

Central Administrative Tribunal, Principal Bench

O.A.No.1742/96

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

New Delhi, this 25th day of March, 1997

Shri Arun Singh Negi
s/o late Shri I.S.Negi
r/o Sector - V
House No.1552
R.K.Puram
New Delhi.

... Applicant

(By Mrs. Meera Chhibber, Advocate)

Vs.

1. Union of India
through Secretary
M/o Defence
c/o The J.S.(Trg.) & CAO
DHQ, P.O. New Delhi-11.

2. Director of Estates
Government of India
Nirman Bhawan
New Delhi.

... Respondents

(By Shri B.K.Punj, Proxy of Shri M.M.Sudan, Advocate)

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The applicant's father died, while in harness, on 26.9.1993 when the applicant was only seventeen and half years of age. He applied immediately for compassionate appointment but as he was under age, his application was returned by the Department with the advise that he should apply after attaining the age of 18 years. He attained the age of 18 years on 2.6.1994. On applying afresh he was offered an appointment as per order dated 16.3.1995(Annexure P-VII). Thereafter, he applied for regularisation of the Type-II quarter allotted to his late father for which he was eligible. Instead he was informed by the impugned order dated 30.1.1996 that the allotment of the quarter stood cancelled and could not be regularised of 12 months as he was appointed after the expiry of concessional period on 26.9.1994. The case for regularisation was recommended by applicant's Department but without considering this

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recommendation, the eviction order dated 30.7.1996 was issued (Annexure P-3). The applicant claims that he could not get the compassionate appointment because of being under age and because further delay took place on the part of the respondents. The delay beyond the permissible period of 12 months was also of only six months. In the facts and circumstances of the case he prays that the orders dated 3.1.1996 and 30.7.1996 i.e. show cause notice and eviction orders respectively be quashed and the respondents be directed to decide his representation sympathetically and till such time status quo be maintained in regard to the possession of the quarter.

2. The respondents state in reply that since the applicant secured employment in Government after a lapse of one year and six months, he did not fulfill the requisite conditions of securing employment in an eligible office within 12 months after the death of the original allottee and hence his request for regularisation had to be turned down.

3. I have heard the learned counsel on both sides. Mrs. Meera Chhibbar, learned counsel for the applicant draws my attention to D.E. O.M. No.12035(14)/82-Pol.II(Pt.) dated 13.4.1989 which reads as follows:

"Cases where an eligible dependent secures employment after a period of twelve months from the date of death of the parent and where ad hoc allotment may be justified on extreme compassionate grounds, the request for such ad hoc allotment may be examined on merits of individual case and decision taken under the powers vested in the Govt. to relax the Allotment Rules under SR-317-B-25. Such cases shall require orders of MOs(UD)/UDM."

4. Learned counsel for the applicant also submits that the Hon'ble Supreme Court has already held in a bunch of cases in the case of Shri Shiv Sagar Tiwari Vs. Union of India & Others, (1997) 1 SCC 444 the Apex Court that there

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could be a 5% discretionary quota for each category of accommodation. In terms of the above mentioned O.M. dated 13.4.1989 a discretion then could be exercised when justified on extreme compassionate grounds with the approval of MOS(UD)/UDM. Considering the circumstances of the applicant, the fact ^{that} he has to support a mother and sister, applicant was atleast entitled for consideration of his case for allotment out of this discretionary quota. On the other hand, the respondents had mechanically rejected his plea on the ground that the compassionate appointment had been obtained after twelve months.

5. I have considered the arguments advanced on behalf of the applicant. It is correct that Hon'ble Supreme Court in its final order of S.S.Tiwari(Supra) has placed a limit of 5% on the discretionary quota in each category of houses fallen vacant in a year. The exercise of this discretion has to be subject to the guidelines to be prepared by the concerned ministry. In so far as the present position is concerned, the O.M. dated 13.4.1989 has already been superseded by O.M., No.12035(14)/82-Pol.II(Pt.) dated 22.5.1996. After giving reference to the earlier O.M., the O.M. dated 22.5.1996 states as follows:

"It has since been decided that generally no relaxation in this regard may be allowed. However, to mitigate the hardship of the family of the deceased allottee, in exceptional cases, delay upto one month in securing employment beyond 12 months from the date of death of the parent, be condoned with the express approval of Minister-in-charge and ad-hoc allotment in such cases may be allowed, subject to fulfilment of other prescribed conditions. No relaxation beyond a period of one month shall be permissible in any case."

6. In view of the above position, the applicant having secured the compassionate appointment after six months of the permissible period of one year is not entitled for any

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relaxation even with the permission of the Minister-in-charge. This being so, there remains no scope for interference by the Tribunal.

7. In view of the above discussion, the OA is dismissed.

No costs.

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

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