

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
OA No.406/1995

New Delhi, this ~~19th~~ day of October, 1995

Hon'ble Shri B.K. Singh, Member(A)

Smt. Ambika Miyan
w/o late Shri K.S. Miyan
M77A, Observatory Compound
Lodi Road, New Delhi

.. Applicant

By Ms. Jasvinder Kaur, Advocate

versus

Union of India, through

1. Secretary
Min. of Science & Technology
Technology Bhawan, New Delhi
2. Director General
India Meteorological Department
Mausam Bhawan, Lodi Road
New Delhi
3. Director (GS)
DGM's office, IMD, Mausam Bhawan
Lodi Road, New Delhi

4. Director of Estates
Nirman Bhawan, New Delhi

.. Respondents

By Shri V.S.R. Krishna, Advocate

ORDER

This OA No.406/95 has been filed against the order dated 12.8.94 (Annexure A/I) and order dated 11.11.94(Annexure A/IA).

2. The admitted facts are as follows. The applicant Mrs. Ambika Miyan was appointed as LDC on compassionate ground on 25.1.94 on the death of her husband on 23.7.93. The deceased husband of the applicant had been allotted quarter No.M77A, Observatory Compound, Lodi Road, New Delhi vide order dated 4.5.92 (Annexure A/3).



3. The applicant was allowed to continue in the quarter as per extant rules for six months and was granted extension for another six months from 24.1.94 to 23.7.94. It is evident from Annexure I enclosed with the counter reply of the respondents. The extension for retention of the quarter expired on 23.7.94 and the applicant is still in occupation of the departmental quarter. The respondents issued notice vide Annexure A/I dated 12.8.94 that she is liable to pay damage rent at the rate of Rs.2359/- per month for unauthorised occupation of the quarter. Aggrieved by this order, this OA was preferred in the Tribunal on 16.2.95 seeking the following reliefs:

- (i) To quash and set aside the impugned orders dated 12.8.94 and 11.11.94 imposing the penalty of Rs.2359/- p.m. for authorised occupation;
- (ii) To direct the respondents to allot suitable accommodation to the applicant and till then she may be allowed to retain the present accommodation; &
- (iii) To direct the respondents to charge normal rent for the present accommodation.

4. The respondents were restrained from recovering damage rent vide order dated 28.2.95 and the interim order has been continuing since then. On notice, the respondents filed reply contesting the application and the reliefs prayed for.

5. Heard the learned counsel for the applicant Ms. Jaswinder Kaur and learned counsel for the respondents Shri V.S.R.Krishna and perused the records of the case.

6. The learned counsel for the applicant vehemently argued that the rules and norms for assessment of damage rent have not been followed by the respondents. She cited examples of Mrs. Anjana Sharma, LDC, Smt. Darshan Grover, Observer, Shri Kailash Chand, LDC and Smt. Gayatri Devi, Peon, who are





similarly placed and in whose favour the residential accommodation was regularised. The aforesaid persons were occupying departmental accommodation at the time of death of

their father/husband in whose favour the quarters were regularly allotted and these very persons were appointed on compassionate ground. The case of the applicant is exactly identical and therefore there is hostile discrimination by the respondents No.1 to 4 in not regularising the accommodation in the name of the applicant. It was argued that when all these persons were similarly placed being compassionate appointees and the accommodation was regularised in their favour, denying the benefit to the applicant is violative of Articles 14 & 16. The applicant filed representation to Respondent No.4 on 2.9.94 and the representation could not elicit any response from him.

7. It was argued that Shri Kailash Chand was appointed as LOD on 20.12.91 on compassionate ground. The accommodation No.M-51A (Type II quarter) was regularised in his favour on 22.4.92. To state that Kailash Chand was holding a duty post and the said quarter was regularised was rebutted by her by arguing that the post of LOD is not listed as a duty post and that care taker is normally in a higher rank than that UDC or LDC and he is not a LDC. It was further argued that Smt. Anjana Sharma was appointed on compassionate ground after the death of her father as LDC on 30.9.88. The accommodation bearing No.M62C(II) occupied by the deceased father was duly regularised in her name. It was further contended that she has been transferred to the office of DDGM and prior to that the applicant and Smt. Anjana Sharma were both working in

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the same office and under the same Supervisory Officer till her transfer to the office of DDGD. It was pointed out that after her marriage, Smt. Anjana Sharma is not living in the quarter M-62C and this quarter is not in the occupation of the allottee implying thereby that it has been let out to someone else. This, needless to say, amounts to gross misconduct and the fact is to be ascertained and if found proved the allotment must be cancelled and given to a needy person. It was further pointed out that Smt. Gayatri Devi, Peon was appointed on compassionate ground on 26.6.90 and accommodation No.E10-B (I) was regularised in her name on 14.8.92 without her appointment to any duty post. The post of Observatory attendant although class iv post, is a technical post and Smt. Gayatri Devi does not have any technical qualification to hold that post.

