

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 841/1994.

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DATE OF DECISION: 24.01.1995.

W. A. Madan & Another Petitioners

G. S. Walia, Advocate for the Petitioners

Versus

Union Of India & Others, Respondents

N. K. Srinivasan, Advocate for the Respondent(s)

CORAM :

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

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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).

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BOMBAY BENCH

Versus

CORAM :

APPEARANCE :

1. Shri G. S. Walia,
Counsel for the Applicant.
2. Shri N. K. Srinivasan,
Counsel for the Respondents.

ORAL JUDGEMENT :

DATED : 24.01.1995.

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

1. In this application, under Section 19 of the Administrative Tribunals Act, the facts are as follows :-

The applicant no. 1 retired as Senior Stores Officer from Western Railway on 31.07.1992. In 1976, he was allotted railway quarter no. 77/5, type-II, Matunga Road, Bombay, belonging to Western Railway. It is stated by the Applicant no. 1 that although he was entitled to a higher type, he continued to stay in type-II quarter. The Applicant No. 2 is the son of Applicant no. 1, and is a regular employee of the Railways working as Khallasi since

November 1990. He was promoted by selection to Group 'C' post and on transfer, appointed as Ticket Collector in the Central Railway and is working as such since 24.06.1993. Applicant No. 2 applied for permission to share the accommodation allotted to his father vide letter dated 23.01.1991 at page 16. There is no permission on record. However, the last pay certificate at page 15 in respect of Applicant No. 2 states that "he stays in type-II Western Railway quarters with his father, sharing has already been granted." While this remark in the L.P.C. does not constitute a formal sanction, it is an admitted position that he ^{not} has been drawing H.R.A. After the applicant no. 1 retired from railway service, he wrote letters on 28.11.1992, 20.03.1993 and 30.01.1994 at page 17, 18 and 19 requesting for regularisation of the quarter in the name of his son, applicant no. 2. The reply rejecting the request has been issued by the Respondents on 03.01.1994 at page 20, which has been impugned by the applicant and which states that the son of the applicant has joined the Central Railway as Ticket Collector and he is, therefore, not eligible for allotment of the above quarter and the applicant no. 1 was therefore, advised to vacate the Railway Quarter within 10 days. Applicant No. 1 represented against this letter vide his representation dated 14.01.1994 at page 21. The same, however, was not acceded. It appears that Show Cause Notice under Section 4 (1) of the P.P. Act was issued to him vide ^{Communicatory} dated 16.02.1994. Interim Relief of non-eviction was ^{MM} granted by this Tribunal on 13.07.1994.

2. The applicant has contended that in terms of Railway Board's Circular dated 28.01.1990, applicant no. 2 is entitled to regularisation of the quarter occupied by applicant no. 1 in as much as he has fulfilled all the requisite conditions laid down in the above circular. Admittedly, the son was a railway employee, he was eligible for railway accommodation and he had been sharing the accommodation with a retiring railway employee for more than six months before the date of retirement. He had also not claimed any H.R.A. during the period.

3. Regarding the type of accommodation, the instructions envisage that ^{if} the son is not eligible for the residence of the type, the residence of the entitled type is to be allotted. As on the date of retirement of the applicant no. 1, applicant no. 2 was not entitled to residence of type-II. According to the instructions, as read by the applicant, the Respondents were bound not to disturb the applicant till they had allotted an alternative accommodation of type-I to the applicant no. 2. It is contended that with effect from 24.06.1993, in any case the applicant no. 2 has become entitled to allotment of Railway Quarters of type-II and therefore, at the present juncture there ^{should} ~~be~~ no difficulty in the matter of regularisation.

4. So far as the change of the railways is concerned, the applicant invites our attention to the Railway Board's Circular dated 02.01.1981 which is at page 26. This reads as below :-

"Please refer to your letter no. EP 58/O dt. 06.12.80 on the subject indicated above. The matter has been considered in this Ministry and it is confirmed that the son of an employee of Western Rly., even if posted on the Central Railway in Bombay area but otherwise fulfilling all the prescribed conditions, will be eligible for allotment of railway accommodation on out of turn basis consequent upon the retirement of his father."

