

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1124/95

Date of Decision 18/4/96

Shri G.P. Kushwaha

Petitioner

Shri G.K. Masand

Advocate for the Petitioner.

Versus

UOI & ORS.

Respondent

Mr.V.S.Masurkar

Advocate for the Respondents.

Shri H.A. Sawant, Counsel for Respondent No.4  
Coram:

The Hon'ble Mr. V. Ramakrishnan, MEMBER(A)

The Hon'ble Mr. -----

1. To be referred to the Reporter or not? no
2. Whether it needs to be circulated to other Benches of the Tribunal? no

*[Signature]*  
Member (A).

trk

*[Signature]* list it for placement  
on 18/4/96

*[Signature]* 17/4

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

MUMBAI BENCH

ORIGINAL APPLICATION NO. 1124/95

Shri Goverdhan Prasad Kushwaha,  
C/o Shri M.D. Pasi,  
155/16, New Western Railway Staff  
Quarters, TPS III, 5th Road,  
Santa Cruz (East) Bombay-400 055.

... Applicant

Versus

1. Union of India through the  
General Manager of the  
Western Railway, Churchgate,  
Bombay - 400 020.
2. Chief Works Manager (Elect.),  
Lower Parel Workshop,  
Western Railway, Bombay.
3. Chief Personnel Officer(Admn),  
Western Railway, Churchgate,  
Bombay - 400 020.
4. Shri Ajay Kumar Jha,  
Type IV Railway Quarter,  
No. 50/L/ A1,  
Santacruz (W),  
Bombay.


... Respondents

CORUM:

Hon'ble Shri V. Ramakrishnan ... Member (A)

APPEARANCE:

1. Shri G.K. Masand,  
Counsel for the applicant.
2. Shri V.S. Masurkar,  
Counsel for Respondents 1 to 3.
3. Shri H.A. Sawant,  
Counsel for Respondent No.4.

 JUDGEMENT

DATED:

18-4-96

Per.: Shri V. Ramakrishnan, Member (A)

The applicant, Shri Kushwaha who is an employee  
of the Western Railways has sought for a direction to

...2/-

the Railways to allot the Type IV Quarter No. 50/L/A-1 at Santa Cruz(W) in his favour after cancelling the allotment of the same quarter to Shri Ajay Kumar Jha, Respondent No.4. He also prays for a declaration that he is the rightful candidate entitled to allotment of the said quarter and the allotment of the same to R-4 should be set aside.

2. The applicant's case needs to be set out in some detail. Shri Kushwaha was appointed as Electrical Chargeman at Lower Parel Workshop, Western Railways on 9.4.80. He was promoted as Senior Electrical Chargeman on 1.1.84 and received further promotion as Junior Shop Superintendent (JSS for short) in the pay-scale of 2000 - 3200 on 2.1.89. The post of JSS is declared as an essential category for allotment of quarter and persons holding that post having reached the pay of Rs.2000/(in the revised scale) are eligible for consideration for Type-IV quarters. The applicant after about two years of joining the Railways, i.e. on 17.4.82 applied for allotment of Railway quarters with the respondents. As no house has been allotted to him, he is presently staying with a colleague in a Railway quarter on shared basis. It is the contention of the applicant that the Respondents maintain a common seniority list for the Electrical department in Lower Parel Workshop for the purpose of allotment of Type-II, III & IV quarters and according to him, once he has applied for even a Type-II

.....3/-

quarter, he has to be considered for allotment of Type-IV quarter on the basis of his seniority in service and there is no need to apply afresh for a Type-IV quarter. He submits that this is the policy which has been followed in the Electrical Wing where he is working and as he claims to have become the seniormost person eligible for Type-IV quarter, he ought to have been allotted the quarter bearing No. 50/L/A-1 which had fallen vacant at Santa Cruz on its vacation by one Shri Jagdish Roy,, Assistant Engineer on 15.7.94. He submitted a representation dated 14.11.94 as at Exhibit-B requesting for allotment of this quarter by convening a Housing Committee meeting. Such meetings of the Housing Committee were convened on 20.12.94, 2.2.95 and 4.2.95 presided over by Mrs. S. Kademani, who is Deputy Chief Personnel Officer (Works) in Lower Parel Workshop and attended by representatives of the two unions of WREU and WRMS and also a representative of the SC & ST (copy of minutes at Exhibit-D & Exhibit-E). These meetings got mired in controversy as the representative of WRMS Union referred to a general circular dated 20.9.84 by the Additional Chief Mechanical Engineer's office (Exhibit-P) and took the view that the policy followed in the Mechanical Wing, namely, the requirement to submit a fresh application for a Type-IV quarter and the registration for allotment of quarters being the date of receipt of application in the office has to be followed for Electrical Wing also.

The representative of the other union did not agree and said that there was no need for a fresh application and once a person had applied for allotment of Type-II accommodation, he was entitled to be considered for a Type-III or Type-IV quarter when he became eligible without a fresh application. It was also brought out in the meeting that there is a single register maintained in the Electrical department for Type-II, Type-III & Type-IV quarter allotment and there is no automatic deletion of the persons' names from the Register on his promotion making him eligible for higher type of quarters. It was also argued that the applicant had not applied afresh for Type-IV quarter which he would have done if clear instructions requiring fresh application for a higher type of quarter had been circulated. Shri Ajay Kumar Jha, Respondent-4 became eligible for allotment of Type-IV quarter on 2.12.91, the date on which he applied for Type-IV quarter after having been regularly appointed as JSS in Nov. 1991 whereas the applicant had started functioning as JSS right from a much earlier date and had applied for quarter on 17.4.82. The representatives of the WRE Union therefore, advocated that Type-IV quarters should be allotted to the applicant which stand was supported by the representative of the SC & ST Association. The meeting of 2.2.95 was adjourned to 4.2.95 where also the two unions took conflicting stands. The WRMS Union representative was of the view that the 20.9.84 circular

.....5/-

issued by Additional CME's office would equally apply to Electrical Wing and not only to the Mechanical Wing. This was contested by the representative of the WREU as also the representative of the SC & ST Association saying that the policy in the Electrical Wing was quite different.

The applicant submits further that while the dispute in the Housing Committee meeting had not been settled, Respondent-2 without any recommendations of the Housing Committee issued an office order dated 8.2.95 (the impugned order at Exhibit-A) allotting the Type-IV quarter to Shri Ajay Kumar Jha, R-4. Once this order was issued, the representative of the WREU resigned from the Housing Committee alleging that such allotment smacked of malpractice and favouritism as per letter dated 13.2.95 as at Exhibit-G. The applicant also petitioned the Chief Works Manager and Chief Personnel Officer through various representations dated 20.2.95 and 22.4.95, Exhibit-H and Exhibit-I. He cites the instances of some people in the Electrical Wing including one Shri Gopilal D. Verma who were allotted Type-IV quarters without submitting a fresh application for the higher type. He also encloses a copy of the letter from the Chief Workshop Manager (CWM) <sup>R<sub>2</sub></sup> dated 21.6.95 addressed to the Chief Personnel Officer as at Exhibit-K where CWM admitted that his office had prima facie made a mistake in allotting the Type-IV quarters

VA ✓

to R-4 and the dealing official had been asked to explain the circumstances leading to the mistake.

