

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2255/96
T.A. No.

199

DATE OF DECISION 11.2.1997

Surender Kumar Goel

Petitioner

Shri B. Krishan

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.M. Sudan

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
 (Smt. Lakshmi Swaminathan)
 Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2255/96

New Delhi this the 11th day of February, 1997

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

1. Shri Surender Kumar Goel,
S/o Shri Jagdish Sharan Goel,
R/o D-32, Moti Bagh-I,
New Delhi.

2. Shri Jagdish Sharan Goel,
S/o Shri Rameshwar Dass,
R/o D-32, Moti Bagh-I,
New Delhi.

..Applicants.

By Advocate Shri B. Krishan.

Versus

1. Union of India, through its
Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhavan, Parliament Street,
New Delhi.

2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhavan,
New Delhi.

3. The Estate Officer,
(Assistant Post Master General),
Delhi Circle,
New Delhi.

..Respondents.

By Advocate Shri M.M. Sudan.

O R D E R (ORAL)

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

The applicants are aggrieved by the eviction order dated 23.9.1996 passed by Respondent 3 directing the applicants to vacate the Government residence No. D-32, Moti Bagh-I, New Delhi within thirty days of the publication of the order. The applicants have also assailed the communication on the part of the respondents in the matter of —regularisation of the said quarter in favour of applicant 1, who is the son of applicant 2 who has retired from Government service w.e.f. 30.6.1992, They

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the matter have submitted that at the time of filing this application/ was pending for consideration with the respondents.

2. By the interim order of the Tribunal dated 22.10.1996, which had been passed after hearing both the parties, the respondents were given the liberty to dispose of the said representation made by the applicants on 4.4.1995 by a detailed and speaking order and during that period they were restrained from taking any action of physically evicting the applicants. The interim order has been continued till date and the O.A. has been taken up for final hearing.

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

4. Both the parties have relied on the judgement of this Tribunal in O.A. 371/93, decided on 2.3.1995 which is placed at pages 28-35 of the paper book in making their submissions. It would, therefore, be necessary to deal with this judgement which is between the same parties. It is also relevant to note that the applicants in O.A. 371/93 had sought two reliefs, namely,

- (i) to set aside the impugned orders dated 17.12.1992 and 29.1.1993; and
- (ii) to direct the respondents to regularise the allotment of quarter No. D-32, Moti Bagh, New Delhi in favour of applicant 1 with effect from 1.11.1992, i.e. the date of cancellation of allotment of the quarter to applicant 2.

The request of ~~the~~ applicant 1 for regularisation and retention of the quarter beyond 31.10.92 as a ward of a retired Government servant had been rejected by the competent authority. ~~xxxxxxxxxxxxxx~~ has, after a detailed discussion of the evidence and submissions made by the parties, on pages 3-5 of the judgement/ dated 2.3.1995. On page 5, it has been stated

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that after hearing the rival contentions and going through the records, the Tribunal found that the main ground taken by the respondents was that the applicant 1 did not satisfy the requirements of three years stay with applicant 2 for regularisation of the quarter in his name. On this ground again, I find that the learned judge had referred to the materials placed on record and the submissions and on page 7 has held as follows:

"After hearing the rival contentions, I find that the facts and circumstances of the case is that the applicant started living with his father with effect from 22.3.1990 and not from 1989. It was only from this date when the period can be reckoned and since the father retired on 30.6.1992, the period works out to only two years and four months. This is certainly less than three years. In the exemplar cited by the learned counsel for the applicants that is of Shri Ghanshyam Gursahaney, the period involved for relaxation was only one month and in the instant case, the period involved is practically eight months".

In the next paragraph, it has been observed that "the allotment and cancellation of a quarter are not strictly within the domain of the executive. The competent authority is empowered to allot a quarter or to cancel it or to regularise it or not to regularise the same if the conditions are not fulfilled. The power of relaxation also vests in the competent authority and courts are not competent to issue any direction to the competent authority to relax the eligibility criteria in respect of individuals".

