

Central Administrative Tribunal
Principal Bench
OA 1678/95

(S)

New Delhi, the 21st March, 1996.

Hon'ble Shri R.K. Ahooja, M(A)

1. G.S. Mahey
C/o 433/S-VII, R.K. Puram
New Delhi.
(Retired officer from Min. of
Defence)

2. Baljinderjit Kaur
R/o 433/S-VII, R.K. Puram
New Delhi.

Applicants

(Advocate: Shri RK Agnihotri)

versus

1. The Secretary,
Min. of Urban Development
Nirmal Bhawan,
New Delhi.

2. Director of Estate,
Nirman Bhawan, New Delhi.

Respondents

(Advocate: Shri Madhav Paniker)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant no.1 was allotted quarter
No.433/S-VII, RK Puram, New Delhi (Type II)
and was in possession of that quarter at the time
of his retirement from service on 28.2.95. His
daughter, applicant No.2, joined Central Govt.

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service as an Auditor in April, 1994. She was married to an employee of an Indian Airlines in October, 1994. However, the applicant claims that she has continuously been residing with her father in the Govt. quarter since 1994 and continued to reside even after her marriage. She also did not claim HRA after her appointment in Govt. service. The applicants made a request to the respondents for regularisation and allotment of the aforementioned quarter in favour of applicant no.2 but are aggrieved that the respondents rejected their request without any reason. The applicants contend that the daughter even if she is married is equally eligible for allotment of a house as the son or the married son of the retiree Govt. official. The respondents deny the claim of the applicant. They submit that the rules permit the allotment in favour of a married daughter, applicant no.2, but upon her marriage she had not been residing in the said quarter and was residing with her husband somewhere in Palam and the documentary proof furnished by the applicant is not acceptable.

2. I have heard the 1st. counsel on both sides. Ld. counsel for the applicant cited the orders of Hon'ble Supreme Court in Civil Appeal No.2441 of 1996 in case of Ms Savita Samvedi and Another vs. UCI - in which it was held that the retiring Govt. employee

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could when has both sons and daughter exercise his choice as to whom he favours for allotment.

The 1d. counsel submitted that even though the applicant No.1 had other children but none of them was in Govt. service and eligible to avail of this facility and in any case the other son who was working in State Bank was living separately. He also contested the claim of the respondents

that the applicant no. 2 was living elsewhere and

challenged the respondents to show ^{as to} ~~as to~~ what

enquiry had been conducted by them to ascertain

the true facts. It was vehemently argued that in

the absence of facts and reliable enquiry by the

respondents, the documentary proof produced by

the applicant in the nature of Ration Card should be

more than sufficient to establish that both the

applicant no. 2 as well as her husband were residing

with applicant no.1 in the Govt. quarter in question.

3. The 1d. counsel for the respondents submitted

that the question of eligibility of married daughter

to get the house allotted was well settled. But in

the present case he submitted that the allotment

could be regularised only if the conditions ~~described~~ ^{ful-}

by the Department were to be ^{ful-} filled. Firstly, he

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he contended that the ration card produced by the applicant was not ^{the} original one but a duplicate ration card, and the entries in regard to the names of the family members added thereto had not been certified by anyone in the Deptt. of Food and Supply. He also pointed out that the rules allow the allotment to married daughter only in case there is no son or in case there are sons but they are not in a position to maintain the parents.

The 1d. counsel said that the applicants had not produced any affidavit from the son of applicant no. 1 who was an employee in State Bank of India ^{stating that he} was not able to maintain his parents and in view of this the application of the applicants could not be further considered.

