

Central Administrative Tribunal : Principal Bench

OA No.2380/95

New Delhi, the 9th July, 1996. (10)

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

Anoop Kumar Vatsa
S/o Late Sh. SC Vatsa
Wr. No. F-146/3, Andrews Ganj
New Delhi.

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Applicant

(Advocate: Sh. HK Gangwani)

versus

1. Chief Secretary,
Govt. of NCT Delhi
Directorate of Education
Old Secretariat
Delhi.

2. The Director,
Directorate of Education
Old Secretariat,
Delhi.

3. The Estate Officer,
Litigation Section
Dte. of Estates,
Nirman Bhawan, New Delhi. ..

Respondents

(Advocate: Sh. P.K. Gupta)

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ORDER

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

The father of the applicant while in service
died on 30.8.93 leaving behind his wife and four
children. The father of the applicant was allotted
Quarter No. F-146/3, Type-C, Andrews Ganj, New Delhi.
Immediately on the death of his father, the applicant
approached the respondents for compassionate appointment.

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The case was strongly recommended and the applicant was appointed to the post of LDC on compassionate basis on 31.3.95. Thereafter, he submitted a representation for regularisation of the aforementioned quarter on 25.4.95 and the same was forwarded to respondent no.2. All the necessary affidavit and form, duly filled in, were submitted by the applicant. The applicant was also eligible for regularisation, as per his

pay, for Type-B accommodation whereas the present accommodation was of Type-C. However, the respondent No.3, the Estate Officer, turned down the application for regularisation resulting in the impugned eviction orders. Further, the representations made by the applicant of dated 21.8.95 and 16.10.95 were rejected and he received a memorandum from the Estate Officer that his request had been considered and rejected due to submission of false information. The applicant claims that he has not given any false information. The nature of false information has also not been spelt out by the respondents. He also affirms that neither he nor his family own any residential accommodation in Delhi.

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2. In reply filed on behalf of the respondents it is stated that the information regarding the death of the allottee on 30.8.93 was received in the office on 16.5.95 and the allotment was cancelled on 30.8.94 after allowing a concessional period of 12 months permissible under the rules. The request for regularisation was received on 16.5.95. The appointment on compassionate ground was made after a period of one year and subsequent to the date of cancellation of the allotment. Further, according to building register, the original allottee was a house owner though the details of the accommodation are not mentioned in the Building register. Thus, the respondents contend that the late father of the applicant being a house owner and the application for regularisation having been received after the expiry of 12 months, the applicant is not eligible for regularisation of the house which was allotted in the name of his father.

3. I have heard the 1d. counsel on both sides. It was agreed that the matter may be disposed of at the admission stage itself. The 1d. counsel for the applicant Shri Gangwani contended that the applicant's father did not own a house and never received any house building advance which had been certified by the Deptt. with reference to his Service Book and this fact has also been admitted by the

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respondents in their counter. No details regarding the house owned by the father of the applicant had been given by the respondents. In the circumstances, the averments made by the applicant that neither he nor any member of his family own a house remain uncontroverted.

The 1d. counsel also pointed out that the applicant had applied for compassionate appointment immediately on the death of his father and his case had also been recommended immediately and it is because of the circulation of the file amongst various authorities that the appointment

order was issued only after a delay of one year and five months. Since the respondents had considered the case of the applicant to be fit for compassionate appointment and the same had been recommended by his Department within a month and a half of the death of his father, the applicant could not be penalised for the delay of five months. In this context he also relied on the order of the Coordinate Bench in O.R.2139/95 dt. 12.4.95 in case of Mrs Sita Devi vs UCI and others. In that case the Tribunal had directed the respondents to take a sympathetic and lenient view for regularisation of the quarter even when there had been a delay of over three years because the son of the deceased Govt. servant was a minor and could not be offered compassionate appointment within the prescribed period of 12 months.

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4. Shri P.K. Gupta, Id. counsel for the respondents submitted that the rules provide for the regularisation only where compassionate appointment had been made within a period of 12 months. He cited the orders of the Hon'ble Supreme Court in Writ Petition (Civil) No.585 of 1994 - Shiv Sagar Tiwari vs UOI and others. In case of Ms Shirily Paul it was observed by the Hon'ble Supreme Court that since she had not been able to get the appointment within one year of the death of the father she is not entitled to the regularisation of the house on this additional ground.

5. I have carefully considered this matter. The Tribunal in OA No.2139/95 (supra) has extensively looked into the authorities relied upon by the two sides in this case also and granted the relief. The position is that while the regularisation for allotment of accommodation is to be made only when appointment on compassionate ground is made within the norms and where such appointments are made after 42 months, the relaxation can be considered in such cases on merit but such relaxation requires the approval of the Ministry in terms of CM No.12035(14)18-Pol.II (Pt.) dt. 13.4.89. There is nothing to show that the representation of the applicant has been considered and rejected as provided in the aforementioned CM. In the circumstances, the application is disposed of with the following directions:

1. The applicant will make a fresh representation within one month of the receipt of the copy of this order to respondent No.3.

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2. The respondent No.3 will consider the representation for relaxation in terms of FRSR 317-B within a period of two months thereafter and inform the applicant of its decision with a speaking order.
3. The respondents will not operate the impugned order of eviction till the representation as mentioned in para (2) is disposed of with a speaking order and communicated to the applicant.

R.K. Ahooja —
(R.K. Ahooja)
Member (H)

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