After the order dated 8.2.95 as at Exhibit-A was issued, the applicant states that there was a protest meeting outside the office of R-2 who by letter dated 9.2.95 directed the keys of the quarter should not be handed over to R-4 but despite these specific orders, the keys were stated to have already been handed over to R-4 and the same could not be recovered.

In the rejoinder submitted by the applicant after getting the reply statement of the respondents, he has enclosed copies of some internal correspondence between the headquarters office (i.e., the General Manager, Western Railways) and the Chief Works Manager, Lower Parel (CWM) where the General Manager's office had supported the applicant's stand. The G.M.'s office has been pursuing the matter with the CWM as recently as February, 1996 but as the matter had been brought before the Tribunal, further action was sought to be deferred.

67 ✓  
Giving this detailed background, the applicant submits that as he is the seniormost candidate eligible to be allotted Type-IV quarters, the same should have been given to him instead of R-4. It is also his stand that despite the admission by the Railway Administration that the allotment of the quarter to R-4 was a mistake

and not proper, no action has been taken to get the quarter vacated for being allotted to the rightful incumbent. For these reasons, he presses for the relief sought for.

3. The respondents resist the application. In their reply statement the official respondents refer to the circular dated 20.9.84 issued by the Additional CME's office (already referred to) and also the circular dated 22.7.75 as at Exhibit R-2 issued by the office of G.M. They contend that an employee who is promoted and whose eligibility has changed for higher type of accommodation should apply afresh for quarters of such higher type. The applicant has failed to apply afresh in continuation of his earlier application dated 17.4.82 which was for a lower type of quarter. He submitted a representation dated 14.11.94 asking for allotment of Type-IV quarters but the respondents state that the same is not an application for Type-IV quarters as per rules. It is their stand that in the light of the general circular of 20.9.84, the registration for allotment of quarters will be as per the date of receipt of application in the office. Shri Jha, R-4 who is eligible for Type-IV quarters had applied for the same on 2.12.91 and as such, he ranked higher in the seniority list for allotment of Type-IV quarters. In the reply statement signed by the Deputy C.P.O. (W), (who is incidentally the Chairman of the Housing Committee and who had signed the impugned

✓



order dated 8.2.95), the Respondents deny the contention that a common seniority list is maintained for allotment of various types of quarters and refer to the register maintained in the Electrical Department where they say there is a column provided for type of quarters applied and the employee, therefore, has to apply afresh for higher type of quarters on change of his eligibility. The applicant had not done so and as per rules on eligibility for higher type of quarters, his earlier application of 1982 automatically stood deleted/cancelled. The respondents do not deny that the applicant is senior in service as compared to R-4.

4. Shri A.K. Jha, Respondent-4 is also represented by Counsel and has filed his objections. He states that he was appointed as an Apprentice Junior Workshop Superintendent on 25.9.90 and was absorbed as JSS on 14.11.91. Soon thereafter on 2.12.91 he applied for Type-IV quarter and at that point of time, there was no application from Shri Kushwaha for allotment of Type-IV quarters. He contends that the Railways quarters was legally given to him and he cannot be ~~vacated~~ <sup>evicted</sup> therefrom. He denies the allegation of malpractice and favouritism. He also refers to the relevant portion from the Additional CME's circular dated 20.9.94 which states that where the staff have applied for Type-I quarters while working as Class-IV (presently Group-D category), they should apply afresh for allotment of Type-II

quarters at the time of promotion to Class-III (presently Group-C category). He argues that the same principle would apply for Type-IV quarters also. He brings out that the applicant was a member of the Housing Committee for a number of years and he would have been fully aware of the relevant instructions which call for fresh application for a higher type of quarters. It is his stand that the allotment of the particular quarter to him is in order and that the Tribunal should declare that the official respondents should not evict him from the quarters. He also states that the official respondents may be directed to allot another Type-IV quarters to the applicant if they feel that they have committed a mistake.

5. I have heard Shri G.K. Masand for the applicant, Shri V.S. Masurkar for the official respondents and Shri H.A. Sawant for Shri Jha, R-4.

6. The applicant in his rejoinder has enclosed copies of some internal correspondence between the office of the General Manager, Western Railways and that of the Chief Works Manager, Lower Parel Workshop. I enquired about the authenticity of the documents. It transpires that these copies had been procured through the Union sources. Shri Masurkar for the official respondents does not dispute the veracity of these letters which are photocopies of the originals.

7. Shri Masand for the applicant reiterates what has already been set out in elaborate detail in the application, namely, that the practice followed in the Electrical Wing in Lower Parel Workshop was that a common seniority list was maintained for Type-II, III & IV Railway quarters. He brings out that the circular dated 20.9.84 was issued by the Additional Chief Mechanical Engineer's office and it applies only to the Mechanical Wing and does not apply to the Electrical Wing. He refers in this connection to the proceedings of the Housing Committee meeting where the representatives of Western Railways Employees Union and also the representatives of SC & ST Association have emphasised this point. He contends that the policy followed in the Electrical Wing all along has been to act on the application for Type-II and Type-III quarters without insisting on a fresh application when an official becomes eligible for Type-IV quarters. The applicant became entitled to Type-IV quarters on his appointment as JSS on 2.1.89. His regular appointment in the grade was also earlier than that of R-4. As he had applied for Railway quarters on 17.4.82, the Type-IV quarters when it became vacant should have been allotted to him. Shri Masand further states that the requirement to apply afresh in the Electrical department was confined only to those who were promoted from Class-IV (Group-D) to Class-III (Group-C). In their case, once they were promoted to a higher category of Class-III,

their names for Type-I quarter which is the only type available for Class-IV employees will be deleted automatically and their names for Type-II quarters will be registered only from the date of their application and neither from the date of their promotion in Class-III nor from the date of their original application for Type-I quarter. Shri Masand says that the official respondents have referred to the headquarters office circular dated 22.7.75 as at Exhibit R-2 which makes it clear that only in respect of Class-IV staff on promotion to Class-III post, they will have to apply afresh for allotment of Type-II quarters. The learned counsel further brings out that under the Indian Railways Establishment Code, only the General Managers of Indian Railways have full powers to make rules with regard to Non-gazetted Railway servants under their control provided that they are not inconsistent with the rules made by the President or the Railway Board. The Additional CME circular dated 20.9.94 is in deviation of this provision and in any case, it cannot bind employees of the Electrical department. The General Manager has required only Class-IV staff to apply for allotment of Type-II quarters on promotion to Class-III post. He says that the official respondents have not shown any rules or instructions by the General Manager which makes it obligatory for a fresh application to be filed in respect of Class-III staff, when they become eligible for a higher type of quarters

and such instructions do not exist. He also refers to the enclosures to the rejoinder filed by the applicant. The General Manager's office in its letter dated 1/2.12.95 addressed to Chief Works Manager Lower Parel Workshop as at Exhibit-L has clearly held that a common seniority list was maintained for all staff eligible for Type-II, III & IV quarters as per the decision taken by the Housing Committee on 19.9.91. Shri Masand draws attention to para (b) of this letter which states that as Shri Kushwaha had applied for a quarter on 17.4.82 and Shri A.K. Jha (Respondent-4) on 2.12.91, the former was to be considered for allotment of Type-IV quarters in preference to the latter as per the policy in vogue and it is irrelevant to decide the case otherwise on the basis of subsequent eligibility or need of taking fresh applications. The GM's office then proceeds to direct the CWM to take corrective action. This was followed up by GM's office by their letter dated 12.12.95, 9.1.96 and 6.2.96 (wrongly shown as 6.2.95). Shri Masand argues that the General Manager who is the ultimate authority has recognised that allotment of a quarter to R-4 overlooking the claims of the applicant was irregular and had to be rectified. He states that the applicant's claim has been upheld by the General Manager's office and the same should be implemented by the Chief Works Manager, Lower Parel Workshop.

