

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 566/97

Transfer Application No.

Date of Decision 12-3-98

M.R.Raut & Anr.

Petitioner/s

Shri S.S.Karkera

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar for R-1 & 2

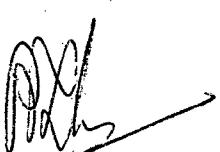
Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ? No
(2) Whether it needs to be circulated to other Benches of the Tribunal ? No


(P.P. SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.566/97

this the 12th day of MARCH 1998

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

1. M.R.Raut
Qr.No. 8/68, Type 'B'
(Special), Ghatkopar
C.G.H.S. Colony,
Ghatkopar (West),
Mumbai.
2. V.M.Raut
Qr.No. 8/68, Type 'B'
(Special), Ghatkopar
C.G.H.S. Colony,
Ghatkopar (West),
Mumbai.

By Advocate Shri S.S.Karkera

... Applicants

V/S.

The Union of India through

1. The Director of Estates,
Directorate of Estates,
Govt. of India, Nirman Bhavan,
New Delhi.
2. The Estate Manager,
Govt. of India, 3rd Floor,
Old C.G.O. Building Annex.,
101, M.K.Road, Mumbai.
3. The Pr. Director of Audit,
Indian Audit & Accounts Deptt.,
O/o Accountant General (A&E)-1,
101, M.K.Road, Mumbai.
4. The Principal Director of Audit,
Indian Audit & Accounts Deptt.,
Madhu Industrial Estate,
Worli, Mumbai.

By Advocate Shri V.S.Masurkar
for R-1 & 2 and Shri P.M.Pradhan
for R-3 & 4.

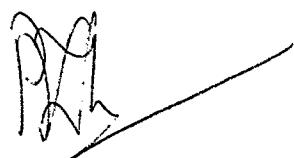
... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

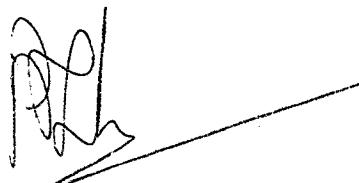
The applicant No. 1 in this OA, was working as UDC in the Office of the Small Scale Industries Service Institute, Govt. of India, Sakinaka. He was allotted a Quarter No. 8/68, Type-B (Special) C.G.H.S. Colony at Ghatkopar in July, 1980. The Applicant No. 1 retired from service on 31.1.1997. The Applicant No. 2, who is the son of Applicant No. 1, was appointed as Group 'D' in 1992 in the Office of Principal Director of Audit, Indian Audit & Accounts Department, Government of India. The Applicant No. 2 has been living with his father, i.e. Applicant No. 1 and has not drawn any HRA since his appointment in 1992.

2. Before the retirement of Applicant No. 1, Applicant No. 2 preferred a representation dated 16.8.1996 to the Office of Director of Audit for allotting him a quarter but his request got turned down by the Office of the Respondent No. 3 on 24.12.96 stating that he is not entitled for allotment of a quarter because of long waiting list. The applicant No. 2 has stated that since his father was Central Government employee and was allotted a quarter by ^{he} Estate Manager, i.e. Respondent No. 2, submitted an application to Respondent No. 2 i.e. Estate Manager through his office, i.e. Director of Audit, Indian Audit & Accounts Department but the same was not considered by Respondent No. 3. The applicant thereupon submitted an application directly to Respondent No. 2 i.e. The Estate Manager for allotting the quarter on father to



son basis on 1.4.1997. The Applicant No. 1 also represented that as soon as a quarter is allotted to him, i.e. Applicant No. 2, he will vacate the quarter. This application is placed at Exhibit-'A-5'.

3. Respondents No. 1 & 2 i.e. Director of Estates and Estate Manager have brought out that the applicant No. 2 is entitled to Type-I quarter and the pool of Type-I quarter for Audit Department is with the Audit Department only and the Estate Manager's pool cannot be used for allotting the quarter to the employees of Audit Department who are entitled to Type-I quarter. Learned counsel for Respondents No. 1 & 2 has further argued that as far as the Estate Manager is concerned, the Applicant No. 1 is in unauthorised occupation of quarter w.e.f. 31.5.1997, the date on which the allotment was cancelled as per the provisions of the allotment rules and the Applicant No. 2 i.e. the son of Applicant No. 1 can be allotted quarter from the Audit Department pool by the Director of Audit and the Estate Manager (is) no way connected with that allotment. All that the Estate Manager is concerned with/the unauthorised occupation of the quarter by Applicant No. 1. The respondents issued the cancellation order vide their order dated 23.5.1997. Aggrieved by this order the applicant approached this Tribunal. The Tribunal by its order dated 3.7.1997 has granted stay order. In terms of stay order, the respondents' letter dated 23.5.1997 has been held in abeyance.



4. Learned counsel for Respondents No. 3 & 4 has argued that there is a long list of Group 'D' employees waiting for allotment of quarter and the Audit Department is not in a position to allot a quarter out of turn to Applicant No. 2. The learned counsel has further argued that if Applicant No. 1, i.e. the father of Applicant No. 2 who is the employee of Audit Department, was also in the Audit Department, the situation would have been different and the Respondent No. 3, i.e. Audit Department would have been obliged to allot the quarter to Applicant No. 2 on father to son basis.

