

Central Administrative Tribunal, Principal Bench

O.A.No.156/96

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

New Delhi, this 7th day of January, 1997

1. Shri M.R.Saran
s/o Shri R. Saran
1572, Laxmibai Nagar
New Delhi - 110 023.

2. Ms. Kusum Kumari
d/o Shri M.R.Saran
1572, Laxmibai Nagar
New Delhi - 110 023. ... Applicants
(By Shri V.K.Rao, Advocate)

Vs.

1. Director of Estates
Nirman Bhawan
New Delhi.

2. The Estate Officer
Directorate of Estates
Nirman Bhawan

(By Shri S.M.Arif, Advocate)

O R D E R (Oral)

Applicant No.1 who is working in the Department of Civil Aviation was allotted Quarter No.1572, Laxmibai Nagar, New Delhi. Applicant No.2 is the third child (second daughter) of Applicant No.1 who joined All India Radio on 4.2.1983. She submits that since her appointment, she is staying with her father and not claiming any House Rent Allowance. She was married on 22.5.1985. Due to some difference of opinion with her husband, she did not stay with her husband for more than two months, and came back to stay with her father. Applicant No.1 was retired on 31.12.1986 and thereafter Applicant No.2 made a representation on 13.1.1987 to regularise the above said quarter in her name. The applicant claims that the respondents could not take any action on the request made by either of the applicants for regularisation, but in the year 1991 a notice was issued for vacation of quarter. Though submissions were

made by the applicants before Respondent No.2, the latter issued the impugned order (A1) dated 16.8.1995 rejecting the request for regularisation of the said quarter in favour of the Applicant No.2. A demand notice was also issued on 08.12.1995 (Annexure A2) to the Applicant No.1 for payment of penal licence fee amounting to Rs.1,40,454/- . This has later been amended by the Respondent No.2 vide order dated 27.8.1995 to Rs.1,58,044/-.

2. The applicants have now approached the Tribunal with a prayer that the impugned order cancelling the allotment and the impugned order rejecting the regularisation and demand letters (A2) and also notice for eviction be quashed and respondents be directed to regularise the allotment of the quarter in favour of the Applicant No.2.

3. The respondents in their reply have admitted that the request for regularisation was received by them but it was rejected on the ground that up to 16.12.1991 married daughters were not eligible for general pool accommodation on retirement of the Government servant although later on an Office Memorandum dated 17.12.1991 was issued wherein the benefit of regularisation was extended to married daughters, but a condition was imposed that this would be allowed only where retiring officials do not have any son or married daughter is the only person who is prepared to maintain the parents and the sons are not in a position to do so. Since Applicant No.1 had three grown up sons, Applicant No.2 was not eligible for the regularisation in terms of the aforementioned Office Memorandum.

4. I have heard the learned counsel on both sides. Learned counsel for the applicant, Shri V.K.Rao, relies on the judgment of the Supreme Court in Civil Appeal No.224/96 in Ms. Savita Samvedi & Another Vs. Union of India & Others, JT 1996(1) SC 680. This is a case of allotment of railway accommodation. In this case the Supreme Court held that in similar circumstances the Circular dated 11.8.1992 of the Railway Board, should be taken to have been read down and deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. In the present case, learned counsel submits that none of the sons in any case is eligible for regularisation as they are not in Government service. Applicant No.2 in the present circumstances is thus the only eligible person and the father, namely, Applicant No.1, has also opted in her favour. Learned counsel for the respondents however submits that when the Applicant No.1 retired, there was no provision in the rules for regularisation in favour of a daughter and these provisions came into force only w.e.f. 17.12.1991. Hence the case of the Applicant No.2 would not come within the ambit of the above cited judgment of the Supreme Court.

5. I have considered the matter. Although Applicant No.1 had retired in 1987, the fact remains that the request for regularisation had not been disposed of finally till the issue of the impugned order (A1) dated 16.8.1995. Nothing has been cited to show that when Office Memorandum dated 17.12.1991 was issued, a bar was

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imposed that past cases could not be considered as regards eligibility of married daughters. For the rest, the present case is fully covered by the ratio of the aforesaid judgment in JT 1996(1) SC 680. Therefore, I hold that the applicant No.2 is entitled to be considered for regularisation of the quarter.

6. Learned counsel for the applicants also refers to the other relief regarding the demand raised for damage/penal licence fee. There is an over stayel on the part of the Applicant No.1 since the allotment in his favour had been cancelled as far back as in 1987. The inclusion of married daughters as eligible wards for regularisation of quarter come only w.e.f. 17.12.1991 and that too subject to a condition. The learned counsel for the respondents points out, that the clearance of all dues outstanding in respect of the retired officers is essential. I therefore, in the interest of justice, direct that the Applicant No.1 should not be asked to pay the damage penal rent for the period after 17.12.1991 till the regularisation of the quarter in the name of the Applicant No.2.

7. The respondents are allowed two months time to complete the formalities regarding the regularisation. No costs.

Rao
(R.K.AHOOT)
MEMBER(A)

/rao/