8. Shri Masurkar for the official respondents does not question the genuineness of the correspondence enclosed as Annexures to the Rejoinder. He, however states that the policy followed in the Electrical Wing of this organisation is the same as in the Mechanical Wing and a fresh application for Type-IV quarters is called for and the receipt of the fresh application in the office is the crucial date for determining the position of the employees in the seniority list for quarters.

9. Shri Sawant for R-4 argues that his client has been given allotment by a proper order of the Railways and he cannot be displaced at this stage. He also expresses surprise that the main tenor of the applicant's case seems to be to get R-4 thrown out of the Type-IV quarters and not so much to get a Type-IV quarter for himself.

10. From the correspondence between the GM's office and the CWM, it is seen that the headquarters office had sustained the stand that a common seniority list was maintained for all staff eligible for Type-II, III & IV quarters in the Electrical Wing of Lower Parel Workshop. Shri Masurkar admits to such exchange of letters and also does not dispute the fact that the General Manager's direction should be binding on the lower formations. He however argues that as per his

instructions the factual position was that separate seniority list was maintained for allotment of Type-IV quarters which was reckoned from the date of application for such quarters.

11. I am told by Shri Masand as also by Shri Masurkar that there is a separate quota of quarters for Electrical Wing and some houses are earmarked for occupation by employees of this Wing. It is further brought out that there is only one Type-IV quarter available for the employees of Electrical Wing.

12. The issue that needs determination in the light of the background given above is whether as per the practice followed in the Electrical Wing of Lower Parel Workshop, there is need for a fresh application by an eligible employee for a Type-IV quarter or whether a common seniority list exists for the staff of the Electrical Wing for Type II, III & IV quarters which means that at the time of availability of a Type-IV quarter, the seniormost eligible employee was to be considered for its allotment without insisting on a fresh application so long as he had applied for a Type-II or Type-III quarter. As Shri Masurkar continued to submit on instruction from the department that the factual position was different from what has been stated by the applicant and endorsed by the General Manager's office, I directed the respondents to file an Affidavit

indicating the practice followed in this regard and substantiate their contention with specific instances. An opportunity was also given to the Private Respondent-4 to make an additional statement in the context of the rejoinder filed by the applicant. The Dy CPO (W) for the official respondents, as also R-4 have filed such Affidavits and made available copies to the applicant's counsel.

13. The official respondents have enclosed with the Affidavit dated 18.3.96 certain documents. Shri Masurkar has also made available to the Court a Register purporting to show the seniority list for allotment of railway quarter of Electrical Department.

Shri Jha, Respondent No.4 has also filed another Affidavit dated 15.3.96 where he inter alia contends that the applicant cannot ask for a particular quarter at a particular place even though he might have right for a particular type of quarter. He also encloses copies of the Housing Committee Meeting held on 31.10.85 and 6.5.86 which are found as Annexures to the Affidavit of the official respondents. He prays that his interests and rights should be protected.

Shri Masand on his part has also produced a circular dated 8.2.80 on the subject of allotment of Railway quarters to staff in the Electrical Department,



copy of which has been available with the Union as also a staff order No. 299 dated 5.9.86 which indicates the date of promotion as JSS in respect of Shri Gopilal . whose case is cited by the official respondents in support of their stand. He has made available copies of these documents to Shri Masurkar and to Shri Sawant.

14. The submissions made by the Counsel and the documents and papers made available throw light on the practice followed in the Electrical Wing of the Lower Parel Workshop for allotment of Type-IV quarters. One of the main planks on which the respondents rely in support of their claim that an employee has to apply afresh specifically for Type-IV quarters when he becomes eligible for the same is the letter dated 20.9.84 issued by the Additional Chief Mechanical Engineer's office. This letter is annexed as Exhibit R-1 to the reply statement of official respondents and the same letter is enclosed by the applicant in his rejoinder at Exhibit-P where he has also given Annexures 'A' & 'B' to this letter which had been left out by the official respondents. This letter is admittedly issued by the Additional CME and addressed to all officers of the Mechanical Wing with a copy to Secretaries of WREU/ WRMS of the PL-MS. While it applies to the Mechanical Wing, there is nothing to show that it covers employees of the Electrical Wing such as the applicant and R-4. It is an admitted

position that there is a separate quota of quarters for the Electrical Wing with a separate Housing Committee. No doubt, it may be desirable to have a uniform pattern for all staff in the Lower Parel Workshop but it does not mean that a circular from the Mechanical Wing will automatically apply to employees of the Electrical Wing when they have got a separate pool of quarters for them.

From the copies of Housing Committee Meetings proceedings, enclosed as Annexures to the OA, it is seen that the concerned Housing Committee outlines the policy for house allotment and the same is accepted. Of course it cannot go counter to statutory rules or to any rule or order issued by the President, Railway Board or General Manager.

The policy for Electrical Wing has been gone into in the Housing Committee Meeting of the Electrical Department on 19.9.91. There is a reference to such a meeting in the minutes of the Housing Committee Meeting held on 20.12.94 at Exhibit-D, the letter dated 1/2.12.95 from the General Manager's office to CWM at Exhibit-L as also in the note of the Chief Works Manager dated 20.10.95 which is enclosed to the official respondents' Affidavit as Exhibit R-15. In this meeting held on 19.9.91 it has been brought out that as Electrical Department has got limited Type-IV and Type-III quarters, seniority of all staff entitled

for Type-II, III & IV are maintained in one seniority in Type-II quarter and that on going through the record, <sup>it was noted that</sup> the senior employees who have applied for Type-II quarters, now entitled for Type-IV quarters, have not applied for the same. The meeting records that it has been decided that the employees who were staying in Type-III quarters should be allotted the vacant Type-IV quarters. The meeting accordingly proceeded to make allotment of Type-IV quarter to one Shri G.L.K. Murthy. This development corroborates the stand that the practice in Electrical Wing was that a fresh application for Type-IV quarter was not being submitted when an employee becomes eligible for that type and that there is a common seniority for Type-II, III & IV quarters. The Chief Works Manager (W) also notes that this implied that anybody occupying Type-III quarters will be straightaway considered for Type-IV quarters subject to his being eligible and that this position binds all the parties till it is logically terminated in such a manner that no employee is subject to undue hardship.

