

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 750/2017

DATE OF DECISION:-14th August, 2019

CORAM:- R. VIJAYKUMAR, MEMBER(A)
RAVINDER KAUR, MEMBER (J)

Mr. Swapnil Anand Walinjkar
Age: 49 years
Working as Asst. Director General
Staff No:-
At Regional Office of
Unique Identification of Authority of India
Cuffe Parade
Colaba, Mumbai - 400005.

.....Applicant

(By Advocate Shri M. V. Thorat)

Versus

1. Union of India,
through The Chairman,
Railway Board, Rail Bhawan, New Delhi 110001
2. General Manager,
Central Railway Office,
CST, Mumbai - 400001

.....Respondents

(By Advocate: V. S. Masurkar)

ORDER

Per: Ravinder Kaur, Member (J)

1. This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) This Hon'ble Tribunal be pleased to call for the relevant record and proceeding from the office of Respondents and after examining the same, quashed and set aside the letter / order dated 10.10.2017 and 13.11.2017 and further direct the Respondent No.2 to allow the Applicant to continue to reside in Flat No. C/3, Nirmal park, Byculla (East), Mumbai 400 027 till the 15 accommodation is not made available under the General Pool Accommodation. The Applicant therefore prays- a) This Hon'ble Tribunal be pleased to call for the relevant record and proceeding from the office of Respondents and after examining the same, quashed and set aside the letter / order dated 10.10.2017 and 13.11.2017 and further direct the Respondent No.2 to allow the Applicant to continue to reside in Flat No. C/3, Nirmal park, Byculla (East), Mumbai 400 027 till the accommodation is not made available under the General Pool Accommodation.

b) The Hon'ble Tribunal may be pleased to direct the Respondent No.1 and 2 to permit the Applicant to retain the Railway quarter bearing Flat No. C/3, Nirmal park, Byculla (East), Mumbai till the completion of deputation in UIDAI or allot the quarter under General Pool of Accommodation which ever is earlier on payment of normal license fees.

c) This Hon'ble Tribunal may kindly waive off the damage rent from 06.03.2017 till disposal of the present Original Application.

d) This Hon'ble Tribunal may pass any other order A as it deems fit, just and proper in the nature and circumstances of the present case."

2. The applicant joined Railway Services on 26.12.2000 as Probationary Officer and worked on various posts. He was working as Sr. Divisional Safety Manager in Mumbai Division of Central Railways and was allotted an accommodation by Respondent no. 2 ie. Flat No. C/3, Nirmal Park, Byculla(East), Mumbai - 400027 in July 2010. Thereafter, the applicant applied for Deputation under Central Staffing Scheme (Hereinafter referred to as CSS) and as a consequence was deputed as Assistant Director General (ADG) of UIDAI on 05.01.1998 and joined the said post vide joining letter dated 06.01.2017 (Annexure A-3). He made representation to the Respondent no. 2 requesting for retention of the aforesaid Railway Quarter. His

application was allowed vide letter dated 30.01.2017(Annex A-5) to retain the quarter from 16.01.2017 to 05.03.2017.

3. It is claimed by the applicant that after joining as ADG of UIDAI, he applied simultaneously for General Pool accommodation under the Directorate of Estates as per rules vide Application dated 28.02.2017(Annex A-6) and he has been in the waiting list. He has placed on record the waiting list status as on October 2017 as Annexure A-7 wherein the name of the applicant appears at Sr. No. 73 for Type V Quarter and Sr No. 51 for Type IVS Quarter.

4. It is the claim of the applicant that he has no house at Mumbai and is presently residing along with his father aged 79 years, mother aged 75 years who is suffering from paralysis since 2011 and wife who has been availing IVF treatment from a leading Gynecologist, Dr. Sadhna Desai for the past more than two years at Mumbai.

5. It is further stated by the applicant that from time to time he had applied for retention of the Railway Quarter. His application dt 06.03.2017(Annex A-8) on medical grounds was rejected by the respondent no. 2 vide letter dated 05.04.2017(Annex A-9) for the reason that he