8. It was further argued that the concept of duty post is ambiguous and vague and that the respondents have not been adopting the same rules and criteria consistently and they are acting according to their whims, fancies and prejudices. It was further argued that a person is eligible for duty post normally only after 18 months from the date of appointment (6 months plus one year) to an operational post. The norms laid down have not been followed. The respondents accommodated Kailash Chand, Smt. Anjana Sharma and Smt. Gayatri Devi against duty posts much before the completion of mandatory period of 18 months. She is concluded by saying that the applicant is similarly placed as three persons named above and the same concession should be granted to the applicant.



(13)

9. The learned counsel for the respondents argued that the applicant is not holding a duty post. Indian Meteorological Department (IMD) quarters are duty quarters meant for allotment to IMD employees holding duty posts. The duty posts are generally meant for the staff who perform roster duty round the clock. Holders of duty posts form distinct class of their own since they are engaged in the discharge of duty of essential nature and quarters are allotted to them in the interest of efficient functioning of operational duty and office work. Persons holding duty posts under IMD are not entitled to general pool accommodation. The other persons who do not hold duty post are eligible for general pool accommodation to be allotted by the Directorate of Estates under SR 317-XXVI-W-22 of the rules for allotment of IMD. It was argued that the concept of duty post is finalised by the Accommodation Advisory Committee(Residential) in which both the management and the staff side are represented through their recognised unions. This committee consists of (i) IMD gazetted officers association, (ii) IMD non-gazetted staff union and (iii) IMD Workshop Union, besides office side. Mrs. Ambika Mayan is not holding a duty post and as such it was argued that she is not eligible for allotment of departmental quarter. It was argued that as a measure of goodwill gesture she was allowed to remain in the quarter allotted to her late husband for one year when as per rules she can retain the quarter for 6 months only.

11. It was stated that she has rightly been declared as an unauthorised occupant with effect from 23.7.94 and as such she is now liable to pay damage rent of Rs.2359/- till she





vacates the quarter under sr 317-XXVI-w-33 of allotment rules of IMD quarter read with Directorate of Estates OM No.18011/3/90-Pol.III dated 31.3.93 (annexure II to the reply).

12. It was further argued that the department has recommended the case of the applicant to the Directorate of Estates and also sent reminder for allotment of general pool accommodation on ad hoc basis vide their letters dated 22.11.94 and 24.1.95(Annexure III and IV to the reply). He further conceded that if Mrs. Anjana Sharm has sublet the quarter, she is to be dealt with departmentally for gross misconduct and the IMD quarter should be cancelled in her name and should be allotted to a person holding a duty post.

13. After hearing the contentions, I find that the rule position is clear that holders of duty post form one class and those who do not fall within this category are not eligible for allotment of IMD quarter, the non-holders of duty post form a separate class and are eligible for general pool accommodation. There is a clear objective in forming this classification and the learned counsel for the applicant, in spite of her argument, could not show that the classification is arbitrary or unreasonable. The onus lies on the counsel for the applicant to show that the concept of duty post and non-duty post and the classification based on that is arbitrary and violative of Articles 14 & 16. The burden has not been discharged. Therefore, it is difficult to find violation of Articles 14 & 16 of the constitution. There is reasonable nexus between the objectives sought to be achieved and the classification made by the respondents.

(15)

Those who hold duty posts perform essential duties and have to live in the proximity of their workplace and as such they are given IMD quarters and those who are not holding duty posts are not eligible for allotment of IMD quarters. The applicant is neither performing roster duty or duty nor holding a duty post as such she is not entitled to the allotment of IMD quarter. The bonafide of the respondents can not be questioned since they have already sent a letter and also followed it by sending two reminders. On merits, the application fails and is dismissed. The interim order is vacated.

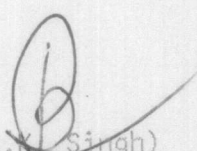
14. However, before parting with this case, I would like to observe that the respondents should exercise their discretion in following the norms laid down strictly and mandatory period of 18 months of service before one could be inducted in a duty post. This is not being followed consistently as shown in the chart below:

Name	Date of appointment	Date of allotment	Qr. No.	Type	Period of operational duty
Sh. Kailash Chand LDC	26.12.91	22.4.92	M-47A	II	4 months
Smt. Anjana Sharma UDC	30.9.88	2/1990	M-62C	II	3 months w.e.f. 14.7.95
Smt. Gayatri Devi Peon	26.6.90	14.8.91	H-10B	I	14 months

The date of appointment and the date of induction to the duty post i.e. that period of 6 months plus one year is not being strictly adhered to. The respondents do not have unfettered discretion immune from judicial invalidation if the discretion is exercised in an arbitrary manner. If the applicant has completed 18 months service her case for

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induction against a duty post should be considered and quarter should be regularised in her name if she is otherwise eligible. She is similarly placed as others noted above and as such her case should have been considered. To that extent there is discrimination but the discrimination is based on discretion and the discretion is not being exercised judiciously. The court would not like to interfere since there is a classification of duty post and non-duty post. Till the applicant is inducted against a duty post, she will not get the benefit of regularisation of the quarter which she is occupying. The observations made above are for guidance of the respondents in exercising their discretion fairly and judiciously.


(B.K. Singh)
Member(A)

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