

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 968/98

Date of Decision: 10.12.98

Shri S.A.Attar ————— Applicant.

Shri Y.R.Singh ————— Advocate for
Applicant.

Versus

Union of India and others. ————— Respondent(s)

Shri Suresh Kumar. ————— Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

(1) To be referred to the Reporter or not? *Yes*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *NO*

R.G.Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESOCOT ROAD, BOMBAY:1

Original Application No. 968/98

Thursday the 10th day of December 1998.

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

S.A. Attar
Residing at
Railway Quarter
No. RB III/3/2
Byculla, Mumbai.

... Applicant.

By Advocate Shri Y.R. Singh.

V/s.

The Union of India through
The General Manager
Central Railway
CST Mumbai.

The Divisional Railway
Manager (P)
Central Railway,
CST Mumbai

The Estate Officer
Central Railway
CST Mumbai.

... Respondents.

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

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

This is an application filed by the

applicant seeking regularisation of the quarters.

The respondents have filed reply opposing the

application. I have heard the learned counsel

for both sides.

2. The applicant who is a Railway employee is now in occupation of quarter bearing No. RB/III/3/2, Byculla. It appears that the applicant's father was occupied the same quarter and now the applicant wants that the same quarter should be regularised in his name on the principle of "father to son" basis. It appears that the respondents have allotted Type II quarters. The applicant is questioning the legality of this order. He is entitled to type III quarters.

The respondents have filed reply opposing the application and ascertained that as per entitlement the applicant is entitled to only type II quarters.

3. At the time of argument regarding admission, the learned counsel for the applicant placed three points in support of the application. The learned counsel for the respondents refuted all the three contentions and justified the action of the administration.

4. It was argued that the order of the administration is malafide since the administration has taken hostile attitude towards the applicant in view of his earlier complaint to C.B.I. Whether the order of the administration is malafide or not, the applicant cannot succeed unless he can show that he is entitled to type III quarters. If the applicant is entitled to type III quarters even if the action of the administration is bonafide, they are bound to allot type III quarters to the applicant. If the applicant is not entitled to type III quarters, then administration's action is justified whether it suffers from malafides or not.

5. It was argued that as per the revised pay scale on the basis of 5th Pay Commission, the application is entitled to type III quarters.

As per the existing rules which are placed on record the officials in the grade "C" in the pay scale for which minimum pay is Rs. 1320/- P.M. are entitled to type II quarters. The applicant under the pre-revised scale was in the pay scale of Rs. 1200 - 1800 and as per the existing allotment

rules as per the pre-revised pay scale the applicant is entitled to only type II quarters.

The learned counsel for the applicant while disputing this position submitted that for entitlement of type III quarters there are four scales of pay. In page 67 of the paper book pay scale of Rs. 1320 - 2040, 1350 - 2200, 1400 - 2300 and 1400 - 2600. He argued that if the pay scales are revised on the basis of the 5th Pay Commission, the three pay scale mentioned above are now merged in one common grade of pay as Rs. 4000 - 6000. He therefore argued that since the applicant's pre-revised scale is 1200 - 1800 and the revised pay scale of Rs. 4000 - 6000 the applicant is entitled type III quarters. In my view this argument cannot be accepted.

The allotment rules is based on pre-revised scale. Whatever the position after the revised pay scale, the Railway Administration has to decide. Admittedly the Railway administration has not yet issued any allotment rules on the basis of the revised pay scale after 5th Pay Commission report. As per the pre-revised scale the applicant is in the grade of 1200 - 1800. He is entitled to type II quarters and not type III quarters. Therefore the applicant's claim as on today for allotment of type III quarters on the basis of the existing rule is not maintainable. If and when the Railway administration issues fresh rules on the basis of new pay scales and if on that basis the applicant is entitled to higher type of accommodation, it is open to the applicant to make proper representation before the Railway administration.

6. Then it is argued that there is discrimination on the part of the Railway Administration in not allotting type III quarters to the applicant. The respondents have allotted type III quarters to another official and placed reliance on the allotment order at page 59 of the paper book and placed reliance at page 60 of the paper book which shows the pay scale. The learned counsel for the respondents is right in his submission that even if the order of allotment of Shri Sayad Imityaz is contrary to rules, it will not give any right to the applicant to claim allotment. If Sayad Imityaz is given a wrong allotment order in respect of quarter which he is not entitled, Article 14 cannot be invoked directing the Railway Administration to commit the same mistake again in favour of the applicant. By exercising the judicial review I cannot direct the Railway Administration to allot a quarter to which he is not entitled to on the ground that wrong quarter has been allotted to Shri Sayad Imityaz. Such a direction cannot be given by this Tribunal while exercising judicial review. If allotment of quarter to Shri Sayad Imityaz is wrong, action may be taken by the Railway Administration or it is open to the applicant to approach the competent authority to take action according to law. That will not help the applicant in claiming the quarter, particularly the quarter to which he is not entitled to.

7. Hence I do not find any merit in the claim of the applicant in respect of the allotment of type III quarters. Therefore, the present O.A. seeking a direction for allotment of type III quarter in favour of the applicant is not

maintainable and liable to be rejected at the admission stage itself.

8. In the result the application is rejected at the admission stage itself. At this stage the learned counsel for the applicant prays for reasonable time to vacate the quarters. The applicant is granted three months time from today to vacate the quarters in hispossession. The question regarding payment of normal rent or penal rent is left open. No costs.



(R.G. Vaidyanatha)
Vice Chairman

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