

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6080 OF 2009

Union of India and ors.	.. Petitioners
Vs.	
A.K. Ansari and anr.	.. Respondents

Mr.Suresh Kumar, for the Petitioners.
Mr..R.G.Walia, for Respondents.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 18th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The petitioners – Union of India by this Petition filed under Articles 226 & 227 of the Constitution of India challenged the order dated 18/04/2009 passed by the Central Administrative Tribunal, Mumbai Bench. The respondents filed OA before the Tribunal for allotment of quarter on 'father-to-son' basis in the name of respondent No.2. The challenge in the OA was to the order dated 29/09/2008 by which the request for

allotment of quarter was rejected. Respondent No.1 employed with the Railways was allotted Type - III accommodation in Byculla railway colony as per his entitlement and according to rules. After retirement of respondent No.1 on 31/07/2008 as the respondent were living together and respondent No.2 was not drawing any HRA, joint request was made to the petitioners for allotment of accommodation occupied by them on father-to- son basis in favour of respondent No.2.

2. In the submission of learned Counsel for the petitioners Shri Suresh Kumar the quarter allotted to respondent No.1 pertained to running pool in as much as respondent No.1 was in running staff whereas respondent No.2 was working as Junior Engineer Grade II and does not belong to running staff category. Learned Counsel also pointed out that as per paragraph 3 of the Railway Board's letter dated 15/01/1990 which provides that in case a retiring employee or member of his family owns a house in place of his/her posting, the specified relatives will not be eligible for allotment on out of turn basis.

According to the learned Counsel, the respondent No.1 owns a house admeasuring 160 sq. feet in Mumbra (Thane). The third contention of learned Counsel Shri Sureshkumar is that note below paragraph 3 of the Railway Board's letter dated 15/01/1990 lists out that if the dependent is sharing the accommodation and has not stopped drawing HRA, the dependent will not be eligible for allotment or regularization of the quarter.

3. Respondent No.1 retired on 31/07/2008. The Tribunal relied upon the letter dated 11/10/2007 addressed by respondent No.1 to the petitioners for granting permission for sharing of the quarter. Respondent No.2 was sharing the quarter with his father for around 7 months. The Tribunal has recorded that admittedly from January 2008 onwards respondent No.2 was not drawing HRA which is confirmed from the written statement filed on behalf of petitioner No.3. Respondent No.2 was entitled to Type - III quarter. Respondent No.1 was holding Type - III quarter. The objection that respondent No.2 is not a

member of running staff and therefore not eligible to quarter which pertains to running pool is not supported any rule or provision. The Tribunal has held that the objection of the Railways is against the rule framed by the Railway Board by their letter dated 18/08/1986. The Tribunal therefore came to the conclusion that the stand of Railway that quarter in occupation of running staff can be allotted only to running staff is against the rules governing the field.

4. The Tribunal has further considered upon perusing note 8 which has been substituted by the Railway Board's letter dated 04/12/1992 which deals with the situation where there is suppression of fact of sharing the accommodation and HRA is drawn during the suppressed sharing period. The representation made by respondent No.1 to the Railways in October 2007 which was granted in January 2008 clearly indicates that respondent No.1 has sought permission for sharing of quarter on father-to-son basis shows that respondent No.2 was staying with him. Thus, there is no suppression. In

any case, respondent No.2 had stopped drawing HRA 7 months prior to his father's retirement. We, therefore, do not find any merit in the 2nd submission advanced by learned Counsel Shri Suresh Kumar as we find that there is no suppression of sharing quarter.

5. Insofar as 3rd submission of learned Counsel Shri Suresh Kumar about owning a house in place of his/her posting, the Tribunal has recorded a finding that respondent No.1 is posted at Churchgate, Mumbai whereas one room accommodation owned by respondent No.1 is at Mumbra in Thane district. The Tribunal has also held that one room accommodation admeasuring 160 sq. ft. which is without a kitchen or a toilet, in the absence of these basic amenities, it would be impossible for 2 families consisting of 5 to 6 members to live in that room. In our opinion, the third contention of Shri Suresh Kumar is also without any substance.

6. We do not find any merit in this Petition so as to

warrant any interference in exercise of our writ jurisdiction under Articles 226 or 227 of the Constitution of India.

7. At the stage of admission, this Court by order dated 18/08/2009 had directed the respondent No.2 to deposit the amount of HRA drawn by him from the date of his appointment. The said deposit was made subject to the outcome of this Petition. Learned Counsel for the respondents, on instructions, submits that he is not pressing this point. In these circumstances, we permit the petitioners to withdraw the amount of HRA deposited by the respondents in this Court along with interest, if any, in terms of order dated 18/08/2009. The learned Counsel submits that he has no objection to petitioners withdrawing the said amount so deposited.

8. Subject to what is indicated above, Writ Petition is devoid of any merits and the same is dismissed with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)