had not submitted necessary medical certificate issued from MD/DY as per rules. On 06.04.2017, the applicant sent reply to the above letter mentioning that his wife was being treated by Dr. Veena Kumari at Byculla Railway Hospital and he would produce the certificate shortly. He thereafter also applied for extension for retaining the quarters vide letters dt. 06.04.2017 (Annex A-10), 08.06.2017, 10.06.2017 (Annex A-12 colly). 27.7.2017 and 04.09.2017 (Annex A-13). Along with the request letter dated 27.07.2017, he annexed the medical certificate issued by the Medical Director of Byculla Railway Hospital (Annex A-11). The applicant has further claimed that as per the Railway Policy for retention of quarters, the respondent no. 2 is duty bound to allow him to continue to retain his aforesaid flat until he is allotted house from General Pool of the accommodation. However, vide impugned order dated 10.10.2017 (Annex A-1), the request of the applicant vide letter dated 27.07.2017 for retention of Railway Quarter referred above on medical grounds of his wife and his application dated 04.09.2017 requesting for retention on ground of posting as ADG/UIDAI, Regional Officer Mumbai was not considered

by the competent authority as per extant rules. Vide this order, the applicant was requested to vacate the quarter immediately failing which the consequences such as eviction proceedings shall follow.

6. After the impugned order dated 10.10.2017 was issued, the applicant again approached the competent authority vide letter dated 17.10.2017 on the similar grounds that treatment of his wife, making reference to the relevant Railway Board Circular, however the said request was also not considered by the competent authority and vide impugned order dated 13.11.2017, Annex A-2, the applicant was again advised to vacate the quarter immediately failing which eviction proceedings will be initiated through Estate Officer along with recovery of damaged rent etc.

7 The applicant claims that both the impugned orders dated 10.10.17 and 13.11.17 issued by respondent no. 2 are illegal, arbitrary and void ab initio being against the policy of the Railways. He has stated that the competent authority has not cited any reasons in the impugned order for rejection of his request except that it is considered as per extant rules. The applicant

in support of his claim relied upon Railway Board's Circular No. E(G)2000 QR1-23 dated 01.06.2001.

8. The respondents filed detail reply wherein it is admitted that after the applicant joined as Assistant Director General UIDAI on deputation, he applied for General Pool Residential Accommodation. It is stated that Railway Board's Circular NO. E(G)2000 QR1-23 dated 01.06.2001 is applicable to the Railway Officers/Staff posted with Central Ministry's at Delhi under Central Staffing Scheme. Whereas, the applicant is posted in Mumbai, therefore, his case is treated at par with permanent transfer in view of the provision contained in para 10.9 of Master Circular No. 49(Revised Letter No. E(G) 2006 QRI-6(Master Circular) dated 20.04.2017 RBE. NO. 35.2017 Annex R-1 issued by the M/o Railways . The relevant paragraph of the said circular is reproduced as follows:

"Railway Officer/staff deputation on under Central Staffing Scheme and to other offices eligible for allotment of accommodation from General pool

a) Railway officers/staff proceeding on deputation to Central Ministries /Departments including UPSC CVC and other central organizations which are eligible for allotment accommodation from General pool by Directorate of Estates would be governed by instructions governing retention of Railway quarter in the case of permanent transfer i.e. Para 1 letter no. E (G) 2000 QR1-23 dated 01.06.2001 (Para 10.1 of this Master Circular)

The earlier provision contained in Para 4 of letter No. E(G) 2000 QR1-23 dated 01.06.2001, 14/02/2002 and letter no E (G) 2003QR1-19 dated 19.04.2004 have been superseded vide instructions dated 20.11.2006.

b) Deputation to state Government and Central Ministries outside of General Pool Delhi where system accommodation does not exist, rules of normal permanent transfer will be applicable."

9. It is further stated that in view of the representation made by the applicant, he was permitted to retain the Railway Accommodation for a period of two months on payment of normal rent from 06.01.2017 to 15.03.2017 in view of para 1 of Railway Board's Circular dated 01.06.2001 (Annex R-2).

10. Further that in terms of para 10.1(b) of Master Circular (Annex R-2) where the request made for retention of Railway Quarters is on grounds of sickness of self or dependent member of the family of Railway employee, the employee is required to produce the requisite medical certificate from the authorized Railway Medical Officer. It is submitted that the applicant submitted certificate of Addl. CHT Byculla, wherein, it was certified that the couple has been undergoing IVF treatment for the last one year and the said treatment is likely to continue for next four months and the said period has already expired. Further, the medical certificate does not speak about any

sickness of the applicant's wife but only about IVF treatment, which as per the noting dated 14.09.2017 (Annex R-4) of Chief Medical Director, Central Railway is not considered as Sickness and does not necessitate the retention of Accommodation.