15. The above position supports the contention that the practice followed for the Electrical Department was not to insist on fresh application for Type-IV quarters. In fact, in the Housing Committee Meeting held on 20.12.94 (Exhibit-D), WREU representatives pointed out that the policy regarding allotment of Type-IV quarters in Electrical Department has already been decided as per the minutes of the

Housing Committee Meeting held on 19.9.1991 and in pursuance to the same a Type-IV quarter was allotted to one Shri Gopilal D. Verma. The representative of the SC & ST Association pointed out that as per the minutes of the meeting on 19.9.91, employees have registered their names in a single register even though they are entitled to higher type of quarters and if the policy is now changed, the seniormost employees will be ignored for the purpose of allotment of quarters. The General Manager's office vide their letter dated 1/2.12.95 (Exhibit-L) held that as per the decision taken by the Housing Committee Meeting on 19.9.91, a common seniority list was maintained for all staff eligible for Type-II, III & IV quarters and at the time of availability of any particular type of quarter, seniormost employee awaiting for quarter or in occupation of lower type of quarter who was eligible, was to be considered for allotment irrespective of his application for lower type of quarter at the time of registration/ application. The headquarters' office proceeded to observe that any decision to change the allotment policy in 1994 or at a subsequent point of time should have been taken without affecting employees who are awaiting for quarter allotment and who were aware of the earlier policy and that the interest of employees who were registered as per earlier policy should not be adversely affected. This office held that as the applicant had applied for quarter on 7.4.82 and Shri A.K. Jha, R-4 on 2.12.91, the former was to be considered for allotment of Type-IV quarter in

preference to the latter as per the policy in vogue without insisting on the need to make fresh application. The headquarters' office concluded its letter as follows:

"In view of the above, corrective action should be taken not only in reference to Shri A.K. Jha about his ineligibility for Type-IV quarter which was incorrectly allotted to him but also to inform all concerned about the incorrect action and take the corrective action by getting the quarter vacated."

The General Manager's office followed up this matter by their letter dated 12.12.95, 9.1.96 and also in February, 1996. But as the matter had been brought before the Tribunal, further action was deferred till the Tribunal takes a decision. It is also pertinent to mention that the Chief Works Manager by his letter dated 21.6.95 addressed to the Chief Personnel Officer in headquarters' office admitted that his office prima facie had made a mistake in allotting the Type-IV quarter to R-4 and a copy of the letter was sent to the Union - Exhibit-K. I may also refer to the note dated 20.10.95 from CWM (Exhibit R-15 (1)) where he has understood the decision of the Housing Committee Meeting held on 19.9.91 in a certain manner but all the same has come to the conclusion that in terms of the existing policy there was no need to insist on a fresh application for Type-IV quarter and that allotment of Type-IV quarter to R-4 was an "administrative error".

These communications/ office notings go counter to the stand taken by the Chairman of the Housing Committee, the Deputy C.P.O. (Works) that the

circular dated 20.9.84 by the Mechanical Wing automatically applies to the quarters in the Electrical Pool. It is also relevant to mention that the agenda for the Housing Committee Meeting on 2.2.95 which was continued on 4.2.95 dealt with policy for allotment of Type-IV railway quarters of Electrical Department. From the minutes, it is seen that the discussions remained inconclusive and no decision was taken with regard to allotment of Quarter No. 50/L/A-1 at Santa Cruz which is the bone of contention. It is, not clear as to how the impugned order dated 8.2.95 was issued when the Housing Committee had failed to come to a decision on this question. The stand of the respondents in this case that a fresh application specifically for Type-IV quarter is required before the same can be allotted to employees of the Electrical Wing is seen to be negated by the letters and notings of the superior officers of the Railways.

17. I shall now proceed to consider the various points raised in the Affidavit of the Dy CPO (W) dated 18.3.96 along with its enclosures and examine whether they lend any support to the case of the respondents. Some of these points have also been urged by the private respondent, Shri A.K. Jha, R-4 in his second affidavit.

18. It is submitted by the respondents that the applicant ought to have registered afresh for Type-IV quarter when he became eligible for the same, in the prescribed form and his application for lower type quarters does not automatically entitle him for Type-IV simply on promotion. There is a prescribed format which inter alia, stipulates that the employee undertakes to abide by the rules in force as amended from time to time. It is argued that the applicant had submitted a representation in November, 1994 for a Type-IV quarter and the same is not in the prescribed form and the earlier application of 7.4.82 for a lower type of quarter does not entitle him for allotment of Type-IV quarter.

As regards this point, it is only the assertion of the Deputy C.P.O. (Works) who has sworn the Affidavit that a railway employee has to apply afresh for a higher type of quarter (Type-IV) as per the policy followed in the Electrical Department. As has already been brought out, there is ample material to show that such indeed was not the policy, particularly in the context of the decision taken in the meeting held on 19.9.91. If there is no need to file a fresh application specifically for Type-IV quarter, the question of insisting on the prescribed format does not arise. It is admitted by the Railways that the applicant had registered his name for railway

... 23/-

quarters on 17.4.82. Obviously, he had done so by means of a proper application in the prescribed format. There is no merit in the contention that the failure to apply in the prescribed format would disentitle the applicant for Type-IV quarter <sup>when</sup> the officer swearing the Affidavit has not been able to rebut the stand taken not only by the applicant but also by the General Manager's office and the Chief Works Manager that there is no need to insist on fresh application for Type-IV quarter.

19. It is argued that the applicant was a member of the Housing Committee earlier. He attended the meetings held on 31.10.85 and 6.5.86. He made certain observations in the meeting held on 31.10.85 while referring to the application of Shri Shaligram who was being considered for a Type-II quarter. There is also a reference to the case of one Shri Cardoz where it was held that he has to apply afresh for registration of his name for Type-II quarter as per the policy decision. The respondents contend that this shows that there is need for a fresh application when a higher type of quarter is sought for.

All the details about Shri Shaligram's case have not been brought out by the respondents. It is seen that the Housing Committee of which Shri Kushwaha was a member in its meeting held on 31.10.85 decided to



give Shri Shaligram his due seniority in the waiting list and his position was brought up to Sl.No.3 from Sl.No.76 (A). There is a reference in the minutes to the procedure vide orders dated 20.9.84. Shri Shaligram, however, was allotted a Type-II quarter. The practice in respect of allotment of Type-II quarter is that if an employee had applied for Type-I quarter while working as Class-IV, he should apply afresh for allotment of Type-II quarter at the time of his promotion as Class-III staff. His name for Type-I quarter while working in Class-IV category will be deleted automatically on his promotion to Class-III category. His name for Type-II quarters will be registered only from the date of his application and neither from the date of his promotion in Class-III nor from the date of his original application for Type-I quarters.

There is also a reference to the letter dated 22.7.75 from the General Manager's office. This letter marked as Exhibit R-2 which reads as follows:

"In this connection it is stated that Class-IV staff on promotion to Class-III post will have to apply afresh for allotment of Type-II quarters".

