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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA.No.682 of 1999

New Delhi, this 09th day of September, 1999.

HON'BLE SHRI S.P. BISWAS, MEMBER(A)

Naveen Chandra
S/o Late Shri Bishamber Dutt
Qtr. No.88-A, Aram Bagh
near Paharganj
New Delhi 110055.

... Applicant

(By Advocate: Shri N.H. Zuberi)

Versus

Union of India, through

1. Directorate of Estates
(Type 'A' Section)
Nirman Bhawan
New Delhi-110011.

2. The Director of Estates
Maulana Azad Road
Nirman Bhawan
New Delhi-110011

... Respondents

(By Advocate: Shri D.S. Mahendru)

O R D E R (Oral)

By Hon'ble Shri S.P. Biswas, M(A)

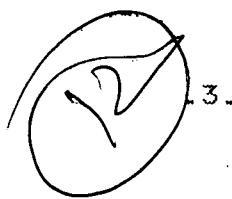
The limited issue that falls for consideration is the legality of applicant's claim, on being appointed on compassionate grounds, in getting the regularisation of the Government quarter originally allotted in the name of his father who died in harness.

2. The appreciation of the legal issues involved herein would require a brief elaboration of background facts. These are as under:

3. The father of the applicant who was a Chowkidar (Group 'D') was living in Government

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quarter No.88/A (Type-A) Aram Bagh, Paharganj on being duly allotted by the respondents. The father of the applicant died on 10.1.1994 while in service leaving behind him a family consisting of five persons. None of them are gainfully employed or having a house in Delhi. The applicant applied for appointment on compassionate grounds on 21.9.1994 which was considered and recommended on 24.3.1995. Unfortunately, the recommendation given by the DMS authorities was rejected by the Ministry of Agriculture vide its order dated 31.3.1997. This forced the applicant to approach this Tribunal by filing an OA No.897/97 seeking consideration of the applicant's appointment under the respondents. Pursuant to this Tribunal's order dated 20.2.1998, the applicant's case for appointment was re-examined and he was appointed on 4.6.1998. While the issue of appointment was resolved as aforesaid, but the issue on retention of the quarter No.88/A remained unresolved since the applicant continued living in the house right from the date of death of his father, i.e. 10.1.1994, dehors the rules on retention. The applicant has prayed for regularisation of the aforesaid quarter, originally allotted in the name of his father, but the same was cancelled on 20.1.1999 but with effect from 10.1.1995. The applicant seeks regularisation of the quarter mainly on the strength of the decision of this Tribunal in the case of Subhash Chander Vs. Union of India (OA.No.2497/92) decided on 23.2.1993.



That was the case where the applicant had applied for the regularisation of the quarter allotted originally in the name of his father who was living in quarter No.41/11, Sector-1, M.B. Road. The said application was disposed of by this Tribunal with the direction to the respondents to consider the application of the applicant therein for regularisation of the quarter in terms of rules applicable at that point of time.

4. In the counter, the respondents have opposed the claim on several grounds. Firstly, it has been submitted that the applicant has approached this Tribunal with undue haste. He had put up first representation on 17.3.1999. Before the ink on the said appeal could even dry up, he came to this Tribunal on 22.3.1999. Respondents did not have any opportunity to consider the case on merits.

5. Secondly, the applicant is to be held guilty for concealment of the material facts. The fact that the father of the applicant died in 1994 was brought to the knowledge of the respondents only in 1998 and that too by a communication from D.M.S. The applicant even did not bother to file an application to the respondents for retention of the house otherwise permissible in such cases.

6. Thirdly, consideration of such cases are to be given only when the applicant/employee approaches

the respondents within a period of 12 months as stipulated under the instructions issued by respondents. The learned counsel for the respondents brought to our notice the details of regulations and executive instructions applicable to ad hoc allotment cases in the name of near relation consequent upon the death of the allottee.

7. We are required to adjudicate the legality of the applicant's claim for regularisation based on rules/instructions on the subject. It is not in dispute that the applicant did not approach the respondents for retention of the quarter immediately after the death of his father. Rules do permit retention of the quarter, on payment of the licence fee under FR 45-A for a period of one year. Applicant did not take that step. It is only when the allotment was cancelled with retrospective effect on 20.1.1999 that the applicant woke up to approach the Tribunal. The need for exercising adequate caution in offering ad hoc allotments or regularisation of such quarters already in occupation cannot be over emphasized and the general principles that have to be followed have been elaborated by the Apex Court in the case of S.S. Tiwari Vs. Union of India (1997) 1 SCC 44. The learned counsel for the applicant's plea that the case is covered under the ratio arrived at in the case of Subhash Chander (supra) cannot be supported in terms of law. This is because the Tribunal in

that case did not enter into a finding about the legitimacy of the applicant's claim therein. That OA was only disposed of with the direction to the respondents to reconsider applicant's claim therein for regularisation. The counsel for the applicant would then argue that the said quarter No.41/11 M.B. Road was regularised in the name of Subhash Chander. He would also submit that the facts and circumstances of the applicant's case herein are, on all fours, similar and identical to those in Subhash Chander's case and, therefore, the present application deserves to be considered on those lines. The basis on which Subhash Chander's case was ultimately considered favourably by respondents is not before us. The regularisation of that allotment may have been done on consideration of law and/or other factors and that needs to be determined first. Merely, because some benefit has been given to certain employees, allegedly held to be identical, does not command extension of the same relief without the support of the law. The mere a fact that respondents have passed a particular order in the case of another person similarly situated, can never be the ground of issuing a writ in favour of the petitioner on the plea of ~~discrimination~~ If the applicant has no legal right he cannot complain of any discrimination nor he can make a legal claim in favour of his grievances merely because similar relief was given undeservedly to any other person.

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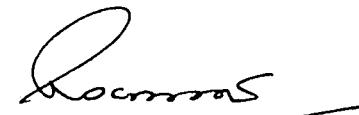
8. I find that the existing executive instructions, as indicated in para-5 aforementioned, touching upon the issues involved herein, have since been modified vide O.M. No.12035/4/98 Pol.II dated 19.11.1998. We reproduce the relevant portion here under:

"In the event of death of the allottee, in terms of the Dte. of Estates OM.No.12035/4/98-Pol.II dt. 9.6.98, the family is now eligible to retain the Govt. accommodation for a period of two years, on payment of normal rate of licence fee, subject to the condition that extended period of one year is not admissible in cases where the deceased officer, or his/her dependent owns a house at the place of posting. In view of this and the extreme hardships being faced by the family of the deceased officers the matter has been considered and it has now been decided that the ward/spouse may be allotted Govt. accommodation on ad hoc basis in cases where the eligible dependent secured employment within a period of two years from the date of death of the allottee, subject to fulfilment of other prescribed conditions including that of not being a house owner. No relaxation

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beyond of two years shall be permissible
in any case."

9. Admittedly, the appointment in this case was obtained much after the permission period of two years.

10. Based on the legal position as aforementioned, the application fails on merits and is allegedly dismissed, but without any order as to costs.


(S.P. Biswas)
Member(A)