11. The respondents have further stated that since the applicant has on his own volunteered for deputation to UIDAI, his case has been considered at par with permanent transfer and accordingly two months extension for occupying Railway Quarter was granted. The respondents have justified the charging of damage rent and issuance of eviction notice to the applicant. Regarding the judgment of this Tribunal (PB) in the case of S K Tyagi vs Union of India in O.A. No. 1091/2009, it is submitted that the same is not applicable to the case of applicant as the facts are different, as therein, the concerned officer was posted under Central Staffing Scheme in Delhi, hence, his case was dealt as per para 4 of Railway Board's Circular dated 01.06.2001, which is not applicable to the present case. It is stated that the rules for retention of Quarters for the Officers posted in New Delhi are different from rules of other places.

The respondents have prayed that the OA in the above referred circumstances is liable to be dismissed.

12. The applicant filed rejoinder and has submitted that the Master Circular of 2006 relied upon by the respondents has not been approved by the Railway Minister and therefore is not a valid circular. It is reiterated that the case of the applicant is covered under Master Circular dated 01.06.2001 followed by a circular dated 14.02.2002 and therefore, he deserves to be allowed to retain the quarter till he is allotted from General Pool Residential Accommodation.

13. We have heard learned counsels for both the parties and have gone through the material available on record carefully.

The learned counsel for the respondents has argued on the issue of jurisdiction of this Tribunal as well as on the substantive claim on merits.

14. The respondents have admitted in reply that the applicant joined as Asst. Director General in UIDAI on deputation though it is argued that he himself had opted for deputation and therefore in view of the Master Circular 2006 para 10.9(b), deputation to State

Government and Central Ministries outside Delhi where system of General Pool accommodation does not exist, rules of normal permanent transfer will be applicable. However, learned counsel for the applicant has vehemently argued that the Master Circular 2006 is not a valid circular as it does not have the approval of the Ministry of Railway. Therefore, the respondents could not have acted upon the same while passing the impugned order. It is further argued that the Master Circular 2001 followed by Circular dated 14.02.2002 still holds water and is applicable to the case of applicant.

15. Learned counsel for the applicant has brought to our notice that identical issue has been dealt with by Principal Bench of this this Tribunal in OA NO. 1091/2002 in the matter of **S. K. Tyagi vs. Union of India and Ors.** The Decision in the case of **S. K. Tyagi** (Supra) was followed by the Principal Bench of this Tribunal in O.A. No. 644/2010 in the matter of **S.A.M. Naqvi vs Union of India & Ors..**

16. We have gone through both the judgments referred above. The Principal Bench of this Tribunal in the case of **S. K. Tyagi** (supra) has categorically made the

following observations:

"The applicant has placed on records material to show that the policy dated 1.6.2001 was issued with the specific approval of the Minister for Railways. This is not in dispute. Therefore, there would be no need to refer to the documents placed on records by the applicant on that behalf. There is material also placed on records to show that the policy dated 20.11.2006 did not have the approval of the Minister for Railways. Once again, as it is an admitted position, there would be no need to refer to the documents placed on records by the applicant on that behalf. It would appear that when the matter came to the notice of the Minister, he himself made a mention that the new policy had been issued on 20.11.2006 without obtaining his approval, and that the Board should review the said policy and place it for his approval. Copy of the Ministers note in file No.E(G)2008/QR 3-2 is placed on records as Annexure-III to the additional affidavit dated 8.2.2010. The same reads as follows:

On perusal of the linked file No.E(G)2000 QR1-23 (pp/n), it is seen that the house retention policy dated 1.6.2001 was issued after full board discussion on four occasions and approval of the then MR was taken on 4.5.2001 in conformity with the instructions issued by MoUD/CPWD. It is, however, seen that the new policy has been issued on 20.11.2006 based on the Board meeting dated 18.10.2006 without obtaining my approval. In view of the several representations received from Hon'ble Ministers, MPs, CVC and others, Board should review this policy and put up for my approval. It appears that the matter was then put up before the Board for discussion in its meeting to be held on 6.8.2008. The Board, however, decided to maintain status quo in the matter in its said meeting and to obtain approval of the Railway Minister. When this decision was put up to the Railway Minister for approval, he did not agree with the Board."

In the case of S K Tyagi(supra), the Principal Bench while relying upon the instructions issued by the Railway Board vide letter dated 01.06.2001 set aside the impugned order whereby the applicant therein was directed to vacate the Railway accommodation allotted to him before he proceeded on deputation by making the following observations in para 13 of its judgment:

"13. For the reasons mentioned herein above, this Application is allowed. Orders directing the applicant to vacate the Railway accommodation allotted to him are set aside. Till such time the applicant may complete his tenure on central deputation or till the allotment of accommodation by the Directorate of Estates, as per his entitlement, or even one level below, he shall be allowed to retain the Railway

accommodation presently occupied by him. There shall be, however, no order as to costs. "

The aforesaid judgment as referred above has been followed by Principal Bench in **S.A.M. Naqvi** (supra).