Shri Masand for the applicant does not dispute the need for a fresh application in respect of Type-II quarters. He, in fact, has contended that only the

... 25/-

General Manager can issue general instructions and the General Manager's instructions require a fresh application only for allotment of Type-II quarters. In the meeting held on 31.10.85, Shri Shaligram's case was considered for Type-II quarter and he was allotted the same. The fact that the applicant was a party to the decision when the subject related to allotment of Type-II quarter does not automatically mean that he has accepted the position that a fresh application is required for Type-IV quarters.

The case of Shri Cardoz referred to in the letter dated 9.2.89 (Exhibit R-23) is clearly the case of a person becoming eligible for Type-II quarter who has to make a fresh registration for such quarters. These references do not advance the case of the respondents.

20. The respondents make a reference to the minutes the Housing Committee Meeting held on 6.5.86. Para 2 of these minutes reads as follows:-

"It was stated by the representative of WRMS that the names of staff in the grade of JSS in the scale of 700 - 900 who was entitled to Type-IV quarters should be deleted from the list and fresh list of Type-IV quarters should be published. Representative of WREU also accepted the suggestion. This will be implemented and a fresh list should be published for

eligibility of Type-IV quarters. Staff concerned will also be advised accordingly. Representatives of WREU and WRMS were requested to have the list scrutinised and bring up discrepancies, if any, which will be discussed in the next meeting after which the list can be finalised."

It is the respondent's contention that Shri Kushwaha who was the representative of WRMS, had in fact, wanted that persons in the grade of JSS who are entitled to Type-IV quarters should be deleted from the list which is presumably the list for lower type of quarters and by implication they should be required to apply afresh for Type-IV quarters.

Shri Masand for the applicant does not agree with this inference. He brings out that only certain suggestions were made and the authorities were required to take further action before the list was to be finalised. No such action was taken with the result that even if a suggestion was made to the effect that it is necessary for a person to apply for Type-IV quarters afresh, this was not implemented. The respondents have not been able to rebut this argument. In any case, in the subsequent meeting of the Housing Committee held on 19.9.91, the decision was not to insist on a fresh application for Type-IV quarters. In

view of this, Shri Masand's contention that the applicant did not apply afresh for Type-IV quarters as the suggestion to that effect was not followed up and implemented has considerable force.

21. The official respondents have made available a Register purporting to show the seniority list of allotment of Railway quarters to Electrical Department. They argue that even though it is a single Register for all types of II, III & IV quarters, there is a column which says "types applied for" and another column which indicates "the date of application". They go on to submit that in the case of Shri Gopilal D. Verma against the column "type applied for", it is shown as Type-IV and his date of application has been mentioned as 23.7.77. According to them, this substantiates their contention <sup>that</sup> there is a requirement to apply separately for each type of quarters. They seek to buttress this argument by enclosing a copy of a letter dated 10.9.91 from Shri Verma where he had stated that he had applied for allotment of Type-IV quarter on 23.7.77 and his name was registered in a waiting list published on 8.2.80. The respondents argue that Shri Verma had in fact submitted a fresh application for Type-IV quarter on 23.7.77 and it is not a fact that he was allotted a Type-IV quarter on the basis of a registration in a common seniority list for Type-II, III & IV quarters as contended by the applicant. They are, however, unable to produce the original application of Shri Gopilal D. Verma ... 28/-

Shri Masand for the applicant refutes this contention. He brings out that Shri Gopilal D. Verma was promoted to officiate on ad hoc basis as JSS in the pay scale of 700 - 900 with the minimum at 700/- per mensem only with effect from 1.9.86. He has produced a copy of the staff order No. 299 dated 5.9.86 in this regard. When Shri Verma was not at all eligible for Type-IV quarters, prior to 1.9.86, the question of his having applied for the same in 1977 would not arise. He states that a person becomes eligible for Type-IV quarter, only when he draws a minimum pay of Rs.700/per mensem in the pre-revised scale and Shri Verma started drawing the same with effect from September, 1986 when he was appointed to officiate in the scale of 700 - 900 that too on an ad hoc basis and his pay was fixed at the minimum of Rs. 700/- per mensem. It is not the case of the respondents that an official can apply for Type-IV quarter in 1977 even though he became eligible for this type much later in 1986. Shri Masand also brings out that Shri Verma in his letter dated 10.9.91 has clearly stated that his name was registered in the waiting list published on 8.2.80. According to Shri Masand, this would indicate that Shri Verma had applied only for a lower type of quarter and in accordance with the policy then followed staked claim for Type-IV quarter when he became eligible for the same. He also produces a waiting list of Class-III essential staff for allotment of railway quarters.

... 29/-

forwarded vide letter No. E/ PL/ 56/ 1/ Col.7 dated 11.4.86. In this list, Shri Gopilal Verma's name figures at Sl.No. 52 and against the column "type entitled", it is shown as Type-III and against the column "the date of application", it is shown as 23.7.77. Shri Masand submits that Shri Gopilal D. Verma's application of 23.7.77 would therefore have been only for a lower type of quarter and this application was held sufficient to allot him Type-IV quarter when he became eligible for the same.

It may be mentioned that the official respondents have not challenged the authenticity of the order dated 5.9.86 and the seniority list forwarded by letter dated 11.4.86. In view of this, it is reasonable to hold that the application dated 23.3.77 of Shri Gopilal D. Verma for a lower type of quarter to which he was eligible was acted upon and he was given Type-IV quarter when he became eligible for the same.

22. After going through the Register produced by the official respondents, I have to state that it seems to have been reconstructed at a later date and is not the original Register. It is seen from this Register that the first 4 pages containing over 100 names (including those of the applicant, Shri Gopilal D. Verma and Shri A.K. Jha, R-4) have been written by the same person, at the same time with the same ink. Sl.

... 30/-

No.1 is one Shri G.S. Michael whose date of application is shown as 19.11.71 and Sl. No. 116 is Shri Surendar whose date of application is 25.2.92. There is a column which is originally written as "type entitled". The word "entitled" in black ink was cut out and modified in blue ink as "for applied". The waiting list forwarded by letter dated 11.4.86 in column 7 shows "type entitled". As such the modification, "type for applied" as against the original entry "type entitled" has been done subsequently. I also notice that at Sl.No. 145, as it originally stood the name Shri Vikas Sharan Kamble appears after Shri N.K. Yadav at Sl.No.144. The date of application of Shri N.K. Yadav is shown as 6.8.93 whereas that of Shri Kamble is shown as 5.7.94. Shri Kamble's name has subsequently been struck off and Sl. No. 145 shows one Shri Ramaraj Yadav who has applied on 13.10.93. Shri Kamble's name now figures at Sl.No.149. If the Register had been maintained properly, and in its original form, there should have been no question of an application dated 5.7.94 figuring immediately after 6.8.93 when there were at least 4 persons who had applied between October 1993 and March 1994. This Register obviously has been written up not earlier than 1994. It is relevant to state that the applicant's representation for a Type-IV quarter was made in November, 1994. For these reasons, I do not accept the stand of the deponent to the Affidavit that her version

... 31/-

of the policy followed for allotment of Type-IV quarters in the Electrical Department of the Lower Parel Workshop is independently corroborated by official documents such as the Register showing the seniority list of allotment of quarters.

