

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1138/98

Date of Decision: 5.8.1999

Vivekanand S. Gaikwad

Applicant.

Mr. G. S. Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. Suresh Kumar.

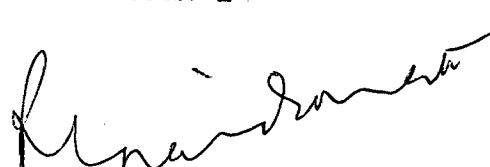
Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

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


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1138/98.

Thusday, this the 5th day of August, 1999.

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

Vivekanand S.Gaikwad,
C/o. G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Behind Handloom House,
Fort,
Mumbai - 400 001.
(By Advocate Mr.G.S.Walia)

...Applicant.

Vs.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.
 2. Chief Workshop Manager,
Parel Workshop,
Western Railway,
Parel,
Mumbai - 400 013.
 3. Dy. Controller of Stores,
Western Railway,
Mahalaxmi,
Mumbai - 400 013.
- (By Advocate Mr.Suresh Kumar)

...Respondents.

: O R D E R (ORAL) :

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

This is an application regarding regularisation of quarters. The respondents have filed reply. I have heard the learned counsels appearing on both sides. Since the point involved is a short point, the OA is being disposed of at the admission stage.

2. Few facts which are necessary for the disposal of the application are as follows.

...2.



The applicant's father S.B.Gaikwad was a Class.III Officer in the Western Railway. He was allotted a Quarters viz. No.94/3, Western Railway Colony, Matunga, Mumbai - 400 019 and he was occupying the same till his retirement on 31.7.1995. In the meanwhile, the applicant, who is the son of Mr.S.B.Gaikwad was appointed as a Class.IV Railway official on 21.9.1991. He has been given permission for sharing accommodation with his father. As per the Recruitment Rules when the son is occupying the quarters with the father with the permission of the Administration, then he is entitled to out of turn allotment of quarters after the retirement of the father. Therefore, the fact that the applicant is entitled to out of turn allotment of quarters is not disputed in this case. Then the Railway Administration allotted a Quarter of Type - I to the applicant by order dt. 13.9.1996. It is also not disputed that a Class-IV official is entitled to Type-I quarter and a Class-III official is entitled to Type-II quarter. Though the applicant has got a right of getting a quarter out of turn on father to son basis, he could not be allotted the quarter in dispute viz. Quarter No.94/3 since it is a Type-II quarter and applicant was entitled to only Type-I quarter, that is how rightly the Administration allotted Type-I quarter to the applicant by allotment letter dt. 13.9.1996. The applicant found that the said quarter viz. Type-I was not in good condition and was in a dilapidated condition and not in habitable condition. Therefore, applicant's father wrote a letter to the Administration dt. 17.9.1996 bringing this fact to the notice of the administration and for a request to allot another quarters. This was followed by a reminder by the applicant's father by letter dt. 10.1.1997. According to the

applicant, there was no response by the Railway Administration to these two letters. In the meanwhile, the applicant got promoted to Class-III as a Class-III official by order of promotion dt.21.6.1997 (vide order which is at page 16 of the paper book). In view of this promotion, the applicant became entitled to Type-II Quarter. Then, applicant made a request in his letter dt. 25.6.1997 that in view of his promotion, the Type - II quarter which is in his possession may be regularised. Since the respondents did not sanction that request, the applicant has approached this Tribunal with this application for a direction to the respondents to regularise the quarter No.94/3 in his name.

3. Most of the facts are admitted in this case. The respondents contention mainly is that the applicant's entitlement of quarter must be decided on the basis of the date of retirement of his father. Since as on 31.7.1995 applicant was a Class-IV official he is entitled to only Type-I quarter and he is not entitled to Type-II quarter inspite of his promotion subsequently and he must stand in the queue for Type-II quarters along with others. In other words, the stand of the administration is that the out of turn allotment as per rules cannot be given to the applicant in respect of Type-II quarter. The respondents have also denied the receipt of the two letters sent by the applicant's father which are dt. 17.9.1996 and 10.1.1997.

4. As far as the two letters dt. 17.9.1996 and 10.1.1997 are concerned, I find that on the two letters there is an acknowledgement from somebody that they have received the letters. There is no necessity for the applicant to fabricate such letters. It is only a request letter bringing to the notice of the administration that the quarter is not in a good condition.

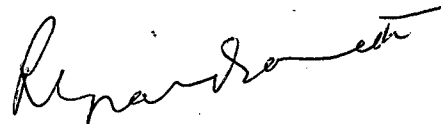
The object of the Railway Rules is that if the father and son are residing together at the time of retirement and if he has been granted permission for sharing accommodation, then the son must get the quarter on out of turn allotment to whichever quarter he is entitled to as per his status. It may be, if we go strictly and technically by the Rules, The learned counsel for the respondents may be right that the applicant's entitlement is only for Type-I quarter. It is well settled that substantial justice must be done by Courts and Tribunals and not technical justice. It is also well settled that Courts and Tribunals should take notice of subsequent events and mould the reliefs accordingly. In view of the applicant's promotion on 21.6.1997 he is now entitled to Type-II quarters. It is ^{ideal} ideal to say that applicant should vacate the Type-II quarter and he must go and occupy Type - ^I ~~II~~ quarter and give one more application for allotment and wait for his turn of allotment of Type-II quarter. If the object of the Railway Circular is borne in mind, I should do substantial justice between the parties without going to technicalities. I feel that in view of the subsequent events of applicant's promotion on 13.9.1996 he should be regularised in Type-II quarter which is already in his possession, since many years before and after his appointment in 1991. It is too late in the day now to direct the applicant to vacate the quarter and go and occupy Type - I quarter and then apply formally for Type-II quarter, that is not the intention of the Rule.

5. In this connection, I am fortified by two of the unreported judgments of this Tribunal of which one was delivered by me and another by another Single Bench of this Tribunal. I have taken similar view in my order dt. 18.12.1997 in OA 900/87



and there is one more decision of a Single Member Bench to the same effect in OA 1037/94. For these reasons, I hold that in view of the subsequent events applicant should be regularised in the Type-II quarter which is already in his possession.

6. In the result, the application is allowed. It is hereby declared that the applicant is entitled to be regularised in Quarter No.94/3 (Type -II) and the respondents should pass appropriate orders within two months from the date of receipt of copy of this order. No order as to costs.



(R.G. VAIDYANATHA)

VICE-CHAIRMAN.

B.