

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 901/94
Transfer Application No. --

Date of Decision : 20-10-95

R.K.Yadav & Ors.

Petitioner

Mr.G.S.Walia

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr.A.L.Kasturey

Advocate for the
respondents

C O R A M :

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

The 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
BOMBAY BENCH

O.A.901/94

R.K.Yadav & 2 Ors.

.. Applicants.

-versus-

Union of India & Ors.

.. Respondents

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

Appearances:

1. Mr.G.S.Walia
counsel for the
applicants.

2. Mr.A.L.Kasturey
counsel for the
Respondents.

JUDGMENT:

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

Date: 20-10-95

In this O.A. u/s. 19 of the A.T.Act
the applicants have sought the relief of holding
and declaring that the applicants are entitled
to be allotted Type-II railway quarter on the
basis of their original date of registration
for the same and to order and direct/ respondent
to allot Type-II quarters to the applicants.

2. In order to appreciate the contentions,
the following table relating to relevant dates
may be noted.

Name of applicants	Date of application for Type-II quarter.	Allotment of Type-I Quarter.	Date of application for change from Type-I to Type-II quarter
(1)	(2)	(3)	(4)
1.R.K.Yadav	16-6-87	6-2-89	8-2-89
2.G.Vishwanath	22-9-87	25-7-90	30-7-90
3.G.H.Dubey	15-12-88	16-10-90	26-10-90

3. The respondents have not disputed these
dates excepting the date of application for change
from Type-I to Type-II in respect of R.K.Yadav.

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According to respondents vide Ex.R-II to the written statement, the date of application for change of Type-II railway quarter in respect of applicant No.1 is 26-10-90 whereas according to applicant No.1 it is 8-2-89. The applicant has referred to the Annexure A-4 to the written statement showing the waiting list for change of Rly. Quarter from Type-II to Type-I from which it is seen that the date of application for change in respect of Shri R.K.Yadav(applicant No.1) is shown to be 6-2-89. This is even an earlier date than the date claimed by the applicant No.1, viz. 8-2-89. Applicant No.1 has also produced the original application for occupation and renamenoting dt. 6-2-89 addressed to DRM(E)BCT and there is an endorsement in this application that "already sent vide office letter dt.8-2-89." I therefore hold that the correct date in respect of name noting so far as applicant No.1 is concerned is 6-2-89 and not 26-10-90 as contended by the official respondents.

3. The counsel for the applicant has raised two fold contentions. First of all he contended that the applicants all are group 'C' employees and Group 'C' employees according to Railway Board circular dt. 24-7-80 at Ex.A-1 are entitled to Type-II quarter. Therefore, the date of entitlement of the applicants for Type-II quarter should be the original date of application irrespective of whether the applicants were allotted the different type of quarter viz. Type-I in the intermediate and subsequently whether they applied for change of quarter i.e. change for improvement from Type-I to Type-II to which they are entitled. For this purpose the applicants relied on the judgment of the Tribunal

in O.A. 502/87, Parasram Singh vs. U.O.I. & Ors. decided by New Bombay Bench on 22-9-1987. We have gone through the judgment. In this judgment the applicant was allotted RB-I quarter and the contention of the respondents was that having been allotted RB-I quarter the applicant lost his claim for RB-III quarter which was a better type quarter. The Tribunal repelled the contention of the respondents and held that RB-III type quarter which was stated to have fallen vacant shall be allotted to the applicant. In our view, however, this judgment will not apply to the applicants' case because the relief was granted on the basis that the applicant therein was still on the waiting list for RB-III Type quarter and he was still on the waiting list when RB-III type Quarter was available. It was under those circumstance that the relief was granted. Therefore, the judgment is not an authority for holding that the entitlement of the applicant crystallised on the very day that he applies for the particular type of quarter irrespective of the fact that he has accepted lower type of quarter and had subsequently applied for a change of type of quarter. On the other hand the respondents had brought to our attention the decision of the Tribunal in Udaybhan R. Yadav O.A.1259/94 decided on 16-6-95. In this decision in para-7 the Tribunal held that the applicant's claim for priority shall be considered on the basis of the date on which he made the application for allotment of better quarter. In our view this judgment does support the contention of the respondents that the claim of the applicants for Type-II quarter has to be considered from the date on which he applies for a change, after having accepted the

the lower type of quarter.

4. The counsel for the applicants contends that the respondents have not been able to cite any rule on the point beyond the minutes of the allotment committee vide Ex.R.III/being the minutes of the Housing Committee meeting dt. 6-10-92. The counsel for the applicants points out that the judgment cited by respondents viz. Udaybhan R.Yadav itself is an authority for holding that it is no part of the duty of Housing Committee to make an adjudication which is solely concerned with the task of allotment according to the existing rules. It is true that the housing committee is not meant for adjudication and the reliance placed by the counsel for the respondents on the observation of the Housing Committee on the point may not be appropriate. The case law cited by us, however, leaves us in no doubt that the date of the application for change of quarter is the date from which entitlement is counted. This also appeals to reasons because not every employee who has got a lower type of quarter may want to shift to/better type of accommodation. For example, the location of better type of accommodation may not be suitable. The allotment of lower type of quarter and its acceptance by the employee concerned brings about a new state of affairs which necessitates that the employee concerned makes his intention of seeking a better allotment clear by applying for the same and his entitlement therefore should naturally count from that date.

5. Having thus arrived at the conclusion that the entitlement of the applicants would count from the date of application for change, we note that these

dates are 6-2-89, 30-7-90 and 26-10-90 respectively.

6. Counsel for the applicants now takes us to his second leg of argument. He states that he relies on the judgment in O.A. 122/92, Rajeev Jumar Saxena v. G.M. Western Railway, Bombay. The applicant R.K.Saxena had challenged the out of turn allotment of Type-I quarter in favour of respondent No.2, Shri A.K.Sharma. In this O.A. decided on 27-4-1992 the Tribunal repelled the contention that an employee who belongs to Territorial Army who is already housed is entitled to improvement in type of quarter on the strength of his being a member of the Territorial Army. The Tribunal had directed Railways to allot Type-II quarter to the applicant by cancelling the allotment of A.K.Sharma which was made irregularly. It has come out that the relief was granted to Saxena, the applicant in that case but the allotment of Sharma was not cancelled. O.A. is by rlys. EX.A4. to/ which the waiting list shows that the applicant R.K.Saxena beneficiary in the earlier judgment is followed by R.K.Yadav the first applicant in the present case. Shri A.K. Sharma is next in the order of priority. The counsel for the applicant, therefore, prays that the department may be directed to allot quarters to the applicants in accordance with their seniority in the list and the hostile discrimination in their case vis-a-vis A.K.Sharma should be corrected.

7. We note that Shri A.K.Sharma is not a party in this case. It is, therefore, not possible for us to give any direction to the department to cancel the allotment made

in his favour. We, however, direct that the allotment of Railway quarters of Type - II may be made to the applicants strictly in order of priority noted by us and especially so far as applicant No.1 is concerned whose claim is superior to Shri A.K.Sharma, the first available quarter of Type-II should be allotted to him.

8. The O.A. is therefore partly allowed with no order as to costs.

MR Kolb & Kow

(M.R.KOLHATKAR)
Member(A)

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