

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 12 21/96  
T.A. No.

199

DATE OF DECISION 19-9-96

<u>V. B. Sharma</u>	Petitioner
<u>Sri S. S. Tiwari</u>	Advocate for the Petitioner(s)
Versus	
<u>UOI and Ors.</u>	Respondent
<u>Sri K. R. Sachdeva</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 )  
Member (J)

Central Administrative Tribunal  
Principal Bench.

O.A. 1221/96

New Delhi this the 19th day of September, 1996

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

V.B. Sharma,  
S/o Shri S.R. Sharma,  
R/o 1063, Lodhi Road Complex,  
New Delhi.

..Applicant.

By Advocate Shri S.S. Tiwari.

Versus

Union of India - through

1. Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
2. Director of Estates,  
Directorate of Estates,  
513-B, Nirman Bhawan,  
New Delhi.
3. Estate Officer & Assistant  
Director of Estates,  
(Litigation),  
Directorate of Estates,  
Nirman Bhawan,  
New Delhi.

..Respondents.

By Advocate Shri K.R. Sachdeva.

ORDER

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

The applicant is aggrieved by the letter dated 16.4.1996 rejecting his request for ad hoc allotment/regularisation of the of the Govt. accommodation which was earlier allotted to his father who had retired from service on 30.11.1995, on the ground that since the applicant's father owns the house in Delhi, the Government accommodation cannot be regularised in the name of the applicant as per the relevant rules.

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2. The applicant submits that he had joined service on 10.3.1992. The applicant's father, having retired from service on 30.11.1995, had applied on 8.1.1996 for regularisation of the Government quarter No. 1063, Lodhi Road Complex, New Delhi in his name, being the son. According to the applicant, ever since he has joined the Government service, he has been staying with his parents in the Government accommodation, which is under his occupation. He submits that neither he, his father or any members of his family own a house in New Delhi which is his place of posting and hence he has prayed for quashing the impugned rejection letter. He further submits that although he made further representations against the impugned order, the respondents have failed to consider the same and hence this O.A.

3. The respondents have, on the other hand, submitted that the applicant was living in his private accommodation at the time of joining Govt. service w.e.f. 10.3.1992 as is apparent from his representation dated 7.5.1996 and the entries in the service book as given in the letter of the Senior Administrative Officer dated 16.2.1996 addressed to the Director of Estates. Since the father of the applicant owns a house in Delhi, namely, B-210, Hari Nagar, Clock Tower, New Delhi, the rejection letter has been correctly done in accordance with the rules issued under Rule XXXV, S.R. 317-B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. As the applicant's father Shri S.R. Sharma had not vacated the Government accommodation after the allotment was cancelled with effect from 1.4.1996, eviction proceedings had been taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Then, the Estate Officer had passed the eviction

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order dated 20.5.1996. Thereafter, the applicant has approached the Tribunal for setting aside the orders dated 16.4.1996 rejecting the request of the applicant for regularisation of this quarter and the eviction order dated 20.5.1996 and for a direction to regularise the quarter.

4. The relevant portions of Rule XXXV - Concession of ad hoc allotment of General Pool of accommodation admissible to eligible dependents/relations of Government employees on their retirement - period of retention, issued under S.R. 317-B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, are reproduced below:

"In exercise of the powers conferred under S.R. 317-B-25 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the Central Government have decided that when a Government servant, who is an allottee of general pool accommodation, retires from service, his/her son, unmarried daughter or wife or husband, as the case may be, allotted accommodation from the General Pool on ad hoc basis, provided the said relation is a Government servant and is eligible for allotment of accommodation in general pool accommodation and had been continuously residing with the retiring Government servant for at least three years immediately preceding the date of his/her retirement. In case, however, a person is appointed to Government service within a period of three years preceding the date of retirement or had been transferred to the place of posting of the retiring Government servant any time, within the preceding three year the date on which he was so appointed or transferred would be the date applicable for the purpose. This decision would cover cases of Government servants retiring on or after 7.11.1989.

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no division of the property or of his share by a partition suit in accordance with law and, therefore, under the above rules, he cannot be denied the regularisation of the Government quarter previously allotted to the father, merely, on the ground that the retiring officer or the applicant 'own' a house in New Delhi. The learned counsel also relies on the judgements of this Tribunal in Dr. A. Golmei and anr. Vs. Union of India & Anr. (O.A. 1249/91), decided on 4.9.1992 which in turn refers to the observations made in Ms Renu Kohli Vs. Union of India (O.A. 11/91), decided on 21.2.1992. As decided in these cases, he submits that the house should be "suitable for living". He also relies on Golmei's case (supra) to show that in that case the Tribunal had ordered for regularisation of the quarter in the applicant's name and for payment of normal licence fee in similar circumstances. The SLP filed by the Union of India against this judgement has also been dismissed by the Supreme Court on 19.7.1996.

6. These averments have been controverted by Shri K.R. Sachdeva, learned counsel for the respondents. He submits that the facts in the judgements of the Tribunal, referred to above, are not applicable to this case, especially the case of Golmei where the applicant was held to be eligible for allotment since 1.6.1976 and in the facts of the case, it was ordered to be regularised in the name of the applicant w.e.f. 1.4.1987. He further submits that the question of ownership of the property under Hindu Law and intestate succession pleaded by the learned counsel for the applicant, is not within the jurisdiction of this Tribunal as it is not a service matter, excepting to the extent of interpreting the relevant rules dealing with allotment, etc. of government accommodation.

