26

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA Nos.408/96, 326/96, 578/96, 611/96, 828/96, 877/96
923/96, 1222/96, 1223/96, 1341/96, 1624/96,
1641/96, 1672/96, 1674/96.

New Delhi this the 4 th day of November, 1996.

Hon'ble Shri S.R. Adige, Member (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

OA 408/96

Shri Manoj Kumar Mishra ... Applicant.
Son of late Sh. Bipin
Chandra Mishra,
Residing at 669-Z, Timar Pur,
Delhi

(By Advocate Shri B. Krishan)

Vs.

1. The Director of Estates, ...
Directorate of Estates,
Ministry of Urban Affairs &
Employment, 4th Floor 'C'
Wing, Nirman Bhawan,
New Delhi-110011.

2. The Estate Officer, Respondents.
Directorate of Estates,
4th Floor 'B' Wingh,
Nirman Bhawan,
New Delhi-110011.

(By Advocate Shri J.B. Banerjee, proxy counsel for
Shri Madhav Panikar.)

OA 326/96

Shri Satyendra Kumar Pandey, ... Applicant.
S/o late Shri S.P. Pandey,
Residing at G-290, Sri Niwas Puri
New Delhi.

(By Advocate Shri B. Krishnan)

V/s.

1. The Director of Estates
Dte of Estates, Ministry of
Urban Affairs & Employment
4th Floor, C-Wing, Nirman
Bhawan, New Delhi.

Contd. .. P.2

2. The Estate Officer
(Shri P.M Mishra)
Dte of Estates
4th Floor, 'B' Wing
Nirman Bhawan, New Delhi. ..... Respondents.

(By Shri Harvir Singh, Proxy Counsel for
Mrs. P.K Gupta, Counsel).

OA 578/96

Shri Baldev Raj
S/o Shri(Late) Laskari Ram
Working as Peon in the O/o P.A.O
M/o Urban Affairs & Employment
Nirman Bhawan, New Delhi. .... Applicant.
(None for the applicant)

V/s

1. Union of India
through Secretary
M/o Urban Affairs & Employment
Nirman Bhawan, New Delhi

2. Director of Estates
Nirman Bhawan
New Delhi. .... Respondents.

(By Advocate Shri J. Banerjee, proxy counsel
for Shri Madhav Panikar)

OA 611/96

Shri Kishan Lal
S/o Shri (Late) RamDass
R/o L-504, Sewa Nagar
New Delhi. .... Applicant.

(By Advocate Shri B. Krishan)

V/s

1. The Director of Estates
Dte of Estates
4th Floor, C-Wing
Nirman Bhawan, New Delhi.

2. The Estate Officer
Dte of Estates
4th Floor, 'B' Wing
Nirman Bhawan, New Delhi. .... Respondents.

(By Advocate Shri J. Banerjee, proxy counsel
for Shri Madhav Paniker).

Contd. .. P.3

28

OA 828/96

Shri Joginder
S/o Late Sh. Surjan
R/o Sector 1, Qtr No. 301
R.K Puram, New Delhi. .... Applicant

(By Advocate : None )

V/s

1. Union of India,
through the Secretary
M/o Urban Development
Nirman Bhawan, New Delhi.

2. The Director of Estate
Dte of Estate, Nirman Bhawan
New Delhi.

3. The Chief Engineer
New Delhi Zone-II
CPWD, Nirman Bhawan
New Delhi. .... Respondents

(By Advocate : SHri V.S.R Krishna )

OA 877/96

Shri Sunil Negi
S/o Shri (Late) A.S Negi
R/o Qtr No. H-417, Sarojini
Nagar, New Delhi. .... Applicant

(By Advocate : Shri B.B Rawal )

V/s

1. Union of India
through Secretary
M/o Science & Technology
New Mehrauli Road (Technology Bhawan)
Near Qutab Hotel, Katwaria Sarai
New Delhi.

2. The Director, Surey (AIR)
West Block,No.4, Wing No.4
R.K Puram, New Delhi.

3. The Director of Estates
M/o Urban Development
Nirman Bhawan, New Delhi. ..... Respondents

(By Advocate Shri R.V. Sinha)

Contd. ... P4

29

OA 923/96

Shri Surender Singh Rawat
S/o Shri (Late) Bachan Singh Rawat
R/o Qtr No.1215, Sector-III
M.B Road, New Delhi. ... Applicant

(By Advocate Ms. Manisha Nigam, Proxy counsel for Mrs. Avinish Ahlawat).