23. I propose to refer at this stage to the note dated 20.10.95 signed by the Chief Works Manager (CWM) addressed to the Dy CPO (W), a copy of which has been annexed as Exhibit R-15 (1) by the official respondents while filing the Affidavit dated 18.3.96. The CWM in his note has clearly held that Shri A.K. Jha, R-4 is not entitled for Type-IV quarter and such allotment constitutes what he calls an "administrative error". He takes the view that by virtue of the decision taken by the Housing Committee Meeting held on 19.9.91 employees staying in Type-III quarters and entitled for Type-IV quarters should be allotted the vacant Type-IV quarter even when they have not applied specifically for such type. He observes that in the absence of any objections to this arrangement, this procedure of not insisting on fresh application for Type-IV quarters should have been followed till it is logically terminated in a manner which does not adversely affect the interest of any employee. He also suggests a number of measures for terminating this arrangement such as giving an opportunity to register for a



Type-IV quarter within a specific time to the eligible persons and if they so register, their relative seniority should be decided based on respective dates of eligibility for Type-IV. He, however, stresses the point that the decision of the Housing Committee Meeting was to allot the Type-IV quarter without a fresh application only to the employees who are staying in Type-III quarters. He goes on to argue that as the present applicant had not been in occupation of a Type-III quarter but had been sharing a Type-II quarter, he is not eligible to be allotted a Type-IV quarter without a fresh application. A copy of this note has also been sent to General Manager's office with a forwarding letter dated 30.11.95 - Exhibit R-15 (2). The General Manager's office by their letter dated 1/ 2.12.95, has interpreted the decision differently. The relevant extract of the communication from the General Manager's office as at Exhibit-L reads as follows:-

67 ✓  
"As per the decision taken by the Housing Committee Meeting held on 19.9.91, a common seniority list was maintained for all staff eligible for Type-II, III & IV quarters. At the time of availability of a particular type of quarter, the seniormost employees awaiting for quarter or in occupation of lower type of quarter who are eligible for the type of quarter that fall vacant was to be considered for allotment of.

quarter irrespective of his application for lower type of quarter at the time of registration/ application".

(emphasis supplied)

In other words, the view of the GM's office was that when a Type-IV quarter falls vacant it should go to the seniormost employee awaiting for a quarter and is not confined only to those who are already in occupation of Type-III quarter.

24. A perusal of the minutes of the Housing Committee Meeting held on 19.9.91 would indicate that the thrust of the decision was that a fresh application for Type-IV quarter was not required. The committee noted the fact that there was no applicant for Type-IV quarters from the eligible employees. This is presumably because as per the procedure followed, there was no requirement to apply afresh for Type-IV quarters. Even though the committee refers to allotment of Type-IV quarter to the employees who are staying in Type-III quarters, it nowhere says that if the seniormost eligible employee for Type-IV is not in occupation of Type-III quarters, he should not be considered for the same. The CWM has not brought out that when the Housing Committee met on 19.9.91, there was any other official senior in service and awaiting for Type-IV quarter and that such senior officer was ignored by the Housing Committee while allotting the

... 34/-

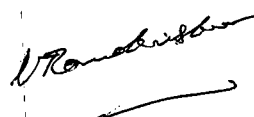
Type-IV quarter to Shri G.L.K. Murthy. In his note, the CWM records that no objection was raised to the decision of the Housing Committee. Obviously, if the seniormost eligible official awaiting for Type-IV quarters was ignored while allotting the quarter solely on the ground that he was not in possession of Type-III quarter, there would have been protests and objections. In view of this, it is not reasonable to understand the Housing Committee decision as restricting allotment of Type-IV quarter without a fresh application only to those who were physically staying in Type-III quarters. The interpretation of the decision of Housing Committee Meeting by the General Manager's office is therefore more rational.

25. In the light of the foregoing discussion, I hold that the policy followed by the Electrical Wing of the Lower Parel Workshop for allotment of Type-IV quarter is as elucidated in the letter dated 1/2.12.95 from the office of the General Manager, Western Railways addressed to the Chief Works Manager, Lower Parel Workshop as at Exhibit-L. If the department wants to change this policy, they have to ensure that the interests of employees awaiting quarter allotment and who were aware of the earlier policy are adequately safeguarded. It is also clear that the action of the authorities in issuing the impugned order dated 8.2.95 allotting the sole Type-IV quarter available for

Electrical Wing to Shri A.K. Jha, R-4 cannot be sustained as it is in violation of the present policy for allotment of Type-IV quarter. I, accordingly, quash this impugned order dated 8.2.95 as at Exhibit-A and direct the authorities to take all consequential steps, such as action to get the quarter vacated by R-4 in accordance with law and to issue fresh orders for the allotment of this quarter in accordance with the present policy as explained in GM's office letter dated 1/ 2.12.95 referred to supra.

The respondents will comply with this direction as expeditiously as possible and in any case within a period of four months from the date of receipt of a copy of this order.

26. With the above direction/ observation, the OA is finally disposed of with no order as to costs.



( V. RAMAKRISHNAN )  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
GULESTAN BLDG. NO.6, PRESCOT ROAD, 4TH FLOOR,  
MUMBAI - 400 001.

REVIEW PETITION NO. 71 OF 1996  
IN  
ORIGINAL APPLICATION NO. 1124/ 1995  
FRIDAY, THIS THE 21ST DAY OF JUNE, 1996

SHRI V. RAMAKRISHNAN

...

MEMBER (A)

Shri Ajay Kumar Jha,  
Shop Superintendent,  
Western Railway Workshop,  
Lower Parel, Mumbai,  
R/at Type IV, Railway Qr.  
No.50/ L-A1, Santa Cruz (West),  
MUMBAI. ...

Review Petitioner

Vs.

1. Union of India,  
through the General Manager,  
Western Railway, Churchgate,  
Mumbai - 400 020.
2. Chief Works Manager (Electrical),  
Lower Parel Workshop,  
Western Railway,  
Mumbai - 400 013.
3. Chief Personnel Officer  
(Administration),  
Western Railway,  
Church Gate,  
Mumbai - 400 020.
4. Shri Govardhan Prasad Kushwaha,  
Junior Shop Superintendent,  
O/o Chief Works Manager,  
Lower Parel Workshop, Mumbai,  
R/at C/o Shri M.D. Pasi,  
155/16, New Western  
Railway Staff Quarters,  
TPS III, 5th Road,  
Santa Cruz (East),  
Mumbai - 400 055.

...

