

(P)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1992/95
T.A. No.

199

DATE OF DECISION 12.2.1997

L.S. Parmar

Petitioner

T.C. Aggarwal

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

M.M. Sudan

Advocate for the Respondent(s)

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The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

(12)

Central Administrative Tribunal
Principal Bench.

O.A. 1992/95

New Delhi this the 12th day of February, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

L.S. Parmar,
S/o Shri B.S. Parmar,
R/o 14/879, Lodi Colony,
New Delhi-3.

...Applicant.

By Advocate Shri T.C. Aggarwal.

Versus

Union of India, through

1. Director of Estates,
Directorate of Estates,
Nirman Bhawan,
New Delhi.
2. The Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

...Respondents.

By Advocate Shri M.M. Sudan.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This application has been filed by the applicant seeking allotment of Government accommodation No. 14/879, Lodi Colony, New Delhi-3, which had been earlier allotted to his father Shri B.S. Parmar, who has since retired from service w.e.f. 31.1.1995. The order cancelling the allotment to the father had been passed by the respondents by order dated 20.10.1995, but the house has still not been vacated by the father. This application has been filed by the applicant against the alleged arbitrary action in instituting eviction proceedings against his father and for regularisation of the same quarter, which had been earlier allotted to the father, in his name.

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18

2. The following facts in this case are not in dispute, namely, that the applicant, who is working with Respondent 2 since 3.4.1980, is entitled under the normal rules for allotment of Type-C quarter in his own turn. The applicant, however, relies on Paragraph 7 of the Government of India's orders (Director of Estates O.M. No. 12035(14)/82-Pol II (Vol.II)(i) dated 19.11.1987, extract placed on record) for allotment of Government quarters to dependants/relations of Government employees, who have retired, on ad hoc basis, which reads as under:

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"The eligible dependant/relation will be allotted Government residence one type below his entitlement, provided that in no case allotment will be made to a higher type of quarter than in occupation of the retired Government servant except in the case of an eligible dependent/relation who will be allotted accommodation in Type B on ad hoc basis even though he is entitled to Type B or any higher accommodation, despite the fact that the retiring Government servant was occupying Type 'A' accommodation. Ad hoc allotment of lower type of accommodation is to be restricted to the same area or adjoining area where retired official is having the accommodation. However, licence fee damages will have to be paid by the retired official if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony".

3. The learned counsel for the applicant, Shri T.C. Aggarwal, submits that the applicant is entitled for allotment of a Type-C quarter, which had been earlier allotted to his father and, therefore, the same should be regularised in his name in accordance with the above provisions. He also relies on the recent judgement of the Hon'ble Supreme Court in Shiv Sagar Tiwari Vs. Union of India & Ors., (Writ Petition (C) No. 585/94), decided on 2.11.1995 (copy placed on record). By this order, he submits that as regards the six persons mentioned at page 7 of the judgement, the Supreme Court had directed to regularise

18

the allotment in the names of their respective wards as per their entitlements under the rules/instructions which, according to him, means that the higher type accommodation to which the ward was entitled was to be regularised. He further submits that since the respondents have admitted in their reply that at least five persons have been accorded sanction by them for regularisation of a higher type quarter when their entitlement was only of Type-B, his case should also be similarly dealt with. The learned counsel for the applicant has also tried to rely on paragraph 3(e) of the Swamy's Fundamental Rules (SR 317-B) regarding ad hoc allotment in the name of near relation in cases of deceased Government which reads as under:

"3. Ad hoc allotment in the name of near relation -

(a), (b), (c), (d) - xxxxxxxxxxxxxxxxxxxxxxxxx

(e) The allotment of the very quarter in occupation of the deceased officer may be regularised in the name of dependent son/daughter provided he/she fulfills the conditions for ad hoc allotment".

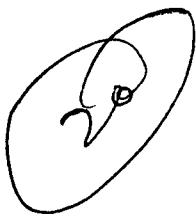
4. After considering the lengthy arguments submitted by the learned counsel for the applicant, pleadings and the submissions made by the learned counsel for the respondents, the claim of the applicant for regularisation of a Type-C quarter cannot be acceded to for the following reasons:

A plain reading of paragraph 7 of the rules/instructions for such type of ad hoc allotment/regularisation of quarter shows that the eligible dependent/relation will be allotted Government residence one type below his entitlement, except in the case of an eligible dependent/relation who will be allotted accommodation in Type B on ad hoc basis, even though he is also entitled to Type B or any higher accommodation. In this case, it is an admitted fact that the applicant is entitled to Type C quarter under normal rules/and, therefore, his

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eligibility for residential quarters on ad hoc basis under the aforesaid Government orders can be made only to a residence which is one type below his entitlement, i.e. in this case a Type B quarter. Paragraph 3 (e) of the "Swamy's Fundamental Rules" (SR 317-B) which is relied upon by the learned counsel for the applicant which deals with the allotment of the quarter in occupation of the deceased officer, will also not assist the applicant, as there are specific rules regarding allotment of quarter on ad hoc basis and regularisation of the same in the name of wards of retired Government servants. The judgement of the Hon'ble Supreme Court in S.S. Tiwari's case (supra) does not also assist the applicant in this case as nothing has been stated therein or can it be implied that the Supreme Court had directed the respondents in all such cases to allot the higher type accommodation contrary to Para 7 above.⁷ This argument is without any basis and is rejected. Similarly, the plea that because certain other persons had been given regularisation of a Type C quarter when the ward was not entitled to the same de hors the rules in the past, prior to the judgement of the Supreme Court in S.S. Tiwari's case (supra), popularly known as the "Housing Scam case", is also rejected. It is settled position of law that the ground of discrimination can be pleaded where under the law or the rules similar treatment has not been given but it cannot be used for enforcement of a wrong which has been done in the past, due to inadvertence or for any other reasons. Therefore, the plea of discrimination cannot be sustained in the facts and circumstances of the case. In the result, the main prayer of the applicant for regularisation of the Type C accommodation which had been earlier allotted to his father while in service, who has since retired, has to be rejected as he is only entitled to Type B quarter.

5. It is noted that the applicant has submitted that the respondents have allotted a Type B accommodation,



Quarter No. 198, Lodi Road Complex, which, as seen from the records placed by the applicant himself in the file has been received by him on 29.1.1996. The respondents have submitted that he has accepted and taken possession of this quarter on 2.2.1996 which fact is also not denied by the applicant's counsel.

6. In the result, this application fails and is dismissed. Interim order of stay is vacated. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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