

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 900/97

Date of Decision: 18.12.97

Vijendra Abhimanyu Ayre, Applicant.

Shri G. S. Walia, Advocate for  
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri V. S. Masurkar, Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

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

*R. G. Vaidyanatha*

(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

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

Original Application No. 900/97

Thursday the 18th day December 1997.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Vijendra Abhimanyu Ayre  
Residing at  
146/3, Railway Colony  
Prabhate Colony Road,  
Santacruz (E)  
Mumbai.

.... Applicant.

By Advocate Shri G.S.Walia.

V/s.

Union of India through  
General Manager,  
Western Railway  
Head Quarters Office  
Churchgate  
Mumbai.

Divisional Railway Manager  
Mumbai Division  
Western Railway  
Mumbai Central  
Mumbai.

Chief Workshop Manager  
Western Railway's  
Parel Workshop  
Lower Parel  
Mumbai.

... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R (ORAL)

( Per Shri Justice R.G.Vaidyanatha, Vice Chairman )

This is an application under Section 19 of the  
Administrative Tribunals Act. for a direction to the  
respondents to regularise the quarter which is in  
possession of the applicant. Respondents have filed  
reply. Since this is a short point and covered by  
earlier decisions, the application is taken up for  
final hearing at the admission stage itself.

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2. The applicant is now group 'C' employee. Earlier he was group 'D' employee in Western Railway. His father was group 'C' employee at that time. Father retired from service on 30.6.92. After his retirement both the applicant and the father ~~has~~ jointly filed an application before the Tribunal (OA 130/94) for regularisation of the Railway quarter on father to son basis. After hearing both the sides this Tribunal allowed that application by order dated 17.2.94, directing the Railway administration to allot a suitable quarter to applicant No.2, in that case, who is the sole applicant before me, within a period of two months subject to the availability of the quarter and until such allotment is made the applicant should not be evicted from the quarter which was in his possession. It appears that the applicant has since been promoted as Group 'C' employee and the applicant is now entitled to type II quarters. Therefore the applicant has filed this application praying for a direction to the respondents to issue a formal order of regularisation of the quarter in question.

3. In the written statement the respondents have stated that the application is not maintainable and is barred by principles of res-judicata. Then on merits it is stated that on the date of retirement of the father the applicant was holding group 'D' post and he is entitled to Type I quarter. Therefore, he cannot ask for regularisation of type II quarters which had been originally allotted to his father. This request of the applicant is contrary to the order of the Tribunal dated 17.2.94.

4. The short point for consideration is ~~about~~ regularisation of Type II quarters, which is admittedly in possession of the applicant.

5. The quarter in question 146/3, Railway Colony, Prabhat Colony Road, Santacruz, which was admittedly a type II quarter which was allotted to his father who was holding group 'C' post. Therefore as on date i.e. on father's retirement, the applicant who was holding group 'D' post was not entitled to type II quarter. However the quarter was continued to be in <sup>his</sup> possession by virtue of the order passed by the Tribunal in the previous case. Admittedly the applicant has since been promoted to group 'C' post on 21.1.97. In view of the subsequent event applicant would be entitled to get regularisation of type II quarters.

6. It is argued on behalf of the respondents that the application is barred by res-judicata <sup>or</sup> and principles of constructive res-judicata. As per the previous order the applicant is entitled to allotment of quarter. Therefore the question cannot be re-opened either by the applicant or by the respondents. Therefore the right of the applicant to get the quarter on out of turn basis on father to son <sup>valid</sup> has become final and cannot be re-opened.

7. The question whether the applicant is entitled to type II quarters or regularisation of the same was not the issue in the previous case. Therefore to that extent the present application is not barred by principle of Res-judicata; in the previous case, <sup>applicant</sup> being a group 'D' employee, <sup>this Tribunal</sup> ~~therefore~~ ordered a suitable Type I quarter. But now the applicant prays for regularisation of type II quarters in view of the subsequent promotion which is subsequent to the previous order. It is a well known fact that the Court or Tribunal should take notice of subsequent event and mould relief accordingly.

8. The learned counsel for the applicant invited my attention to the non-reported judgement of this Tribunal in OA 1037/94 H.M. Nimal and Another v/s Union of India and others Wherein an identical question arose for consideration. The question was whether after the official has since been promoted whether he is entitled to regularisation of higher quarter for which he is not entitled to in the begining. A Single Member of this Tribunal observed that in view of the subsequent promotion, Type II quarter should be regularised in the name of the son.

7. In the present case the applicant <sup>W.M</sup> had allotted quarter out of turn as per previous order, that order is binding on both the parties. Admittedly the respondents did not offer type I quarter to the applicant, in the <sup>Performance</sup> light of the order passed by the Tribunal. The applicant has now been promoted to Group 'C' and he is now entitled to Type II quartets. Admittedly the applicant is in possession to type II quarters for the last 5 years. In these circumstances <sup>of his hold</sup> it may not be in the interest <sup>of</sup> that to give a direction to allot a type I quarter and again <sup>to</sup> apply for type II quarter. In spite of the direction of <sup>the</sup> Tribunal in the previous order to allot a suitable type I quarter within a period of 2 months, the Railway administration has allowed the applicant to continue in the quarter (Tyk) for the last 5 years. As already been stated that the respondents have not allotted any type I quarter to the applicant. In the facts and circumstances of the case no injustice will be caused to the respondents



in continuing the applicant to retain the type II  
quarters which is in <sup>his</sup> possession.

8. In the result the application is allowed.  
The respondents are directed to regularise type II  
Railway quarter which is in possession of the applicant  
within three months from today. No costs.

*R. G. Vaidyanatha*

(R.G. Vaidyanatha)  
Vice Chairman.

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