Respondents

...2/-

O R D E R

The Review Applicant, Shri Ajay Kumar Jha, who was Respondent No.4 in OA 1124/95 has prayed for a review of my order dated 18.4.96 where I had held that the allotment of Type-IV Railway Quarter No. 50/L-A1 at Santa Cruz West to Shri Jha could not be sustained as it was in violation of the present policy on allotment of Type-IV quarter and accordingly quashed the order dated 8.2.95 allotting the quarter to him. I also directed the respondents to take all consequential steps, such as action to get the quarter vacated by Shri Jha in accordance with law and issue of fresh orders for the allotment of the quarters in accordance with the present policy as explained in the letter from the office of the General Manager, Western Railway dated 1/2.12.95 addressed to the Chief Works Manager, Lower Parel Workshop, which was annexed as Exhibit-L to the OA. I was sitting in the Mumbai Bench for three weeks in March, 1996 in accordance with the orders of the Hon'ble Acting Chairman and this case was heard by me then.

2. In the OA, the main issue which needed determination was whether as per the practice followed in the Electrical Wing of Lower Parel Workshop, there was need for a fresh application by an eligible employee for a Type-IV quarter or whether a common seniority list existed for the staff of the Electrical Wing for Type-II, III and IV quarters. After considering the submissions made by the Counsel and after examining the documents and papers made available, I concluded that the policy followed in the Electrical Wing of the Lower Parel Workshop for allotment of Type-IV

quarter was as explained in the letter dated 1/2.12.95 from the General Manager's office referred to supra which stated that at the time of availability of Type-IV quarters, the seniormost employee waiting for quarter or in occupation of a lower type of quarter should be considered for allotment even though he had not specifically applied afresh for a Type-IV quarter so long as he had applied for a Type-II or Type-III quarter. The decision in the OA referred to was given on the basis of my finding on this issue.

3. The grounds urged by Shri A.K. Jha in support of the review application are examined below:

(1) He contends that there is a statement in the judgement that there is only one Type-IV quarter available for the employees of the Electrical Wing and that this assumption is wrong. He states that there are two Type-IV quarters available in the Electrical Wing, of which one is at present under the occupation of Shri M.G. Verma, who is a motor-man in Western Railway with effect from 1.4.94. As regards this contention, there is a mention in para 11 of the judgement that it was brought out by the Counsel that there was only one Type-IV quarter available for the employees of the Electrical Wing. Even according to the present submission, the other Type-IV quarter is not vacant and has been allotted to a motor-man who does not belong to Workshop pool. The issue involved in the case was as to the policy followed in allotment of Type-IV quarters for the Electrical Wing and it does not really matter whether

there was only one Type-IV quarter or two Type-IV quarters.

(2) It is submitted by the Review Applicant that the conclusion of the Tribunal that a common seniority list exists for the staff of the Electrical Wing for Type-II, III & IV quarters is patently erroneous as no rule or policy decision is shown to have existed in support of the said proposal. As regards this argument, the Tribunal had considered at length, the various documents such as, notings in the relevant files, proceedings of the meetings of the Housing Committee, etc. while coming to its findings regarding the policy actually followed in the matter. If the review applicant is aggrieved by this finding of the Tribunal which was arrived at after examining the various materials before it, he has to seek his remedy elsewhere and not by way of a review application.

(3) It has also been urged that in the case of R.K. Yadav and two others vs. Union of India and others in OA 901/94, the Mumbai Bench had held that a Class III employee entitled to a higher type of quarter should apply for the same and his entitlement for such quarter will arise from the date of application. It is contended that this judgement rendered on 20.12.95 by Hon'ble Member (A), Shri M.R. Kolhatkar, referred to some other decisions of the Bench. The applicant proceeds to argue that as the judgement in Yadav's case lays down a different proposition, the judgement under review is required to be recalled and the matter is required to be submitted to the Full Bench. A copy of the judgement in Yadav's case is



annexed as Exhibit-B to the review application.

As has been admitted by the review applicant himself, the decision in Yadav's case was not brought to my notice and he says that none of the parties in the present OA seems to have been aware of the said judgement. I have gone through the judgement in Yadav's case. The issue involved in that case related to the need for a fresh application in respect of Type-II quarters in respect of persons who are allotted Type-I quarters, whereas the issue in the present OA is the policy followed in the Electrical Wing of the Lower Parel Workshop for allotment of Type-IV quarters. After perusing the judgement, I do not agree with the contention that this lays down any general law with regard to allotment of any type of quarters by any department irrespective of the policy followed in the various units which may not be uniform. I reject the contention that this judgement lays down a pure legal proposition of a general nature and is not restricted to any class of employees or any type of quarters. There is no direct conflict between the judgement under review and the judgement in Yadav's case in the context of the facts and circumstances of each case and there is no need for reference to a Full Bench as contended.

(4) It is submitted that the letter dated 20.9.84 issued by the Additional Chief Mechanical Engineer is addressed to all the officers at Lower Parel Workshop and Mahalakshmi Workshop and the assumption that it was addressed only to the officers of the Mechanical Wing was wrong. In para 14 of the judgement no doubt, there is a reference that the

letter is addressed to Mechanical Wing. However, this para goes on to discuss the actual policy which was in fact followed from time to time and refers to the decision taken in meetings held on 19.9.91 and there is a finding that the practice in Electrical Wing is that fresh application for Type-IV quarter was not being submitted when an employee becomes eligible for that type and that there is common seniority for Type-II, III & IV quarters. As such, even after the issue of letter dated 20.9.84 from the Additional CME, the policy actually followed in the Electrical Wing was held to be that a fresh application for Type-IV quarter is not required. This contention also does not advance the case of the review applicant.

(5) The review applicant submits that the letters dated 12.12.95, 9.1.96 and February, 1996 from the General Manager's office are letters issued in the context of the dispute in question and are not general rulings or general instructions of any superior authority.

On perusal of the various letters referred to above, it is clear that these were issued after considering the policy followed in this office and the General Manager's office came to the conclusion that the policy followed was that the seniormost eligible employee was to be considered for allotment of the quarter irrespective of the fact that he had applied only for a lower type of quarter. The General Manager's office directed the Chief Works Manager to implement this policy in respect of Shri Kushwaha, the original applicant. It is, therefore, not correct to imply

67

that these letters of the General Manager's office were issued without taking into account the policy followed in the Electrical Wing and that the instructions dated 20.9.84 of the Additional CME should automatically have been adhered to irrespective of the actual practice followed in that office.

(6) It is stated that Shri Jha is senior to Shri Kushwaha, the original applicant and that if the quarters have to be allotted to the seniormost eligible employee, the same should have been done to Shri Jha instead of Shri Kushwaha. The term seniormost eligible employee has to be viewed from the date on which the official becomes eligible for Type-IV quarter in the context of the pay drawn by him. The eligibility for Type-IV quarter arises when the person starts drawing Rs.700/- in the pre-revised scale and Rs.2,000/- in the revised scale. Shri Kushwaha had stated in the OA that he started drawing this pay from a date earlier than Shri Jha and this position was not been controverted by the respondents and the only ground adduced by the official respondents in their reply statement in support of the impugned order was that the eligibility for Type-IV quarter arises from the date of application for Type-IV quarter and not from the date of entry into the grade which would make the official eligible for such quarter. Seniority has to be reckoned from the date the officials started drawing the eligible pay and not by any subsequent development. Whatever may have been the subsequent development and promotions between Kushwaha and

Jha, the position is that Shri Kushwaha started drawing the eligible pay earlier than Shri Jha. I reject the different interpretation of the "senior-most eligible employee" sought to be given by the review applicant at present.

