

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

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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.

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Respondents

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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.

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(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 paragraph 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

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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.

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(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.

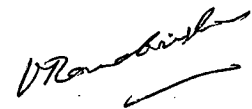
4. There is a request by the review applicant for hearing the review petition in open Court. I may mention that I heard the OA on a number of occasions and adequate opportunities were given to all the parties in the present OA to make their submissions and to produce documents in support of their cases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

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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)

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