From this circular, it is clear that when the Respondents issued the impugned letter dated 03.01.1994 rejecting the request of the applicants on the ground that applicant no. 2 is a Central Railway Employee, they ought to have taken account of these instructions as being relevant for the decision of the case.

5. The applicant also points out that there are several such cases of regularisation in the case inter railway transfer or in the case of different types of quarters and has called on the Railways to reply to the interrogatories as mentioned in the M.P. No. 1168 of 1994, which was allowed by us on 29.11.1994. The Respondents' Counsel contends that firstly he would like to have time to file a reply to the interrogatories and secondly, even if there may be special individual cases, the rules as at present applicable to case do not permit the regularisation, contrary to what is contended by the applicant. According to him, the Railway Board Circular dated 02.01.1981 only entitles the applicant no. 2 to be considered for out of turn allotment but not to a regularisation of the same quarter occupied by his father.

6. In our view, it is not necessary in this case to await the reply to the interrogatories. It may be possible to dispose of the O.A. by interpretation of the available instructions, namely; Railway Board Circular dated 15.01.1990, circulated by Western Railway on 28.01.1990 read with Railway Board Circular dated 02.01.1981, circulated by Western Railway on 22.01.1981. In our view, the facts makes it clear that applicant no.2 fulfills all the requisite conditions laid down in circular dated 15.01.1990 except that, his father was occupying a higher type quarter to which he was not entitled but in which case he was entitled to relief of continuity^{of} occupation of the quarter till the alternate accomodation ~~at the~~ quarter was allotted to him. We cannot however, shut our eyes to the subsequent development, namely with effect from 24.06.1993, the applicant no. 2 is a Group 'C' employee and is therefore, entitled to type-II quarter, as occupied by his retiring father. We are, therefore, of the view that his demand for regularisation of quarter no. 77/5, type-II, Matunga Road, belonging to Western Railway, ought to be granted in favour of applicant no. 2 with effect from 01.12.1992 subject to payment of the regular rent in this regard. In this connection, the applicant has invited our attention to O.A. No. 276/92 in Anil Shankar V/s. Union Of India & Others, decided by a Single Member Bench of Jodhpur Bench on 20.10.1992, in which a similar view was taken when there was a gap between the date of allotment of quarters and the date of entitlement of the quarters of a particular type and the Tribunal had directed the


authority that the applicant should be allowed to continue in the quarter which had been in occupation of his father.

7. So far as the reliefs (c) and (d) are concerned, it is also contended that DCRG payable to applicant no. 1 and the post retirement passes to which the applicant no. 1 is entitled, have been with-held by the respondents and the same may be released. According to the respondents, this amounts to multiplicity of relief. We are not inclined to accept this contention because in our view, the relief relating to DCRG is a consequential relief for which the applicant should not be required to file a separate O.A. We hold that on regularisation of the quarters in favour of applicant no. 2 with effect from 01.12.1992, subject to payment of the regular rent upto date, applicant no. 1 is entitled to the relief of release of DCRG with-held by the respondent no. 1 alongwith interest to which the applicant is entitled according to rules. Applicant no. 1 should also be given post retirement passes from 1995 onwards. We, therefore, dispose of this O.A. by passing the following orders :-

: ORDER :

O.A. is allowed. Respondent No. 2 is directed to regularise the quarter no. 77/5, Type-II at Matunga Road belonging to Western Railway in favour of applicant no. 2 with effect from 01.12.1992. Respondents are also directed to release the DCRG payable to the applicant no. 1

minus the rent, if any outstanding, at the normal rates alongwith the applicable rate of interest within two months of the communication of this order.

Respondent No. 3 is also directed to release entitled  post retirement passes in favour of applicant no. 1 with effect from 1995 and thereafter.

No order as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

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