of the applicant regarding his selection as Trade Apprentice was noted, but in para 2 the contention of the respondents that the applicant had worked as a regular Railway Servant for only two months when his father retired was also noted. In fact nothing in the Judgment turned on the appointment of the applicant as Trade Apprentice on 16.7.1989. ~~It is~~ The Tribunal at all required to grant the relief of regularisation of the quarters on father to son basis on the footing that all conditions relating to regularisation had been fulfilled. The Tribunal took note of the latest development viz. that the General Manager had passed an order on 12.1.1995 allotting a Type-I Railway Quarter to the applicant on out of turn basis and the Tribunal only granted relief in view of the latest development plus the appointment of the applicant No.2 as Ticket Checker a Group 'C' post. Keeping in view the ratio of case law viz. W.A.Madan & Another V/s. Union of India & Others O.A. No.841/94 decided by Bombay Bench on 24.1.1995, Anil Shankar V/s. Union of India, O.A.276/92 decided on 20.10.1992 which was a Judgment of the Jodhpur Bench

of the Tribunal and Savita Samvedi V/s. Union of India 1996 SCC (L&S) 521 which was a Supreme Court Judgment. The Tribunal held that considering the ratio of these Judgments and considering that the applicant No.2 who was occupying Quarter of Type-II ~~subsequently~~ subsequently became eligible for allotment of Quarter of Type-II and already ~~was~~ was occupying Quarter of Type-II which was allotted to his father should not be disturbed and was entitled to the relief of regularisation of Type-II Quarter keeping in view the ratio of the Judgments referred to above. There is, therefore, no error apparent on the face of the record in the Judgment. The R.P. has no merit and is therefore dismissed by circulation as is permissible under the Rules. Both M.P. 78/97 and R.P. 11/97 stand disposed of.

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

B.

dded '20/2/97
Order/Judgement despatched
to Applicant/Respondent(s)
on 27/2/97


28/2/97