

Central Administrative Tribunal, Principal Bench

O.A.No.175/96

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

New Delhi, this 14th day of May, 1997

Harsi Devi
wife/widow of late Shri Inder Singh Khalasi
r/o Kasturba Nagar
Quarter No. L-331, New Delhi. ... Applicant

(By Shri A.K.Bhardwaj, Advocate)

Vs.

1. Union of India through
The Director General
Survey of India, West Block
No.4, Wing No.4,
R.K.Puram, New Delhi.
2. The Director of Estates
Directorate of Estates
Nirman Bhawan
New Delhi - 110 011.
3. The Director (Survey) AIR
West Block No.4
Wing No.4, R.K.Puram
New Delhi - 110 066.
4. The Superintending Surveyor
No.64, (A.H.S.) Party
Dte. of Survey(Air)
Pushpa Bhawan
M.B.Road
New Delhi. ... Respondents

(By Shri Madhav Panikar through Shri C.Hari Shankar,
Advocate)

O R D E R(Oral)

The applicant's husband late Shri Inder Singh was appointed as Khalasi under the respondents w.e.f. 17.11.1975 and had been allotted a Government accommodation No.L-331, Kasturba Nagar, New Delhi. The applicant's husband died on 1.3.1992 leaving behind the applicant as well as two minor children. The respondents appointed the applicant as Khalasi in Group 'D' post w.e.f. 1.3.1993 on compassionate grounds i.e. within one year from the date of the death of her husband. Thereupon the applicant had asked Respondent No:4, Superintending Surveyor, to pass necessary orders

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regularising the Government accommodation which was earlier allotted to her late husband. She is aggrieved that without considering any of the requests made by Respondent No.3 and 4 vide notice dated 11.2.1994, Respondent No.2 issued a show-cause notice to the applicant requiring her to show cause as to why she should not be evicted from the quarter in question. She submits that no consideration of her request for allotment has taken place and hence this notice is unwarranted. Her application for regularisation had been forwarded by Respondent No.3 to Respondent No.2 with the recommendations that the said quarter must be regularised in her name. She also submits that in similar circumstances one Smt. Bindo Devi was employed under the Respondents 1,3 & 4 as Contingent regular Khalasi and Respondent No.2 decided her claim for regularisation of the Government quarter which was earlier allotted in the name of her late husband. She has come before the Tribunal now seeking a direction to the respondents not to evict her from the Govt. accommodation in question and to direct the respondents to regularise the Government quarter in her name.

2. The respondents in their reply statement submit that the applicant had been appointed as Contingent paid Khalasi and as such she is not eligible for allotment and regularisation of quarter in her name.

3. I have heard the counsel on both sides. Learned counsel for the applicant argues that the applicant was entitled for regularisation of the quarter just as a regular employee since the respondents have considered her claim for such an appointment on compassionate

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grounds. He also argues that the respondents do not say that the applicant in no case could have been given the out of turn allotment under the Rules. He also relies on the judgment of this Tribunal in OA No.884/95, Sushma Sharma Vs. UOI & Others, 1997(1) Vol.63 ATSLJ 503 and points out that under similar circumstances, in respect of the same department to which the applicant now belongs, the Tribunal directed that the allotment should be regularised in favour of the applicant who was a Contingent Khalasi. The learned counsel for the applicant has further pointed out that in the aforesaid judgment, the Rules laid down the entitlement of the contingent staff and the allotment of accommodation is not excluded from the list of entitlement. Finally he submits that, as the employer has certified that there is no difference between the contingent staff and the regular staff, the applicant should be allotted and regularised such accommodation and it is not open to Respondent-2 to deny such regularisation.

4. The learned proxy counsel for the respondents, Shri C.Hari Shankar, on the other hand, cites the decision of the Tribunal in OA No.201/93, Sushil Dogra Vs. The Director of Estates & Another (decided on 11.9.1996) in which it was held that a Casual labourer working on ad-hoc basis is not entitled to regularisation of allotment. He further submits that the case relied upon by the applicant relates to the Survey of India houses and not the general pool accommodation, in regard to which the present applicant is seeking relief. As regards the case of Bindo Devi, learned counsel submits that Supreme Court has held in State of Haryana & Others Vs. R.K.Mann, 1997(3) SCC 321 that the relief wrongly

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given to others cannot be made the basis of a claim unless there was an enforceable right the plea of discrimination could not be pressed.

5. I have considered the matter carefully and heard the arguments advanced by the learned counsel and have gone through the pleadings as well as citations relied upon. In the case of Sushil Dogra(supra) the issue related to regularisation of accommodation in respect of a casual employee working on adhoc basis when the accommodation belonged to the general pool under the control of Directorate of Estates. In that case the adhoc appointment finally culminated into a regular appointment. Even there the applicant was held to have no valid claim, since on the date on which the impugned order was passed, he had not become eligible for ad-hoc allotment of the accommodation. It may be that in the present case the applicant would have been appointed on regular basis under the relevant Rules concerning compassionate appointment with the benefits of regular employee in all respects. However, so long as the applicant is a contingent paid or an adhoc employee her status is different from that of a regular employee for the purpose of allotment of accommodation. On that basis, the applicant is not entitled to the relief sought for.

6. The learned counsel for the applicant submits that in Sushma Sharma's case (supra) also the employee was similarly situated and was working in the same department. He submitted that in case the respondents do not have their own accommodation in a separate pool, the ratio of the same would apply even in respect of

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accommodation placed by the Directorate of Estates at their disposal. I am unable to agree with this. The Directorate of Estates cannot discriminate between the employees of one department and another. So long as the accommodation belongs to the general pool its allotment must be governed by the Rules of Directorate of Estates which regulate the allotments of houses. Irrespective of whether the houses in question were for any reason earmarked for the Survey of India or it was only a matter of entitlement of the employees of Survey of India, the allotment must be governed by the Rules of the general pool accommodation.

7. In respect of the case of Sushma Sharma (supra), in view of the aforesaid reason, it cannot be cited as a precedent since the case of the applicant is not covered by the Rules. She has no enforceable right and in terms of Supreme Court Judgment, i.e., State of Haryana & Others Vs. Ram Kumar Mann (supra), she is not entitled to relief on grounds of discrimination.

8. In the light of the above discussion, no intervention by this Tribunal is called for and the OA is disposed off accordingly. This would not however prejudice any consideration that the respondents may like to make in respect of allotment of house to the applicant if they have a separate housing pool of their own.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)

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