

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1185/94

Transfer Application No.

Date of Decision 31.1.1997

V.A. Patade

Petitioner/s

Ms. Y. Shenoy for Mrs. N.V. Masurkar

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri N.K. Srinivasan

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

- (1) 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)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OA NO. 1185/94

Friday this the 31st day of January, 1997

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

Vijay Atmaram Patade
residing at Railway Quarter
No. 152/J, Khar (E), Bombay.

By Advocate Ms.Y.Shenoy for
Mrs. N.V.Masurkar ... Applicant

V/S.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager (E), Western Railway, Bombay Division, Bombay Central, Bombay.
3. Senior Divisional Engineer(S), Western Railway, Bombay Division, Bombay Central, Bombay.

By Advocate Shri N.K.Srinivasan ... Respondents
C.G.S.C.

ORDER (ORAL)

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

In this OA, the applicant has challenged eviction notice under Section 5 of the P.P. Act dated 18.8.1994 in respect of Railway QR. No. 152/J, Khar (East), Bombay, which was allotted to his father who was a Railway employee. His father retired from Railway service on superannuation on 31.10.1980. The applicant was appointed as daily rated casual labour on 11.11.1980. He

appears to have been regularised w.e.f. 2.1.1982.

The applicant contends that there were some family difficulties as a result of which the applicant was in need of quarter and he had been making applications for regularisation of quarter in his name. The applicant's father had written letters in this regard to the respondents vide dated 10.1.1984, 10.2.1984, 13.1.1984, 17.2.1984, 26.6.1984, 27.11.1984 and the letter dated 10.2.1984 written by the applicant himself. The letter states as below :-

" Sub: Allotment of Room (Rly)

Sir,

I am at present working at motor garrage at Mahalaxmi, since last 11.11.80 and I was permanent on 2.1.82 my Ticket No.167.

Sir, my father Atmaram Patade was retired on 31.10.80 as Motor Driver from Stores Department and therefore I am in difficulty that my old father-mother staying with me and my other brother and sister too. At present my family is on road. I personally request your honour to kindly help to get me accommodation(i.e. room) and transfer from my father's name.

I hope that your honour will help to get transfer on my name.

Thanking you,"

2. The contention of the applicant is that the eviction notice has been issued without taking into account his repeated representations to the Railway administration. On the footing that he was a regular railway employee on 2.1.1982 he would have become 10.2.84 eligible for allotment of Railway quarter even prior to the date of eviction notice and there should have been no difficulty for the respondents to allot a quarter of a type entitled.

3. Secondly, it is contended that the eviction notice is discriminatory because in the case of Xavier Kuriakose who was not sharing the quarter with his father prior to his retirement and did not fulfil any conditions for regularisation on father to son basis was allotted Railway quarter ^{not only} vide letter dated 28.9.1990/in relaxation of rules but also the allotment was treated as with retrospective effect ^{much as} in as the action of recovering penal rent and with-holding post retirement passes was also subsequently withdrawn.

Therefore, the action of the respondents in not regularising the quarter in question is discriminatory and is violative of Articles 14 & 16 of the Constitution.

The Railways were directed to file a specific affidavit stating the ~~circumstan~~ces of 'out of turn allotment' vide order dated 13.6.1996 and the ~~Joint Director Estt.~~ (Rep) Railway Board, Ministry of Railways, Rail Bhawan, New Delhi has filed an affidavit dated 7.1.1997 stating that the out of turn allotment was done at the instance of the then Railway Minister.

4. I have considered the matter. It appears that since the son was not in regular service of the Railways at the time of retirement on 31.10.1980, the Railways were right in not regularising the quarter in the name of the applicant. Respondents in this connection have invited my attention to the order of the Tribunal in

OA.NO. 897/94 decided on 30.5.1996 in which interim stay on eviction was vacated when the requisite conditions for regularisation were not fulfilled.

5. So far as Xavier Kuriakose's case is concerned, the order making allotment to Shri Kuriakose recites that it has been done as a one time exception, not to be quoted as precedent in future. The exception therefore made in the Kuriakose case cannot be converted into a rule which can be made applicable to in the case of the applicant. Assuming that the Railways were wrong in regularization of quarter in favour of Kuriakose, that does not confer any right on the applicant to claim the same relaxation. This court is also not required to treat the OA. as PIL in which to pass orders with reference to the propriety of individual decision of the Executive. It is, therefore, clear that interim relief in favour of the applicant is required to be vacated. At the same time, I also to have take note in the circumstances that Railways themselves had failed to take occupation of quarter for about 14 years and the applicant and his father in their applications were repeatedly requesting for regularisation of the quarter and had willingness to make also shown/payment of the licence fee and the respondents have not dealt with these submissions of the applicant and have treated the case of the applicant as in isolation as a result of which eviction order has come to be passed.

11/5/1

In my view, therefore, the prayer of the applicant that applicant's request letter dated 7.4.1982 and his application for allotment of quarter may be treated as his application is required to be considered and his willingness to make payment of the rent is also to be kept in view. It is noticed, however, that the applicant who was sharing with his father made a request for an allotment of a quarter for the first time only on 10.2.1984. His request therefore may be considered on the basis of this application filed by the applicant for Railway quarter in his turn as per ~~Waiting~~ list. This may, however, be done only if applicant makes payment of rent for ~~occupation~~ of the quarter at the normal rent along with water and electricity charges till date in three monthly instalments. I say nothing regarding liability of the applicant for payment of damage rent which respondents may decide as per rules.

6. In the light of the above discussion, I dispose of the OA. by passing the following order :-

I.R. is vacated but eviction proceedings to start after three months. Respondents are further directed to consider the case of the applicant for allotment of quarter in the normal course on the basis of his application on 10.2.1984 from which date his name may be interpolated in the waiting list and allot a quarter if the applicant is entitled to quarter

and if quarter is available. This may be done within three months from the date of receipt of this order. The allotment and possession of the new quarter may not be given till the applicant pays accumulated normal rent and other charges in terms of what is stated above.

The OA. is disposed of with the above directions with no orders as to cost.

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.