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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 284/95

Transfer Application No.

Date of Decision 02-05-96

Subir Ray

Petitioner/s

Shri H.A. Sawant

Advocate for
the Petitioners

Versus

The General Manager, Western Rly.
Churgate, Bombay & Anr.

Respondent/s

Shri V.S. Masurkar

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

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

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

ORIGINAL APPLICATION NO. 284/95.
DATED THIS 2nd DAY OF MAY, 1996.

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

Subir Ray ... Applicant.
(Advocate by Shri H.A. Sawant)

v/s.

1. The General Manager,
Western Railway, Headquarters Office,
Churchgate, Bombay - 400 020.
 2. The Chief Workshop Manager,
Carriage Workshop, Lower Parel,
Western Railway, N.M.Joshi Marg,
Bombay - 400 013.
- ... Respondents.
(Advocate by Shri V.S. Masurkar)

I O R D E R I

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

1. The applicant is working as a Supervisor in Parel Carriage Workshop, Western Railway. While working as such, respondents started disciplinary proceedings against the applicant. These disciplinary proceedings ended in 1992 and the same ended in censure and he was considered suitable for promotion to the post of Chargeman-A in the grade 1600 - 2660 with effect from 19/5/86 and his name was interpolated in the seniority list. He was notionally reassigned for the cadre of Junior Shop Superintendent scale Rs.2000 - 3200/- with effect from 5/12/87. The main contention of the applicant is that because of the pendency of the proceedings he was not able to apply for the accommodation of the appropriate type. His name was registered at Sr.No.72 with effect from 15/5/92 in the essential quota for allotment of Railway Quarters at Parel vide CWM's Parel's letter at Annexure A-8 dated 21/5/1992. His name was registered at Sr.No.691 in the essential quota for allotment of railway quarter at Headquarters vide Headquarters letter dt.

(10)

12/10/92 at Annexure A-17. He therefore requested that his name may be withdrawn from the Parel Workshop and the same may be registered at Headquarters with effect from 15/5/92. However, he was informed by the letter at Annexure A-2 dt. 25/3/94, that as per rules he can register his name only at the parent department and hence his registration at the Head Office has been cancelled. It is this letter dt. 25/3/94 at Annexure A-2 which has been challenged by the applicant. The main contention of the applicant is that no consistent rule regarding registration of the name of the employee with the parent unit for their registration for allotment of quarters is followed by the Department. In this connection, he has given examples of 4 employees namely Shri R.C.Iyer, Shri Munnilal Sharma, Shri G.H.Patil and Shri H.C.Iyer who were given allotment from Head quarters quota. It is further contended by the applicant that consequent on readjustment of his seniority he ought to be given benefit of readjustment of his registration No. in the list of allotment also because it was the respondents who unjustly started the departmental enquiry against him and the same having been concluded he got the benefit, of notional seniority and similarly he should also get the benefit of notional back date of his registration No. in the matter of allotment of quarters.

2. In this connection, he has contended that Shri Zaheer who is junior to him in the Parel Workshop has since been allotted the quarters and though he is senior to him he has still been denied quarters.

3. The respondents resisted the claim of the applicant. According to the respondents, as per rule date of the application of an employee is the date of registration and the applicant has applied for type-IV quarters by application dated 15/5/92 and accordingly his Sr.No.

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was taken as on 15/5/92 and registration No.72 was granted vide letter dt. 21/5/92 (at Annexure A-8). His name was separately registered at Sr.No.691 in the Head Quarters Pool but this was done because it was not known that his name was already registered at Parel Workshop. Around 22/3/94, he intimated that his name was already registered in Parel Workshop when action to cancel his name from the register for Head office pool was taken. It is also contended by the respondents that the applicant suppressed material facts while registering his name in the Head Quarters Pool. So far as the case of 4 employees who were given allotment from Head Quarters Pool is concerned, it is clarified that Shri R.C.Iyer was allotted quarter because he came on transfer from BVP division., Shri G.H.Patil was given allotment as he came on transfer and ~~he was given allotment as he~~ from Ajmer workshop./Shri H.C.Iyer/came on transfer from Baroda division. So far as the 4th employee is concerned, his name was interpolated in headquarters list as he had registered his name for allotment on 14/3/85 at PL Workshop.

4. Regarding Shri Zaheer, it is contended that Shri Zaheer applied for registration for allotment for quarter on 5/12/87 whereas the applicant applied much later namely 15/5/92 and therefore his case cannot be compared with that of Shri Zaheer.

5. The applicant in his rejoinder has filed a copy of the detailed Railway Board instructions on the subject of rules of allotment of Railway Quarter at page.13 to 16 of his Rejoinder. ~~His seniority was~~
~~revised~~ consequent on conclusion of the departmental enquiry. There is a comparable situation relating to upgradation of Artisan post with retrospective effect from 1/8/78. Para-14 of the circular reads as below:-

" As per GM(E)CCG's circular No.EP/58/0 dt. 10/10/63 it has been decided that Class IVZ employees, who had registered their names for

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Type I quarters but who have now become eligible for Type II quarter due to upgradation of artisan posts with retrospective effect from 1/8/78, should be permitted to maintain their names in the register for allotment of Type-I quarter unless they themselves ask for fresh registration for allotment of Type II quarters. It has also been decided in the said circular that Class IV employees who have been allotted Type-I quarters between 1/8/78 and 31/3/83, but now become eligible for allotment of Type-II quarter, from 1/8/78 may be permitted registration for Type-II quarters from the date of occupation of Type-I quarter. It is decided that the provisions of this circular would apply to such Class-IV staff, who have been promoted to Class-III essential category and such staff should apply immediately for this."

6. It is stated in this circular that when there promotion is a case of retrospective benefits, the applicant automatically become eligible for type-II quarters from the date of occupation for type-I quarter. This is also done in the case of Munilal Sharma whose name was interpolated at Headoffice list of allotment of quarters as per his turn because he had registered his name on 14/3/85.

7. In my view the analogy of the Railway Board circular reproduced by me applies to the instant case also. But for the departmental enquiry, which was initiated against the applicant on 17/5/85 and which concluded only in April, 92, the applicant could have got normal promotion and then he would have applied for the allotment of type.IV quarters on the due date. It is not disputed by Railway Administration that applicant was given deemed date of promotion of 4/12/87 for the cadre of Junior Shop Superintendent in the scale 2000 - 3200. There is a fiction which operated in the case of ~~artisans~~ who were promoted retrospectively and this analogy would also apply to the case of the applicant.

8. In this connection, I refer to the observations of various authorities on the matter of operation of a legal fiction.

"Referring to the following observations of Lord Asquith in East End Dwellings Co.Ltd. vs. Finsbury Borough Council 1952 AC 109 at p. 132 the Supreme Court in I.T.Commission v's. Teja Singh, AIR 1959 Supreme Court 352, explained the scope

of a legal fiction:-

(A3)

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

In B.P.Andre vs. Superintendent, Central Jail, Tihar, AIR 1975 Supreme Court 164, the Supreme Court further pointed out:

"It is now well settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusions."

9. When therefore the applicant is given deemed date of promotion by means of a fiction, he is also entitled to deemed date of registration for the allotment of quarters.

10. I am therefore of the view that the OA succeeds and is disposed of in terms of the following directions.

11. Respondents are directed to interpolate the name of the applicant in the registration for allotment in respect of Parel Workshop pool on the basis of his deemed date of promotion namely 5/12/87 and on that basis allot him type-IV quarter. Action in this regard should be completed within 3 months of the communication of the order. There would be no order as to costs.

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

abp.