4. I have carefully considered the arguments advanced by the 1d. counsel on both sides. The instructions of the Govt. of India as regard the allotment to the wards of the retiring officials ^{are given} in OM No. 12035(14)82-Pol. II (Vol. II) dt. 17.12.91. The relevant portion reads as follows:

" It has now been decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not have any son or in case where married daughter is the only person who is prepared to maintain the parents and the sons are not in a position to do so. This will be subject to the

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following conditions:

1. The ward should be continuously residing with the retiring govt. servant and not drawing HRA for at least 3 years immediately preceding the date of his/her retirement. In case however, a person is appointed to the govt. service within the period of 3 years preceding the date of retirement or has been transferred to the place of posting of the retiring govt. servant any time, within the preceding 3 years, the date of posting to that station shall be applicable for the purpose.
2. The concession shall not be available in case where the retiring officer or a member of his family own a house at the place of his/her posting.
3. The eligible dependent will be allotted accommodation one type below his/her entitlement. In no case, except otherwise specified, allotment will be made to a higher type of accommodation, than in occupation of govt. servant. However, where the eligible govt. servant is entitled to a type II or higher type of accommodation, he/she may be allotted accommodation in Type II on adhoc basis, even if the retiring Govt. servant was occupying a type I accommodation.
4. The clearance of all dues outstanding in respect of the premises in occupation of the retired officers shall be an essential condition for the consideration of an allotment to an eligible dependent.
5. In this context it will be useful to go through the orders of Hon'ble Supreme Court in Civil Appeal No. 2441 of 1996 supra. In that case the retiring official was an employee of Indian Railways. Sons as well as daughters made a joint application but the married daughter was only one who was a railway employee. Thus none of other children apart from the married daughter in question was eligible to be considered for the concessional allotment of the railway quarter. It was held that in such a case there was no question of choice since the married daughter was only eligible to be considered for concessional allotment. The Court, however, further

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observed that "the retiring officials' expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes damped, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgement on the point and be not respected by the railways authorities irrespective of the gender of the child." Therefore, the requirement in the aforesaid OA that married daughter must be the only person who is prepared to maintain the parents and the sons are not in a position to do so is discriminatory and violative of article 14 and 16 of the Constitution. Married sons may or may not look after their aged parents and aged parents may prefer that they can be looked after better by a married daughter than by a married son since there is no guarantee that a daughter-in-law would be more considerate than a son-in-law. I therefore hold that the respondents cannot reject the claim of the

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applicant on the ground that they have failed to produce an affidavit from the ~~employee of the~~ son that he is not able to maintain his parents.

6. The eligibility of a married daughter to obtain concessional allotment is nevertheless subject to ~~the~~ conditions as would apply in case of allotment to a married son. I have noted above that such an allotment is subject to the condition that retiring official or a member of his family do not own a house ~~at~~ the place of her posting. The applicant no.1 has submitted an affidavit that neither he nor any of his sons, married or unmarried, own a house in Delhi. The respondents on the other hand contend that as per their information applicant No.2 is residing with her husband at a different place. The status of a daughter changes when she marries and in case her husband owns a house then it cannot be claimed that she is not a co-parcener in that property. Hence if the unmarried daughter after her marriage becomes joint owner ~~of the house~~ with her husband and she becomes disentitled to the concessional allotment of a house on account of the retirement of her father. The respondents also dispute the validity of the duplicate ration card produced by the applicants to show that the married daughter as well as her husband ~~and~~ reside in the Govt. quarter in question. This can

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however be easily verified by obtaining a report from the concerned District and Civil Supply Officer as to the authenticity and veracity of the duplicate ration card without much effort.

7. On a careful consideration of the various aspects of this case, I hold that the applicant No.2 is eligible for allotment of the quarter in question in her favour subject to the condition that she does not own a house in Delhi after her marriage and the concerned authorities certify the veracity of the duplicate ration card produced by her from the Food and Supply Department. I accordingly direct that the respondents to regularise the allotment in her favour within two months of applicant No.2 ~~after~~ producing an affidavit that she or her husband do not own a house in Delhi. In the meantime, the respondents will obtain a report from the Food and Supply Department regarding the veracity of the duplicate ration card and issue the allotment letter on obtaining the ~~above mentioned~~ affidavit and report of the Food and Supply Authorities.

8. The application is disposed of with the above directions. There shall be no order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

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