V/s

1. Union of India
through Chief Engineer
CPWD, Srinivas Puri
New Delhi.

2. Union of India,
through Dte of Estates
Nirman Bhawan, New Delhi. .... Respondents

(By Advocate Shri B. Lall)

OA 1222/96

Smt. Om Wati
W/o Late Shri Daya Pershad
R/o Sector-II/328
R.K Puram, New Delhi. ... Applicant

(By Advocate Shri B. Krishan)

V/s

1. The Director of Estates
Dte of Estates, M/o Urban Affairs & Employment, 4th Floor, C-Wing,
Nirman Bhawan, New Delhi.

2. The Estate Officer
Dte of Estates
4th Floor, B-Wing, Nirman Bhawan
New Delhi. .... Respondents

(By Advocate Shri B.Lall)

OA 1223/96

Shri Jagdish Chand
S/o Late Shri Jagat Ram
R/o Sector 2/297, R.K Puram
New Delhi. .... Applicant

(By Advocate Shri B. Krishan)

V/s

1. The Director of Estates
Dte of Estates, 4th Floor,
C-Wing , Nirman Bhawan
New Delhi.

Contd. ... P.5

2. The Estate Officer
Dte of Estates
4th Floor, B-Wing
Nirman Bhawan, New Delhi. ... Respondents

(By Advocate Shri Harveer Singh, proxy counsel for Mrs. P.K Gupta)

OA 1341/96

Smt. Modri Devi
W/o Late Shri Bhagwan Singh
R/o 29/407, DMS Colony
Hari Nagar, New Delhi .... Applicant

(By Advocate Shri R.S Rawat)

V/s

1. The Union of India
through the Secretary to the
Govt. of India, M/o of Agriculture
Deptt. of A.H & Dairying, Krishi Bhawan
New Delhi.

2. The General Manager
Delhi Milk Scheme
West Patel Nagar
New Delhi - 8. ... Respondents

(By Advocate Shri Harveer Singh, proxy counsel for Mrs. P.K Gupta)

OA 1624/96

Shri Aditya Joshi
S/o Shri (Late) B.C Joshi
3-II-F 949, Timar Pur
Delhi. ... Applicant

(By Advocate Shri Rajinder Nischal)

V/s

1. Union of India
through Secretary
Ministry of Urban Affairs & Employment
Nirman Bhawan, New Delhi.

2. Director of Estates
Nirman Bhawan, New Delhi.

3. Director General (Audit)
Central Revenue, AGCR Bldg
New Delhi. ... Respondents

(By Advocate Shri V.S.R. Krishna )

Contd. ... P.6

OA 1641/96

Kumari Dolly
D/o Late Shri Madan Mohan
R/o H-370, Sriniwas Puri
New Delhi. .... Applicant

(By Advocate Shri B. Krishan)

V/s

1. Director of Estates
Dte of Estates
4th Floor, C-Wing , Nirman Bhawan
New Delhi.

2. The Estate Officer
Dte of Estates
4th Floor, B-Wing, Nirman Bhawan
New Delhi. ... Respondents

(By Advocate Shri R.V Sinha )

OA 1672/92

Shri Rajinder Prasad
S/o Late Shri Faqir Ram
R/o 633, Lodhi Road Complex
New Delhi. ... Applicant

(By Advocate Shri B. Krishan)

V/s

1. The Director of Estates
Dte of Estates
4th Floor, C-wing, Nirman Bhawan
New Delhi.

2. The Estate Officer
Dte of Estates,
4th Floor, B-Wing, Nirman Bhawan
New Delhi. .... Respondents

(By Advocate Ms. Aparna Bhatt )

OA 1674/96

Shri Rahul Jain
S/o Late Shri S.K Jain
R/o C-100, Kidwai Nagar
New Delhi. ... Applicant

(By Advocate Shri B. Krishan)

V/s

1. The Director of Estates
Dte of Estates
4th Floor, C-Wingh, Nirman Bhawan
New Delhi.

By Estate Officer

Contd. ... P.7

2. The Estate Officer,
Dte of Estates,
4th Floor, B Wing, Nirman Bhawan,
**New Delhi.** ..Respondents

(By Advocate Shri B. Lall)

O R D E R

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

O.A. 408/96 (Manoj Kumar Mishra Vs. The Director of Estates and Anr.) together with 13 other cases were taken up together with the consent of the parties as these cases raise similar issues of facts and law arising out of the recent judgements/orders of the Hon'ble Supreme Court in **Shiv Sagar Tiwari Vs. Union of India & Ors.**(Writ Petition (Civil) No. 585 of 1994) (hereinafter referred to as the 'S.S. Tiwari's case'). It was also generally agreed by the learned counsel for the parties that O.A. 408/96 may be taken up in the first instance which more or less covers all the other cases.

