

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1146/96
T.A. No.

199

DATE OF DECISION 11.9.96

<u>John Takri and Anr.</u>	Petitioner
<u>Shri R.V. Sinha, proxy for for Shri R.N. Singh Versus</u>	Advocate for the Petitioner(s)
<u>Union of India</u>	Respondent
<u>Shri B. Lall</u>	Advocate for the Respondent(s)

CORAM

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)
M(J)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. No. 1146/96

New Delhi this the 11th day of September, 1996

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

1. Johnson Takri,
S/o (Late) Shri John Takri,
R/o Sector V, Qr. No. 1438,
R.K. Puram,
New Delhi.

2. Smt. Premeela Takri,
W/o late Shri John Takri,
R/o 1438, Sector-5,
R.K. Puram,
New Delhi.

...Applicants.

By Advocate Shri R.V. Sinha, proxy counsel for Shri R.N. Singh.

Versus

1. Union of India, through
Secretary,
Ministry of Urban Affairs,
Nirman Bhawan,
New Delhi.

2. Ministry of Planning,
Department of Statistics, National
Sample Survey Organisation,
C-Block, 3rd Floor, Madangir Road,
Pushpa Bhawan,
New Delhi through Secretary.

3. Estate Officer,
Directorate of Estates,
Ministry of Urban Affairs,
Nirman Bhawan,
New Delhi.

4. Director of Estates,
Ministry of Urban Affairs,
Nirman Bhawan,
New Delhi through Director.

...Respondents.

By Advocate Shri B. Lall.

ORDER (ORAL)

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

Applicant No.1 is aggrieved by the letter dated 29.12.1995
issued by Respondent No.4 rejecting his request for regularisation

of the quarter which had been allotted to his late father. The applicant has alleged that this rejection letter is arbitrary and not warranted in his case. The relevant facts are that the applicant No.1's father died in harness while working with Respondent No. 2 on 23.12.1991. Thereafter, on ^{an} application being made for compassionate appointment by the applicants, applicant No. 1 was appointed as Peon in the same office w.e.f. 27.7.1993. According to the applicant, he submitted an application on 4.5.1994 for regularisation of the Quarter No. 1438, Type-I, Sector-V, R.K. Puram, New Delhi, which had been allotted to his father on 14.3.1988 by Respondent No.2 in terms of the relevant instructions dated 13.4.1989.

2. Shri R.V. Sinha, learned counsel for the applicants, submits that the respondents have rejected the request for regularisation of the quarter in the name of the applicant No.1 mainly on the ground that he has got employment after a gap of 19 months which is outside the permissible period under the rules of 12 months. This, according to the learned counsel, is arbitrary since the respondents have not taken into account the fact that there has been no delay on the part of the applicants and whatever the delay has happened is that of Respondent No.2 for which the applicants cannot be blamed.

3. Another argument advanced by the learned counsel for the applicants is that even the period of 12 months which has been laid down in the instructions dated 13.4.1989 which has been subsequently amended by the O.M. dated 22.5.1996 which allows relaxation for a further period of one month is itself arbitrary as there is no nexus of the period to the object sought to be changed. He relies on the judgement

8 (10)

of Phulwati Vs. Union of India (AIR 1991 SC 469) and certain observations of the Hon'ble Supreme Court made on 21.9.1995 in Vishnu Kumar's case in W.P.(C) 585/1994, Shiv Sagar Tiwari Vs. Union of India & Ors. In this case, he submits that the Supreme Court has directed the Directorate of Estates to allot a house to the daughter of the deceased employee even though the applicant had got the appointment after 12 months after the ¹³date of her father. He has also relied on the letter dated 1.6.1992 written by Respondent No.2 in which it has been stated that since they had only one vacancy of Peon in 1992 and that post had been given to a more deserving candidate, the applicant No.1's case will be considered in the following year. This is relied upon to show that the delay, if any, for appointment is due to the administrative actions taken by Respondent No. 2 and not that of the applicants.

4. The respondents have filed the reply in which the facts in the case are not disputed. The respondents have also submitted that the request of Applicant No. 1 for regularisation of the quarter which had been originally allotted to the father of the applicant No. 1 could not be accepted as per the extent rules as admittedly the applicant No. 1 has been appointed on compassionate grounds as Peon 19 months after his father's death, whereas the rule itself provides only for a gap of 12 months between these two events. They have also submitted that the Hon'ble Supreme Court has held in W.P.(C) No. 585/94 (Supra) that under the rules which they are following, the son or the daughter getting appointment after 12 months is not eligible for regularisation of the quarter. A reference

13

has also been made to a subsequent O.M. dated 22.5.1996 in which it has been stated that in exceptional cases, delay upto one month in securing employment beyond 12 months from the date of death of the parent, may be condoned with the express approval of ^{the} Minister-in-Charge. Shri B.Lall, learned counsel for the respondents, has also submitted that the rational behind prescribing the period of 12 months in the rules during which time the quarter which had been allotted to the deceased employee could be regularised was that under the allotment rules, on the death of the employee the family is allowed to retain the quarter at normal licence fee for a period of one year. This obviously is to help the bereaved family to tide over their financial and other difficulties.