17. Learned counsel for the applicant has further brought to our notice that the Hon'ble High Court of Delhi in WP(C) No. 1647/2010 in the matter of **Union of India & Ors. vs. Ved Prakash** while disposing off the identical issue made the following observations:

"6. We eschew any discussion to the policy of the Railways for the reason whether it is the Indian Railways or the Ministry of Defence, they are all organs of the Union. Suffice would it be to state that as an employee of the Indian Railways the respondent would be an employee of the Union of India. Similarly, as an employee in the Ministry of Defence he would be an employee of Union of India. If one hand of the Union of India requires the respondent to give back something, the other hand of the Union of India is obliged to hand over to the respondent the same thing or the equivalent. To put it differently, the Union of India would be a creditor for the same sum as also a debtor for the same sum. Vice versa, the respondent would be a creditor for the same sum and a debtor for the same sum. The two liabilities or the two rights would compete with each other and hence nullify each other.

7. We note that both postings are in New Delhi. That apart, there exists Government of India guidelines where one department can surrender an accommodation in lieu of another. This is nothing but jugglery by the bureaucracy. We see no reason why Courts should be burdened with such litigations. We see no reason why one wing of the Union of India would not allot General Pool accommodation to the respondent and till then request its other wing to keep its hands off."

18. It is argued by Learned counsel for the respondents that the Master Circular dated 01.06.2001 is not applicable to the case of the applicant in view of its para 4 as the same related to the Railway Officers posted to Central Ministries at Delhi under Central

Staffing Scheme. Para 4 of the Master Circular dated 01.06.2001 is reproduced as below:

"Railway officers/staff posted at Central Ministries at Delhi under Central Staffing Scheme"

Railway officers/staff proceeding on deputation to other Central Government Ministries under the Central Staffing Scheme may be allowed retention of Railway Houses subject to the following:

- (a) Railway employees must apply for the General Pool accommodation for the level of entitlement plus one level below within fifteen days of his/her joining the new post under Central Staffing Scheme.
- (b) The retention of existing Railway accommodation shall be permitted till the first house is allotted to him/her from the General Pool either of the type he/she is entitled to or of one level below irrespective of its location.

OR

The retention of existing accommodation shall be permitted till the time as person junior in the waiting list for General Pool accommodation gets an accommodation allotted in the normal course.

- (c) The rent chargeable would be at normal rate for two months and thereafter, on payment of special licence fee ie. At double the normal license fee."

However, the above noted argument of the respondents has been rebutted by the counsel for the applicant who has brought to our attention Railway Board's letter dated 14.02.2002 whereby the policy instructions on retention of Railway Quarter contained in Board's letter dated 01.06.2001 have been reviewed by the full Board in its meeting held on 20.12.2001 and the instructions were modified as follows:

"The policy instructions on retention of Railway quarter contained in Board's letter No. E(G)2000 QRI-23 dated 1-6-2001 (RBE 100/2001) has been reviewed by full Board in its meeting held on 20-12-2001 and it has been decided to make the following modifications in, the instructions dated 1-6-2001:

Para 4- Railway officers/staff posted to Central Ministries under Central Staffing Scheme.

a. Deputation to UPSC, CVC and similar other bodies are covered under the Central Staffing Scheme and the rules as in para-4 of Board's letter No. E(G)2000 QRI-23 dated 1-6-2001 will be applicable for the same.

b. Deputation to state Government, and Central Ministries outside Delhi where system of general pool accommodation does not exist rules of normal permanent transfer as contained in para-1 of Board's letter No. E(G)2000 QRI-23 dated 1-6-2001 will be applicable."

It is observed that in the above noted case laws the issue of jurisdiction of this Tribunal has not been discussed nor this issue was raised by the respondents therein. The Hon'ble Delhi High Court in the case of Smt. Babli and Anr. Vs. Government of NCT of Delhi and Others reported in 2002 (95) DLT 144 : 2001 (60) DRJ 788 decided on 31.08.2001 has dealt with the issue as to whether allotment of residence is a condition of service of an employee and if not whether this Tribunal has jurisdiction to try such matters in terms of Section 3(q)(v) of the Administrative Tribunals Act, 1985. In none of the cases cited by learned counsel for the applicant we find reference to the case of Smt Babli and Another (supra). However, learned counsel for the applicant argues that in the cases cited by him as well as in several other cases, this Tribunal has exercised jurisdiction in such like matters.