(7) It is submitted in para 7 (j) of the review application that the Tribunal has made a mistake in regard to the scope and effect of the minutes of the Housing Committee <sup>meeting</sup> held on 19.9.91 and it is asserted that in para 8 of the said minutes, it is unequivocally stated that Shri Kushwaha is not eligible for the quarter in question ahead of the review petitioner.

The review applicant is mixing up the minutes of the Housing Committee Meeting held on 19.1.91 and the note given by the Chief Works Manager on 20.10.95. What is claimed to be para 8 of the minutes of the Housing Committee Meeting is really para 8 of the note of the Chief Works Manager. This note has been gone into by the Tribunal in para 23 of the judgement under review and certain observations have been made in that paragraph. This argument is thus of no avail to the review applicant.

67  
(8) There is also no force in the contention that the OA has been converted into a public interest litigation. I had already brought out the issue which needed determination by the Tribunal and came to the finding that the seniormost eligible employee was to be considered for allotment of Type-IV quarter without insisting on a fresh application, so long as he had applied for a Type-II or a Type-III quarter. As Shri Kushwaha started drawing

eligible pay earlier than Shri Jha, in any case, his claim for Type-IV quarter would be superior to that of the review applicant. The Type-IV quarter in question has to be allotted to the official of the Electrical Wing, who started drawing the eligible pay the earliest and it is a question of fact to be determined on the basis of the actual position. If Shri Kushwaha, in fact, is such a person, he would be entitled to get the quarter allotted in his favour. I had also directed the respondents to take all consequential steps, which would include fresh orders for allotment of the quarter after getting the quarter vacated by Shri Jha in accordance with law. Such a direction has been given as a natural corollary to my order quashing the impugned order dated 8.2.95 as at Exhibit-A. As such, the judgement has a direct bearing on the rights of the parties to the OA and the OA has not been converted into a public interest litigation.

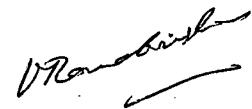
4. There is a request by the review applicant for hearing the review petition in open Court. I may mention that I heard the OA on a number of occasions and adequate opportunities were given to all the parties in the present OA to make their submissions and to produce documents in support of their cases and as is clear from the main judgement, the parties availed themselves of the same. As

... 10/-

the review applicant has not brought out any error apparent on the face of the record as is evident from the foregoing discussion, I hold that there is no need to hear the review petition in open Court.

5. The review petition is accordingly dismissed.

Note: Review Petition decided at  
at Bangalore on going through  
the papers.



( V. RAMAKRISHNAN )  
MEMBER (A)

TCV

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,  
MUMBAI - 400 001.

CONTEMPT PETITION NO.12/98 in

ORIGINAL APPLICATION NO.1124/95.

DATED THE 7TH DAY OF SEPTEMBER, 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.  
Hon'ble Shri D.S.Baweja, Member(A).

Shri G.P.Kushwaha

... Applicant.

V/s.

General Manager,  
Western Railway

... Respondents.

&

1. Shri Arunendra Kumar
2. Shri Shiv Dutt
3. Shri Ajay Kumar Jha

||  
||  
||  
||  
||

... Contemners-

TRIBUNAL'S ORDER:

[ Per Shri R.G.Vaidyanatha, Vice Chairman ]

Shri G.K.Masand for Applicant and Shri V.S.Masurkar  
for official respondents. Shri Ramamurthy for Private  
Respondent No.3.

CP-12/98 is filed by applicant for contempt against  
Railway Administration for not complying with the order of  
Tribunal in getting the quarter vacated. It is now brought  
to the notice of Tribunal, that Shri A.K.Jha has vacated  
the quarter on 31/8/98.

In view of this subsequent event, there is no  
contempt surviving. Shri Ramamurthy <sup>says</sup> ~~prays~~ that his client  
<sup>has</sup> unnecessarily been made party to CP. Since we are  
disposing of the CP on the ground that it does not survive,  
because Shri A.K.Jha has vacated the quarter, we are not  
passing any order as to cost. CP-12/98 stands disposed of.

(D.S.BAWEJA)  
MEMBER(A)

abp

(R.G.VAIDYANATHA)  
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 'GULESTAN' BUILDING NO:6  
PRESCOT ROAD, MUMBAI:1

C.P. 6/99 in  
Original Application No. 1124/95

Monday the 31st day of May 1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S. Baweja, Member (A)

Govardhan Prasad Khushwaha ... Applicant.  
By Advocate Shri G.K. Masand

V/s.

Union of India and others. ... Respondents.  
By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

{ Per Shri Justice R.G.Vaidyanatha, Vice Chairman }

C.P. 6/99 has been filed by the applicant alleging that the respondents have violated the order of this Tribunal dated 18.4.1996 in O.A. 1124/95 and order dated 21.6.1996 in R.P. 71/96. The respondents have filed reply opposing the Contempt Petition. We have heard the learned counsel for both sides.

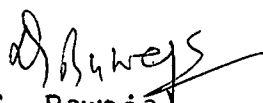
2. The Tribunal by order dated 18.4.1996 while quashing the impugned order dated 8.2.1995 directed the authorities to take all consequential steps such as action to get the quarter vacated by respondent No.4 in accordance with law and to issue fresh order for the allotment of this quarter in accordance with the present policy issued by the General Manager. Then again in the Review Petition the Tribunal has observed that the respondents should consider the question of allotment of quarter on merits and in case the applicant is entitled for allotment of quarters on merits and as per seniority he should be considered. Now the applicant states that

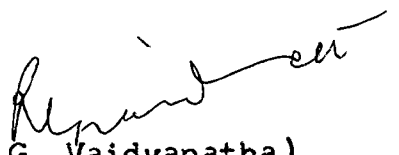


he has not been allotted type IV quarters in spite of the order of the Tribunal.

3. According to the respondents the quarter will have to be allotted to the senior most official. Accordingly the Housing Committee allotted the vacant Type IV quarter to Shri G.R.Verma. It is also on record that Shri G.R.Verma has declined the quarter sometime in January 1999. Now we are in the end of May 1999 and the Housing Committee has not taken any decision to allot Type IV quarter to the eligible official of Electrical Wing as per the order of the Tribunal. In view of this the respondents should be directed to allot the quarter as per rules and as per the observations made in the two orders of this Tribunal dated 18.4.1996 and 21.6.1996 to the eligible officials of the Electric Wing. Since the administration has not made any fresh allotment after G.R.Verma's declining of the quarter, we feel that without taking any action under the law of contempt the respondents be directed to decide the question of allotment of the vacant quarter. Without expressing any opinion on merits, the administration is directed to allot vacant Type IV quarter to eligible officials of Electrical Wing as per the observations made in the Tribunal's order dated 18.4.1996 and 21.6.1996, within a period of six weeks from the date of receipt of this order.

4. C.P. 6/99 is disposed of subject to above observations.

  
(D.S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman