

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 13000 of 1994

Date of Decision: 29.1.97

C. M. Vyas & Anor.

Petitioner/s

Mr. G. S. Walia

Advocate for the
Petitioner/s

V/s.

UOI & Ors.

Respondent/s

Mr. N. K. Srinivasan

Advocate for the
Respondent/s

CORAM:

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

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI-400001

O.A. NO. 1300 OF 1994

DATED : WEDNESDAY THE 29TH DAY OF JANUARY, 1997

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

1. G.M. Vyas
Retired Railway Employee
Formerly working under
Dy.Chief Engineer(Const.)
Western Railway
Churchgate
Mumbai 400020
2. Yogesh Gajanan Vyas
working as Khalasi
Under CTFO(C) OHE
Bombay Division
Bombay Central
Mumbai 40008

C/o. G S Walia,
Advocate, High Court,
16 Maharashtra Bhavan
Bora Masjid Street,
Fort, Mumbai 400001

(By Adv. Mr. G S Walia)

Applicants

v/s.

1. Union of India
through General Manager
Western Railway
Headquarters Office
Churchgate
Mumbai 400020
2. Divisional Railway Manager
Western Railway
Bombay Division
Bombay Central
Bombay 400008
3. Dy.Chief Engineer (Const.)
Western Railway
Headquarters Office
Churchgate
Mumbai 400020

(By Adv. Mr. N K Srinivasan)

Respondents

ORDER
[Per: M R Kolhatkar, Member(A)]

1. Applicant No.1 retired as Sub-Overseer Mistry from the service of Western Railway on 31.8.1994.

His son, Applicant No.2, worked as Trade Apprentice in the Railways from 1.8.1991 to 31.7.1992 and was absorbed as Khalashi on 21.4.1994, and on 26.4.1994 he applied for permission to share the railway quarters with his father. He states that in fact he was sharing the quarter with his father for more than 20 years. Permission to share the accommodation was granted by the Railway Authorities by letter dated 3.10.1994, but in the same letter Applicant No.2 was advised that he is not eligible for regularisation of Railway Quarter as he does not fulfil the condition of six months minimum sharing in terms of Railway Board's letter No.E(G)66-QRJ-II dated 25.6.66. The applicant has sought relief for declaration that the Applicant No.2 is entitled for allotment of quarter and direct the respondents to allot the said quarter and has further prayed to quash that portion of the letter dated 3.10.1994 to the extent it is contrary to the declaration in the first prayer. The other prayers are release of DCRG in favour of the Applicant No.1 with 18% interest and to direct the respondents to issue post retirement passes to Applicant No.1.

2. Respondents have opposed the O.A. in as much as that the applicant No.2 was appointed on a regular basis only on 21.4.94 and thus he has shared the accommodation with his father only for 4 months and 11 days as a regular employee and since he does not fulfil the condition of sharing accommodation for a period of 6 months during regular service before the date of the retirement

of Applicant No.1, it is contended that the applicant No.2 is not eligible for out of turn allotment.

3. Shri Walia invited my attention to the Western Railway Head Quarters circular dated 5.2.87 on the subject 'Counting of period spent on training before appointment to Service as qualifying for pension', according to which the training period of Trade Apprentices and Apprentice Mechanics recruited direct prior to their appointment in regular grade should be counted as regular service for pension. However, this instruction has to be read with the clarification that this training is required to be followed immediately by an appointment. In the case of the applicant ^{No.2}, the training was for the period from 1.8.91 to 31.7.92 and there was a break before training and absorption on 21.4.1994. It would, therefore, appear that the circular dated 5.2.87 would not help the applicant.

4. Counsel for the applicant then invites my attention to the Tribunal's judgment in O.A.No.901/92 - Paras Ram Singh, Ashok Singh Chouhan V/s. Union of India. In this judgment, the Tribunal had considered the question of fulfilment of the condition relating to regular employment viz., sharing accommodation six months prior to the retirement of the father. The Tribunal noted the judgment of the Hon'ble Supreme Court in HARESH KUMAR CHHAGANLAL Vs. UNION OF INDIA, which was Civil Appeal No.1183 of 1994 in which the Hon'ble

Supreme Court had reversed the decision of the Division Bench of Ahmedabad in O.A.No.201/90 dated 14.9.1993 in which the Ahmedabad Bench had held that six months is required to be calculated strictly. The Hon'ble Supreme Court observed that the narrow view taken by the Tribunal in the facts and circumstances of the case was not justified. The Tribunal in Paras Ram Singh case had also interpreted the Railway Board circular by reference to the 'rule of last antecedent', page 251 of G.P.Singh on Principles of Statutory Interpretation. According to this rule, relative and qualifying words, phases and clauses are applied to the antecedent immediately preceding. Reference to six months follows reference to sharing of accommodation and therefore the condition of six months applies only to sharing and it does not apply to the applicant being an eligible railway employee for six months.

5. In my opinion this case is squarely covered by the above interpretation of the Railway Board Circular dated 25.6.1966 as to the fulfilment of the condition of being in regular service for six months prior to the date of retirement of the father. It was also pointed out to me that the judgment in Paras Ram Singh Vs. Union of India has been followed in M.M. Siddiqui & Anor. Vs. Union of India in O.A.No.843/90 decided on 2.6.94 by the then Vice Chairman sitting as Single Bench.

6. I am therefore of the view that the applicant No.2 is entitled to the relief of regularisation

of quarter considering that he had shared the accommodation with his father for more than requisite period that the sharing was approved and that the condition of regular employment of six months is required to be interpreted flexibly as was done in O.A.No.901/92, Paras Ram Singh & Ashok Singh Chouhan's case supported by Supreme Court Judgment in Haresh Kumar Chhaganlal.

7. O.A. therefore is allowed. That part of the letter dated 3.10.1994 viz., para 2 whereby it is stated that Yogesh Gajanand is not eligible for regularisation of quarter is quashed and set aside. Respondents are directed to regularise the quarter in occupation of Applicant No.1 in the name of Applicant No.2, since it is not disputed that the Applicant No.2 is entitled to the same type of quarter as Applicant No.1. Respondents are also directed to release DCRG and post retirement passes to Applicant No.1 within 2 months. So far as the interest on DCRG is concerned I am not inclined to allow the same as the regularisation, although it would operate retrospectively for purpose of rent ^{as to be charged at new and rate} is in terms of order in praesanti. No order as to costs.

M.R.Kothakar

— (M.R.Kothakar)

Member(A)