

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 8/95  
Transfer Application No.

Date of Decision : 5/12/95

Surendrarsingh J. Solanki & Anr.

Petitioner

Shri M. S. Ramamurthy

Advocate for the  
Petitioners

Versus

Union of India & Anr.

Respondents

Shri V. S. Masurkar

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?

abp.

*M.R.Kolhatkar*  
(M.R.KOLHATKAR)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No.8/95

1. Surendrarsingh J Solanki

2. Kamlendrarsingh S Solanki

... Applicants

V/s.

1. Union of India,  
through the General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

2. Divisional Rail Manager(E),  
Western Railway,  
Bombay Central,  
Bombay - 400 008.

... Respondents.

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

APPEARANCE:

Shri M.S. Ramamurthy,  
Counsel for Applicants.

Shri V.S. Masurkar,  
Counsel for Respondents.

JUDGEMENT:

DATED :

5-12-95

X Per Shri M.R. Kolhatkar, M(A) X

In this OA under section 19 of ATA the facts  
are as below:-

Applicant No.1 is the father who was a regular railway employee and was allotted Railway Quarters No.201/2, type-I at Khar(E). He superannuated on 28/2/94. Applicant No.2 is the son who is also a railway employee, who was initially appointed as Casual Labour on 14/10/91 and was granted temporary status w.e.f. 20/10/92. He has been screened and placed in the panel for regular absorption vide panel dated 30/1/95 at Exhibit R-1 to the Written Statement and in particular Sr.No.154 thereof. Applicant No.2 had applied for sharing of the railway

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accommodation allotted to his father and the permission for sharing was granted by the memorandum dated 10/6/93 at Exhibit-C. This memorandum however stated in para-2 that in case the father (Principle allottee) is required to vacate the quarter, the sanction to sharing of accommodation will automatically stand cancelled and he will have to vacate the quarter without any further notice. It is further stated that on being regularised in Railway service, the said railway quarter will not be automatically allotted to the sharer on out of turn basis and he is to vacate the quarter on retirement of main allottee. As mentioned above, applicant No.1, the main allottee superannuated on 28/2/94, thereafter the applicant No.2 applied for regularisation of quarter in his name by his application dt. 22/4/94. It is the grievance of the applicant that while there was no reply to his request for regularisation, the applicant received notice dt. 20/9/94 at Exhibit-A which is the impugned order. This notice addressed to applicant No.1 states that since he retired on 28/2/94, he is in unauthorised occupation and should vacate the quarters within one month failing which action would be taken against him under the provisions of PP(EUO) Act 1971. It appears that proceedings under PP act have since been initiated but because of the pendency of the OA and the Interim Relief by way of stay

on vacation, the same are in abeyance.

2. It is the contention of the applicant that the relevant railway instructions are the Railway Board Circular No.E (G) 85 QR 1-9, dated 15.1.1990, according to para-2 of which the applicant No.2 is entitled to regularisation of quarters initially allotted to applicant No.1 in the name of applicant No.2. Para-2 reads as below:-

2. When a Railway employee who has been allotted railway accommodation retires from service or dies while in service, his/her son, daughter, wife, husband or father may be allotted railway accommodation on out of turn basis provided that the said relation was a railway employee eligible for railway accommodation and had been sharing accommodation with the retiring or deceased railway employee for at least six months before the date of retirement or death and had not claimed any H.R.A. during the period. The same residence might be regularised in the name of the eligible relation if he/she was eligible for a residence of that type or higher type. In other cases a residence of the entitled type or type next below is to be allotted."

Subsequently, the Railway Board has issued clarification vide circular dated 15/3/91 and according to the applicant this clarification does not in any way affect his position of eligibility. The applicant relies on CAT, Bombay Bench judgement in Totaram V/s. Union of India vide OA 236/93 decided on 23/7/93 and also judgement of CAT Principal Bench in Tilak Raj & Another V/s. Union of India decided on 20/5/92. He also relies on Supreme Court judgement in Gangaram.M.Gupta V/s. Union of India and others in Civil Appeal No.3498 of 1991 decided by the Supreme Court on 3/9/91.

3. The respondents, namely Union of India through General Manager, Western Railway and Divisional Railway Manager, Western Railway have opposed the OA. According to the respondents, applicant No.2 is not entitled to regularisation of quarters initially allotted to his father in terms of Railway Board Circular dated 12/5/83 which appears at Exhibit-R-2 to the Written Statement. In para-3(iii) of this circular, it is stated as below:-

"(iii) The concession of out of turn allotment can be extended to a dependent relative only if he is in regular service and has been sharing accommodation for a period of 6 months during regular service before the date of retirement/death of his father."

4. According to the respondents, on the date of retirement of applicant No.1 namely 28/2/94, the applicant was a temporary Status Monthly rated employee. The applicant was not at that time regularised although he might have been sharing the accommodation with his father on the basis of permission granted and not receiving HRA 6 months prior to the date of retirement of his father. It is further stated by the respondents that since the applicant is not permanent, he is not entitled for regularisation of Railway Quarter. At the argument stage, the Counsel for the respondents contented that the OA is premature. What has been impugned by the applicant is only the notice preliminary to the proceedings under PP act and he has no real grievance. So far as the claim for regularisation is concerned, it

is not covered by standing instructions dated 12/5/83 referred to above. The Counsel for the Respondents argued that out of the 3 reliefs claimed by the applicant namely

- (a) quash and set aside the notice to quit dated 20.9.94.
- (b) regularisation of railway quarters in the name of applicant No.2.
- (c) to release the Gratuity amount of Rs. 36,630/- in favour of applicant No.1 with interest thereon from 1.3.94.

