

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A. No.1030/98

Decided on:5-3-1999.

Milind D.Kamath

..Applicant

(By Advocate Shri U.M.Joshi)

vs

Divisional Railway Manager,
C.S.T.Mumbai & ors.

..Respondents

(By Advocate Shri R.R.Shetty)

CORAM:

THE HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN

- ✓1. To be referred to the Reporter or not? *yes*
- 2. Whether to be circulated to other Benches of the Tribunal?



(K.M.AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.No 1030/98

THIS THE 5TH DAY OF MARCH, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN

Milind D.Kamath,
No.R.B.II/303/38,
Byculla,
Mumbai.

...Applicant.

(By Advocate Shri U.M.Joshi)

vs.

1. Divisional Railway Manager,
C.S.T. Mumbai.

2. Chief Personnel Manager,
CST, Mumbai.

3. The Estate Officer,
Central Railway,
CST, Mumbai.

...Respondents

(By Advocate Shri R.R.Shetty)

ORDER

JUSTICE K.M.AGARWAL:

By this O.A., the applicant seeks a declaration that the out of turn allotment of Qr.No.RB-II/303/38 of Hospital Pool at Byculla, Mumbai by order dated 11.2.1998 in his favour may be upheld and makes a prayer for directing the respondents to refrain from recovering penal rent from him with a further implied prayer to restrain them from ejecting him from the said quarters.

2. Briefly stated, the applicant's mother was a nurse and was the allottee of the said quarters. On her retirement, out of turn allotment was made in favour of the applicant, though he was not a hospital employee. He was an Assistant Driver in the Central Railway. Accordingly after offering him an alternative accommodation, he was asked to vacate the said accommodation of Hospital Pool, but he did not vacate it and, therefore, it appears that penal rent was sought to be recovered from him and proceedings to eject him from

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the accommodation were also contemplated against him. Under the circumstances, this O.A. has been filed for the said reliefs. This is resisted by the respondents.

3. The learned counsel for the applicant submitted that the alternative accommodation offered to the applicant was in a very bad condition and not habitable. Referring to paragraph 2.2 of the Master Circular No. E(G)92 QR 1-20, dated 19.1.1993 of the Railway Board, the learned counsel wanted to urge that in the given circumstances, the allotment was valid, though the accommodation belonged to Hospital Pool.

4. The learned counsel for the Railways submitted that an accommodation of the Hospital Pool could not be permanently diverted to General Pool and that as soon as an alternative accommodation was provided to an allottee of a non-entitled accommodation in certain special circumstances like the present one, he is bound to accept the alternative accommodation and to vacate the accommodation, which could not be allowed to be retained by him according to his entitlement. According to him, the accommodation offered to the applicant is a part of multi-storeyed building and that all other flats or quarters of the building are occupied by Railway employees. Necessary repairs of the accommodation offered to the applicant have been carried out. It is cleaned and fit for comfortable living. In support of his contention, he produced before me the letter dated 10.2.1999 written by the AEN (Wks) Office, Byculla.

5. Paragraph 2.2 of the Master Circular dated 19.1.1993 reads as follows:

"2.2. If, in any case, a quarter belonging to a particular pool is allotted to the eligible dependent of an employee working in a different department, thereby causing a shortfall in the quota of quarter in

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that pool, the deficiency so caused in that pool of quarters should be made good at the earliest available opportunity, in order that the balance is restored at the earliest."

These instructions though indicate that "a quarter belonging to a particular pool" may be "allotted to the eligible dependent of an employee working in a different department," do not further go to recognise any right in favour of the "eligible dependent" to continue to retain the accommodation at his option. In fact it appears that in order to reduce the hardship of a retiring Railway employee and his or her family members in securing alternative residential accommodation after retirement, a favoured treatment is given to ^{/ dependent of} such an employee in the matter of allotment of accommodation, if his or her dependent is also in service with the Railways, but not in occupation of any Railway quarters. In short, the employee is, in this manner, saved from being thrown on the streets immediately after his or her retirement. This concession cannot be allowed to be misused.

6. It is true that under the said instructions in paragraph 2.2 of the Master Circular, the deficiency caused in any particular pool due to allotment of the accommodation to the eligible dependent of an employee working in a different department, is required to be made good "at the earliest available opportunity" and that it may be achieved either by giving another accommodation to that particular pool, or by restoring the accommodation of its pool after offering alternative accommodation to such a favoured allottee. What course may be followed is left to the discretion of the administrative authorities because it depends on various factors. In the present case, the other course was followed, which cannot be said to be arbitrary or unreasonable. The accommodation of the

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hospital pool in question is admittedly in the vicinity of the hospital. The services of hospital staff may be required any time. There may be cases of emergency and, therefore, the applicant cannot insist to continue to occupy the accommodation, which was earlier occupied by his mother as a nurse in the Raillway hospital, though he is an Assistant Driver and not a member of the Hospital staff.

7. The grievance of the applicant that the alternative accommodation offered to him is in bad condition or that it is not habitable is not tenable in view of the report contained in the letter dated 10.2.1999 of the office of AEN(Wks), Byculla which reads as follows:

"On date 4.2.1999, I, the undersigned, had inspected RB/III/7/20 at Mazgaon and necessary repairs along with painting/touch up has been carried out to make the room habitable, so the room is habitable and can be occupied any time."

A copy of the letter is directed to be given to the learned counsel for the applicant during the course of the day, as he submitted that he did not know about it.

8. For the foregoing reasons and in view of the fact that the initial allotment of the accommodation in dispute was made by the respondents in favour of the applicant on retirement of her mother, following directions are given to the parties:

(i) The applicant shall vacate the present Qr.No.RB-II/303/38 of Hospital Pool at Byculla, Mumbai within 30 days from today; and

(ii) The respondents shall not charge any penal rent in respect of the said accommodation from the applicant till 4.4.1999 and if any penal rent has been recovered so far, the same shall either be refunded to the applicant or adjusted against the present or future rent of the present accommodation or that of the alternative accommodation.

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(iii) The applicant may occupy the alternative accommodation within 30 days from today, otherwise he may not be entitled to any alternative accommodation but shall be liable to be ejected from the present accommodation of Hospital Pool.

(iv) No costs.



(K.M. AGARWAL)
CHAIRMAN