(Emphasis added)

5. Shri B. Krishan, learned counsel, has very strenuously argued that the above conclusion in the judgement in O.A. 371/93 shows firstly that the Tribunal had declined jurisdiction in the matter and that the points which are sought to be agitated in this O.A. have ^{therefore, be} not been adjudicated, including the fact whether applicant 1 was living with the father from 1989 as he claims or from 22.3.1990, as claimed by the respondents.

JK

The learned counsel further submits that the above observations of the Court should be taken to mean only that the principles of res judicata do not apply in this case and the present O.A.; therefore, has to be adjudicated on the basis of the further detailed representation made by the applicant on 4.4.1995. This has been denied by Shri M.M. Sudan, learned counsel for the respondents.

6. After very careful perusal of the judgement in O.A. 371/93, I find that the above contentions of the applicants have to be rejected. The portions extracted above clearly show that the same matter which is sought to be agitated in the present O.A. was before that Court, which after hearing both the parties and on the basis of the materials on record came to the conclusion on the facts and circumstances of the case that the applicant started living with his father w.e.f. 22.3.1990 and not from 1989 and, therefore, this O.A. is liable to be dismissed on the principles of res judicata. The latter part of the observations of the Tribunal is confined to the question relating to relaxation of the rules, which was held, could only be done by the competent authority and not by the courts. In that case, the Court had come to the conclusion that the applicant was living with the retired father only for a period of two years and four months and he, therefore, fell short of about eight months, to the period of three years prescribed under the relevant instructions for regularisation of the quarter in his name. The O.A. was accordingly dismissed.

7. The applicant has submitted that in pursuance of the judgement dated 2.3.1995 (O.A. 371/93), he had submitted a representation dated 4.4.1995 to the respondents. However, it is seen from this representation that although reference has been made to the judgement, he had requested the respondents to regularise the allotment in his name based on the evidence he had submitted, namely, that he had not drawn House Rent Allowance since 1.5.1989, he was married in December, 1989, was holding CGHS Card and Ration Card, etc., but it is pertinent

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to note that in this representation, he has not made any specific request to the authorities to relax the period of three years as ~~provided~~ ^{provided} ~~required~~ under the Rules.

8. Subsequently, both the applicants have been served show cause notice on 23.9.1996 in which the above facts have been narrated. The Tribunal in the order dated 2.3.1995 had rejected the prayers of applicant 1, and that of applicant 2, to regularise the quarter in his name which has been noted in the show cause notice. The submissions of Shri Krishan, learned counsel for the applicants, that the competent authority has not come to a decision in accordance with the provisions of Sections 4 and 5 of the P.P. Act, 1971 are also rejected. The issues which the applicants have tried to reagitate in the representation of 4.4.1995 as well as in the present O.A. already stand decided in the Tribunal's judgement dated 2.3.1995 in O.A. 371/93. The learned counsel for the applicants has tried to show that some of the documents that he relies upon in this O.A. might not have been placed before the competent authority earlier, but that again would not permit him to reagitate the same matter, as the same will be barred under the principles of constructive res judicata. It would also be relevant to note that in pursuance of the Tribunal's order dated 22.10.1996 in this case, the respondents have considered the applicant's representation dated 4.4.1995 and have rejected the same by the letter dated 14.1.1997 in which they have stated that since applicant 1 has not resided with his father continuously for a period of three years which is binding as per the rules for regularisation of the quarter in his name, the same has been rejected. This action of the respondents cannot be faulted as the relevant rules have been followed after ^{also} following the proper procedure and complying with the principles of natural justice.

JS

9. The learned counsel for the applicants has also relied on the judgement in Minoo Framroze Balsara Vs. Union of India (AIR 1992 Bom. 375). In the facts and circumstances of the case discussed above, this case is not applicable as it cannot be stated that the respondents have not followed the provisions of Sections 4 and 5 of the P.P. Act.

10. For the reasons given above, I find no good ground to justify any interference in the matter as it is barred by the principles of res judicata, apart from the fact that neither the rules nor the principles of natural justice have been violated in this case. The O.A., therefore, fails and is dismissed. The interim order is vacated. No order as to costs.

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

'SRD'