~~1~~ the relief at Sr.No.C cannot be claimed as part of a joint application because there is no commonality of cause between applicant No.1 and applicant No.2 as to this relief. So far as the various judgements of CAT quoted by the applicant are concerned, the Counsel has invited our attention to the Full Bench judgement in Liaquat Ali & Anr. v/s. Union of India reported at 1995(2) ATJ 161 which overruled the same. In para-36 of the judgement, the Full Bench re-formulated the questions to be answered and returned a negative reply to all 3 as below:-

"36. In our opinion, the questions referred to the Full Bench require re-casting. The questions to be answered by the Full Bench should read as follows:-

- (1) Whether allotment of a railway quarter can be claimed as a matter of right?
- (2) Whether ward of retired or retiring railway employee who was living in railway quarter along with retiring or retired railway

servant with the permission of the railway administration foregoing house rent allowance has a right to claim regularisation of quarter in his name?

(3) Whether casual labour and substitutes with or without temporary status and who have not become regular railway employees are eligible to be considered for out of turn allotment on the basis of the circular of the Railway Board.

37. Our answer to all the three questions is in the negative."

In his rejoinder, the Counsel for the Applicant has submitted that the relief relating to Gratuity is consequential and can very well be claimed by the applicant as part of the joint application. So far as the Full Bench judgement relied on by the Counsel for the respondents is concerned, the Learned Counsel for the Applicant would submit that the same needs to be considered in the context of the fact that Totaram judgement referred to by applicant had relied on OA-271/86 in Vithalrao Arjun Kale & Anr. v/s. Union of India & Ors., in which SLP 10795/88 was rejected by the Hon'ble Supreme Court. According to the Counsel, it is feasible to distinguish the ratio of Totaram which relies on the judgement of Vithalrao Arjun Kale upheld by the Supreme Court inspite of the Full Bench judgement. The Learned Counsel for the Applicant ~~also relied~~ on the ratio of Gangaram M. Gupta's case. We therefore reproduce the relevant portions of the judgement:-

"2. The circular issued by the Railway Board categorically indicates

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that a related person sharing the accommodation with the allottee relation for more than six months prior to retirement would be entitled to allotment of the accommodation. In this case the appellant No.2 had already prayed for sharing of the accommodation more than one and a half years prior to his father's retirement in 1982 but order for sharing was made about two months before the retirement.

3. The emphasis which the appellant No.1 lays upon his submission that the application for sharing was kept pending for more than one and a half years has been lost sight of by the Tribunal. We are inclined to accept the submissions of the appellant No.1 that his case is squarely covered by the ~~Railway~~ Board's instructions and, therefore, appellant No.2 - his son is entitled to the allotment of the accommodation on the retirement of his father. The appeal is allowed and the order of the Tribunal is reversed. The claim for allotment is granted. No costs."

6. The Supreme Court judgement entirely proceeds on the basis of Railway Board instructions. The relief was granted only on the ground that application for sharing was kept pending for more than one and half years and thus the condition of sharing accommodation for six months was deliberately not allowed to be fulfilled. It was in view of this that the Supreme Court set aside the order of the Tribunal. In our view, therefore, nothing has been brought before us to take a view different from Full Bench. We may also mention that in para-14 of the judgement, the Full Bench dealt with the case of Totaram and the Full Bench stated in para-30 that in our opinion for non-consideration of these important aspects, the said decisions cannot be treated as laying down the law correctly; the law was correctly applied in the cases in which relief for regularisation was refused.

It is therefore clear that the Full Bench has clearly stated that the case of Totaram does not lay down the law correctly. The same applies to the case of Tilak Raj also.

8. Since the claim to regularisation, if any, flows from Railway Board instructions which are required to be construed strictly in terms of the Full Bench judgement on the basis that allotment of a railway quarter is not a matter of right but is a matter of concession, we considered the circular quoted by applicant, namely circular dated 15/1/90. No doubt this circular does not in terms state that the son of the railway employee who claims regularisation must be a regular employee, but it only talks of eligibility of Railway employee. It would appear that the term 'eligible Railway employee' does not cover monthly rated casual labour <sup>or</sup> the temporary status which the Applicant is. Apart from this strict technical connotation, however, the clarification dated 15/3/91 at Exhibit-F enclosed by applicant himself clearly shows that the applicant is not entitled to regularisation. Item-5 of the clarification raises <sup>and replies to</sup> the following question:-

"Whether casual labour/substitutes with or without temporary status are still not entitled to such benefits?

Reply is in affirmative."

That is to say, the Railway Board clearly clarifies that the persons similar to

those in the class of applicant No.2 are not entitled to the benefit of regularisation. The Full Bench has dealt with this issue in para-31 of its judgement observing that even if the circular dated 15/1/90 created a gap, <sup>a because it superseded previous circular</sup> if the circular is read together with circular dated 15/3/91, the gap is filled. The present case relates to a period post-15/3/91 and there is, therefore, no ambiguity.

8. We are now required to consider the question/that applicant No.2 has been regularised after the superannuation of the applicant No.1. On this point, it may be noted that the applicant No.1 superannuated in February, 94 whereas the applicant No.2 was regularised only in January, 95. It is the eligibility of the applicant on the date of superannuation of applicant No.1 that has to be considered. Subsequent regularisation therefore, does not help the Applicant.

9. Considering all facts and circumstances, we are of the view that the OA is liable to be rejected and is accordingly rejected so far as reliefs (a) & (b) are concerned. Regarding relief (c), it is a distinct relief for which Applicant No.1 would be at liberty to explore <sup>thereafter</sup> departmental avenues and if he/feels aggrieved, approach the Tribunal if so advised. There would be no order as to costs.

M.R.Kolhatkar

(M.R. KOLHATKAR)  
MEMBER (A)

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