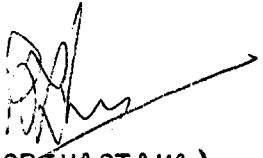
But in the present case the Applicant No. 1 was not working in the Audit Department. He was working in some other department and therefore the Type-I quarter of Audit Department cannot be used for out of turn allotment because the benefit of Applicant No. 2 flows out of the service of Applicant No. 1 in some other department.

5. After hearing all the counsels, I am of the view that as far as Applicant No. 2 is concerned, he is entitled to be considered for allotment of quarter from father to son basis according to law and there does not seem to be any dispute as he has not drawn House Rent Allowance from the date of his appointment. The only question is as to who is required to allot him the quarter? Whether it should be the Audit Department from their own pool or from the general pool of Estate Manager. The dispute between the two Government departments is not an issue before this Tribunal nor the Tribunal is required to resolve this dispute in this case. Since both the departments are under Government of India, it is for them to resolve their dispute as to who will allot the quarter to the Applicant No. 2.



6. As far as the claim of the applicant is concerned, I am of the view that the applicant is entitled for consideration for allotment of quarter according to rules from father to son basis of appropriate Type. Since the father was occupying Type-II quarter, the Applicant No. 2 cannot continue in Type-II quarter of his father. However, till the dispute is resolved as to who will allot the quarter to the Applicant No. 2, he would be entitled to continue in the quarter which was allotted to his father, i.e. Applicant No. 1 although it is Type-II quarter. The Estate Manager, i.e. Respondents No. 1 & 2 would be free to allot a Type-I quarter temporarily to the applicant so that they can get their Type-II quarter released till the dispute between the Audit Department and the Estate Manager is resolved.

7. The OA. is, therefore, disposed of with the direction that the Applicant No. 2 is entitled for consideration of allotment of quarter from father to son basis. Accordingly, the Applicant No. 2 is permitted to retain Type-II quarter of his father till a Type-I quarter is allotted to him. The dispute between the Audit Department and Estate Manager should be resolved through their official channel. The Estate Manager would be free to allot a Type-I quarter temporarily to Applicant No. 2 to get the Type-II quarter vacated by Applicant No. 1 till the dispute as to who will finally allot the quarter to Applicant No. 2 is resolved by Audit Department and Estate Manager. The OA. is disposed of with the above directions. No costs.



(P.P. SRIVASTAVA)
MEMBER (A)

(5)

mr.j.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

R.P.NO. 43/98 in OA.NO. 566/97

this the 15th day of April 1999

CORAM : Hon'ble Shri D.S.Bawejja, Member (A)

Union of India
through Estate Manager,
Govt. of India, 101, M.K.Road,
Mumbai.

By Advocate Shri V.S.Masurkar

Review Petitioners

V/S.

M.R.Raut & Anr.

By Advocate Shri S.S.Karkera

Review Respondents

ORDER

(Per: Shri D.S.Bawejja, Member (A))

This Review Application has been filed
the
by the respondents seeking review of order dated
12.3.1998 in OA.NO. 566/97.

2. The Hon'ble Member who had passed the order under reference has since retired and therefore another Bench has been constituted for consideration of the Review Application. Accordingly, preliminary hearing has been held. Shri S.S.Karkera, learned counsel for the applicant and Shri V.S. Masurkar on behalf of respondents argued.

3. The Review Application has been filed about 20 days beyond the period of one month permitted for filing the review application from the date of receipt of the order. In view of the position explained, the delay is condoned.

4. As held by Hon'ble Supreme Court in catina of judgements, the power of review may be exercised on the discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the person seeking review or could not be produce by him at the time when the order was passed. The review may also be sought when some mistake or error apparent on the fact of the record is found. However, review is not to be sought on the ground that the decision was erroneous on merits. Review application is not to be an appeal in disguise.

5. Keeping in view the para-meters laid down by the Hon'ble Supreme Court for exercising the power of review, the grounds advanced by the respondents in the review application have been carefully gone into. The applicant has contested the review application stating that review of the order has been sought on merits and no error or mistake apparent on the fact of the record has been brought out by the respondents. The learned counsel for the applicant has also stated that the O.M. dated 1.5.1981 relied upon for seeking the review had already been produced before the Bench and the same had been considered while passing the order. After careful consideration of the averments made by the respondents in the review application, I am inclined to endorse the contention of the applicant. The respondents have sought review of the order on the plea that the same is erroneous and the various provisions of the rules have not been taken into account. It is

also noted that no error or mistake on the fact of the record has been brought out.

In view of this, the review application does not meet with the para-meters under which the review of the order can be sought. The review application therefore deserves to be dismissed as lacking any merit.

6. During the arguments, the learned counsel for the respondents made another plea and sought a direction on the same pointing out that no time limit has been laid down for implementation of the order. The counsel for the applicant brought out that there is a dispute between the two departments and the quarter to the applicant has to be allotted from the pool of the Accountant General and in the absence of any time frame given, no action has been taken by the respondents No. 3 & 4 to allot the quarter and release the quarter of the general pool at present occupied by the applicant. After going through the order dated 12.3.1998, I am not impressed by the plea made by the counsel for the respondents. In Para 7 of the order, the dispute between the two departments had already been noted. It is for the concerned departments to settle the dispute as both of them belong to Govt. of India. The Tribunal cannot arbitrate for the dispute between the two departments who are required to take action as per the rules and keeping in view the directions in the order. In view of this, the plea made by the respondents cannot be accepted and it is not considered necessary to lay down any direction with regard to time limit for allotment of quarter by Respondents No. 3 & 4.