In the circumstances, the learned counsel has submitted that there is no merit in the application and, therefore, the same be dismissed.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The argument advanced by Shri Sinha, learned counsel for the applicants that there is no rational in the period prescribed in the rules of 12 months cannot be accepted. On the death of ^a Govt. servant who had been allotted ^a quarter during his service under the allotment rules (S.R. 317), the family is allowed to continue in that house for a period of 12 months. The Government has also made provisions to help the indigent family who suddenly finds that they are left without the bread winner, ~~for whom provisions have been made~~ ^{by} giving suitable appointment to deserving dependents of the family on compassionate grounds by relaxation of the rules like education, age, and procedure through employment exchange, etc. It

is settled position that the object of giving compassionate appointment in such circumstances is to help the bereaved and indigent family in deserving cases to tide over the financial and other difficulties. If during this period of 12 months one of the family members has been appointed on compassionate grounds, it would only be in the fitness of things that he and the family ^{be} allowed to continue in the same quarter, if he was otherwise entitled, by regularisation of the same quarter in his name without too much disruption and difficulties to the family. However, the family does not have a right to reside in that quarter for an indefinite period de hors the rules. In the circumstances, the requirement of the period of 12 months laid down in O.M. dated 13.4.1989 for ad hoc allotment of quarter in the name of the near relation of the Government servant who dies while in service, is based on sound reasoning and is not arbitrary. Therefore, the objection taken on this ground is rejected.

7. The next ground taken by the learned counsel for the applicants, was that the delay in the applicant No.1's appointment on compassionate grounds was due to administrative reasons on the part of the Respondent No. 2 and that he cannot be blamed for the same. He submits that in such a situation the respondent No. 1 ought to have exercised the power of relaxation and regularised the quarter. On perusal of the letter dated 1.6.1992 relied upon by the applicant, it is seen that they have given valid reasons that the applicant No. 1 could not be accommodated in 1992 as they had only one vacancy as Peon which had been given to a more deserving candidate and that his case would be considered in the next year. Therefore, there is no merit in the allegation made that there is fault on the part of Respondent No.2 in deliberately delaying the appointment of applicant No.1 as Peon in their office and this ground is also rejected.

18.

18.

8. The Hon'ble Supreme Court in Shiv Sagar Tiwari Vs. Union of India & Ors. (W.P.(C) 585 of 1994) in their order dated 19.10.1995 in Mr. Keshar Singh's case, has held:

"...In any case since he got employment more than one year after the death of the original allottee he is not entitled to the transfer of the house in his name".

The earlier order passed by the Supreme Court in the same case of Shiv Sagar Tiwari (in Vishnu Kumar's case) dated 21.9.1995 relied upon by the applicants will not be of any aid to them as in the later order, the Supreme Court has also held as under:

"Mr. K.T.S. Tulsi has invited our attention to the Government Memorandum which states that the ward/dependent who gets employment on compassionate grounds one year after the death of his parent/guardian, he would not be entitled to the transfer of the house in his name. We have been passing orders following this Rule. Mr. Tulsi has brought to our notice that on earlier occasions we have passed 2-3 orders where regularisation has been made in favour of those dependents who got job on compassionate grounds more than one year after the death of the allottee Government servant. He may bring all those cases to our notice by way of a review application so that consistency is maintained by this Court".

9. Having regard to the decision of the Supreme Court in Keshar Singh's case and the facts in this case, since admittedly the applicant No.1 got appointment on compassionate grounds 19 months after the death of his father, he is not entitled for/ the house which had been allotted to his late father. ~~to be regularised in his name~~ In this connection, in passing, it may be noted even the later O.M. dated 22.5.1996

14

will not assist the applicant No. 1 because under this memorandum also no relaxation beyond the period of 13 months is permissible for ad hoc allotment in the case of near relations of Government servant who dies in service.

10. In the facts and circumstances of the case and having regard to the directions of the Supreme Court referred to above and the relevant rules/instructions, I find no justifiable ground to interfere in this matter as the respondents have not acted arbitrarily, illegally or unreasonably in the matter. At this stage, the learned counsel for the applicants submits that in case this application is not allowed, two months time may be granted to the applicants to vacate the quarter. The learned counsel for the respondents has no objection to this, subject to period of one month being given for the applicants to vacate the quarter.

11. In view of the submissions made by the learned counsel for the respondents, the applicants are directed to vacate the quarter by the end of September, 1996 and hand over vacant possession to the competent authority on or before 1.10.1996.

12. In the result, this application fails and is accordingly dismissed. *Subject to the above para 11.* No order as to costs.

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

'SRD'