19. Learned counsel for the respondents submitted that allotment of accommodation is not part of service condition of the applicant and therefore this Tribunal has no jurisdiction to adjudicate the present OA. On the other hand, learned counsel for the applicant had made no comments as to whether the allotment of accommodation is part of service condition of the applicant or not?

20. The matter has been carefully considered in the light of the judgments cited by learned counsel for the applicant which have already discussed above as well as in reference to the case of Smt Babli and Another (supra). In the case of Smt Babli (supra), the Petitioners were persons who were the legal heirs of retired or dead employees and had subsequently secured Government service and after holding on to the premises originally allotted to the retired/dead employees, they asked for regularisation. They argued that Section 3(q) (v) of Administrative Tribunals Act, 1985 which referred to "any other matters whatsoever" included everything connected with the service of the employee including the claim to residential accommodation as a service matter. The Hon'ble Delhi High Court in its judgment has recorded

the following observations:-

"4. Section 3 (q) (v) which is material for our purposes in reproduced for proper appreciation of the issue involved:

"(q) "service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the Control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

(i)

(ii)

(iii)

(iv)

(v) any other matter whatsoever"

5. It must be clarified at the very outset that claim to allotment of Govt. residential accommodation does not become condition of service unless the relevant service Rules provide so. No such rule was shown or pressed in service in the present case which provided for petitioners entitlement to residential accommodation. The expression "any other matter" occurring in Sub Clause V could not be also interpreted so liberally and loosely as to include any matter whatsoever whether or not it was related to employees service condition. The words "any matter" would be read *esjuda generis* and in the context of provisions of Rule 3(Q). Otherwise any contrary interpretation placed on it would lead to absurd results and would make Tribunal a forum for all matters including private matters of an employee. That indeed cannot be the intent and purpose of this Rule which defines the service Matters for purposes of giving jurisdiction to Tribunal. The employee's non charging of HRA would be inconsequential in this regard and would not convert his claim for residential accommodation to service condition.

6. As regards pool Rules, they only regulate the allotment of Govt. accommodation and do not confer any right as such on an employee to claim it."

Para 10 of the aforesaid judgment is relevant and is reproduced as under:-

"10. We, accordingly, hold that CAT had no jurisdiction to entertain OAs claiming allotment or regularization of Govt. accommodation unless such claim was shown to be a condition of service. Nor could it assume jurisdiction where eviction action was taken against an employee for his alleged unauthorized occupation of the premises under the Eviction Act. These petitions are accordingly dismissed and Tribunal order affirmed."

21. With regard to the applicant's reliance on the judgments in the case of Ved Prakash (supra), S.K. Tyagi (supra) and S.A.M. Naqvi (supra), the fact that the Tribunal exercised jurisdiction in identical matters cannot validate the action of the Tribunal unless the Tribunal had specifically dealt with the matter and held that allotment of accommodation is a condition of service and bestows jurisdiction to this Tribunal in such matters. It is observed that the specific judgment of the Hon'ble High Court of Delhi in Smt Babli and Another (supra) does not find mention in any of the judgments nor was that aspect even discussed or considered.

22. In the circumstances, the views of Hon'ble Delhi High Court in Smt Babli (supra) are quite categorical and the applicant has failed to demonstrate by reference to his service condition that the same also includes the aspect of provision of accommodation. This judgment has been followed by the Hon'ble High Court of Delhi in its

later judgment in the case of Union of India and Others Vs. Dr. Jagdish Saran decided on 23.08.2005 on appeal from orders of the Tribunal in OA No.180/2003 dated 25.08.2003 and also by this Bench in previous orders.

23. In these facts and circumstances of the case, if the applicant had been able to satisfy this Tribunal that his service conditions include the provision of accommodation, he could have been benefited with the outcome of the judgments in the case of S.K. Tyagi (supra) and S.A.M. Naqvi (supra).

24. In the absence of any evidence on the aspect of whether the applicant's service rules had made provision for accommodation as a service condition, we are of the opinion that this Tribunal is lacking jurisdiction in dealing with such matters.

25. In view of the above observations, the Original Application is dismissed for want of jurisdiction. MA No.475/2018 also stands closed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

gm/ma.

JD
14/8/19