7. In the applicant's representation dated 7.5.1996, he has stated as follows:

"That House No. B-210, Hari Nagar, New Delhi is my permanent address and belongs to our ancestral property, which is inherited by my grand father's posterity which comprises of 30 separate family units and all of them can't live together in that house, it is because of this reason my father had to come for a Government accommodation and I also resided in the said accommodation ever since my entry in Government Service. Moreover, my grand father has already been expired."

From this statement, two things emerge, namely (1) that the applicant's father and family resided in the Hari Nagar house before the father applied for allotment of Government accommodation on 20.11.1981 and was offered the allotment of House No. 1063, Lodhi Road Complex, New Delhi in February, 1983, and (2) that perhaps only after 1992 when he joined Government service, the applicant has been residing with the father in the government accommodation. In proof of his statement that he has been residing in the government accommodation he has submitted his CGHS Card dated 24.7.95 and Ration Card dated 8.9.94. He has also submitted that from March, 1992 he has not been getting H.R.A. The Tribunal in the order dated 6th June, 1996 noted that the applicant has himself admitted in his petition dated 7.5.1996 that House No. B-210, Hari Nagar, New Delhi, is his permanent address and belongs to his ancestral property. From this letter, it is also apparent that at least till February, 1983 the applicant and his father were in possession and residing in their house at Hari Nagar, New Delhi. Nothing has been placed on record to show that they do not own that house or cannot take possession of it or continue to reside in that house (see V.K.Kaul's case supra). In this view of the matter, the other arguments advanced by Shri

Tiwari, learned counsel are not relevant.

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8. The point vehemently argued by Shri Tiwari, learned counsel, was, that because a large number of persons have inherited that house which was not large enough to have a separate kitchen<sup>13 for them</sup> and the applicant and his father had only a share in it, it was not possible to reside very comfortably there. Therefore, they cannot be held to 'own' the house which was suitable for living. In this connection, he had stressed on the observations of the Tribunal in Ms. Renu Kohli's case (supra) wherein it was held that the applicant's case had to be considered on the basis that the retiree had no house which was suitable for living. In that case, the facts were entirely different. As noted by the Tribunal in Kohli's case, the applicant's father had died soon after retirement and the house owned by him at Vijay Nagar, New Delhi, which was a one room house was in a ruinous state. It was also demolished within the life time of the father and, in fact, there was only a plot of land when the eligible ward had applied for ad hoc allotment and regularisation of the Government quarter in terms of Rule XXXV. The conclusion of the Tribunal that in the facts of the case a plot of land cannot be considered 'suitable for living' is, therefore, distinguishable from the facts here, where undisputedly there is a house at Hari Nagar in which the applicant and his family can live. The applicant has nowhere disputed that he or his father cannot live in that accommodation as they have a share in that property, but the main contention is that it may not be very convenient or spacious enough to accommodate all the family members. But that by itself does not

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show that it is not suitable for living as held in Kohli's case. It is settled law that the decision in each case has to be seen in the context of the facts and circumstances and the facts in Kohli's case <sup>are distinguishable and</sup> will not assist the applicant. It is relevant to note that both the applicant and his father have referred to this house at Hari Nagar as their permanent home address which shows that it is an accommodation which may be termed as a home suitable for living. Therefore, in the facts of this case, it is not possible to come to the conclusion that the house at Hari Nagar is not suitable for living.

9. The other case which was again very much relied upon by Shri Tiwari, is the case of Dr. A. Golmei & anr. (supra). That case again was decided on the facts and circumstances of the case and in the interest of justice and fair play, wherein it was noticed that even otherwise Dr. Golmei was entitled to Type-V accommodation since 1.6.1976. Another relevant fact noticed by the Tribunal was that later in 1987 the place where Dr. Golmei was working, namely, Dr. N.C. Joshi Hospital, was also declared to be an eligible office. In the circumstances, the Tribunal came to the conclusion that merely because the applicant owned a house in Janakpuri did not debar him from the concession, he would otherwise be eligible for under the rules. In this connection, Shri Sachdeva, learned counsel for the respondents, has correctly pointed out that under the relevant rules there is no bar for the Government servant being allotted a Government quarter even if he owns a house at the same place of posting, if he is otherwise eligible.

Unlike the case of Dr. Golmei, the applicant is not otherwise entitled for allotment of government accommodation and he cannot, therefore, seek regularisation under the concession rules without satisfying the conditions prescribed therein. Therefore, Dr. Golmei's case cannot also assist the applicant.

10. Another relevant factor which has to be kept in view while dealing with Rule XXXV, under which the applicant is claiming relief in this case, is that this is a concession in the rules providing for ad hoc allotment of accommodation in certain cases. Therefore, it is in the form of an exception to the general rule that permits ad hoc allotments, and any such concession will, therefore, have to be strictly construed. The object of the concession rule is to provide the retiring government servant a roof over his head if he has none, <sup>provided</sup> ~~and in case~~ the other conditions are fulfilled.

11. In the facts and circumstances of the case, the applicant has failed to establish that he or his family do not own a house in New <sup>e</sup> ~~Dh~~ <sup>or that it</sup> ~~is~~ unfit for living and he is, therefore, not entitled to any reliefs. The impugned action of the respondents rejecting the applicant's case for regularisation of the quarter No. 1063, Lodhi Road Complex in his name cannot be held to be either arbitrary, illegal or contrary to the rules which justifies any interference in the matter.

12. In the result, the application fails and is dismissed. Interim order dated 19.7.1996 is vacated. No order as to costs.

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan)  
Member(J)

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