2. In O.A. 408/96, the applicant's father died in service on 25.12.1993 while working as Superintendent Grade-I Officer of DASS. On 31.1.1994, the applicant applied for compassionate appointment and he was so appointed on 1.3.1995. Since he is aggrieved by the letter dated 29.1.1996 rejecting his request for regularisation of the quarter which had been earlier allotted to the father while he was in service, he has filed this O.A. seeking a direction to the respondents to regularise the quarter

in his name atleast from the date of his appointment and preferably from the date of cancellation w.e.f. 26.12.1994. The reason given in the rejection letter is that his request for regularisation of the quarter was not covered under the existing guidelines. The relevant point to note here is that between the date of death of the father and the appointment of the son, more than 12 months had elapsed. This is the permissible period provided under SR 317 B-11 under which on the death of the allottee the family could reside in that quarter for a period of 12 months. In the O.M. dated 13.4.1989 on the subject of ad hoc allotment, it is also provided that a request for ad hoc allotment can be considered in case the dependent gets employment in an eligible office even after the death of the officer provided such an appointment is secured within a period of 12 months after the death of the officer and the accommodation in occupation of the officer had not been vacated. The learned counsel for the applicants, Shri B. Krishan, has challenged the rejection letter on a number of grounds, which are common to most of the other 13 cases taken up. The other 13 cases are also more or less on similar facts, with variation of dates only, and in order to facilitate the matter, a chart has been prepared in all these 14 cases giving the information, as below:

| SL. NO. | O.A. NO. | DATE OF DEATH OF FATHER IN SERVICE | DATE OF APPLICATION BY WIDOW/APPLICATION FOR COMPASSIONATE APPOINTMENT | DATE OF COMPASSIONATE APPOINTMENT OF APPLICANT | PERIOD BETWEEN COL.3 & 5 | WHETHER THERE IS A LETTER FROM RESPONDENTS REGARDING ADMINISTRATIVE DELAY IN APPOINTMENT |
|---|---|---|---|---|---|---|
| 1. | OA 408/96<br>M.K. MISRA<br>V/s<br>DTE.OF ESTATE | 25.12.1993 | 31.01.1994 | 01.03.1995 | 1 YR.2 MONTHS & 5 DAYS | NO |
| 2. | OA 877/96<br>SUNIL NEGI<br>V/s<br>1. M/O SCIENCE & TECHNOLOGY<br>2. DIRECTOR, SURVEY<br>3. DTE.OF ESTATE | 08.02.1992 | 22.01.1993 | 17.08.1995 | 3 YR.6 MONTHS | YES |
| 3. | OA 828/96<br>JOGINDER<br>V/s<br>1. M/O URBAN DEVELOPMENT<br>2. DTE.OF ESTATE<br>3. THE CHIEF ENGINEER, C.P.W.D. | 30.05.1993 | 11.06.1993 | 29.05.1995 | 2 YR. | NO |
| 4. | OA 611/96<br>KISHAN LAL<br>V/s<br>DTE.OF ESTATE | 27.08.1993 | IMMEDIATELY AFTER THE DEATH OF FATHER/ DATE NOT MENTIONED | 28.10.1994 | 1 YR.2 MONTHS | NO |
| 5. | OA 923/96<br>S.S. RAWAT<br>V/s<br>1. CHIEF ENGINEER, CPWD<br>2. DTE.OF ESTATE | 05.07.1993 | 20.08.1993 | 08.03.1995 | 1 YR.7 MONTHS | NO |
| 6. | OA 1641/96<br>KUMARI DOLLY<br>V/s<br>DTE.OF ESTATE | 25.11.1992 | DATE NOT MENTIONED | 26.04.1995 | 2 YR.5 MONTHS | NO |
| 7. | OA 1672/96<br>RAJENDRA PRASAD<br>V/s<br>DTE.OF ESTATE | 15.12.1993 | DATE NOT MENTIONED | 31.07.1996 | 2 YR.7 MONTHS & 16 DAYS | NO |
| 8. | OA 1222/96<br>SMT. OM WATI<br>V/s<br>DTE.OF ESTATE | 03.12.1993 | 03.02.1994 | 17.02.1995 | 1 YR.2 MONTHS & 15 DAYS | NO |
| 9. | OA 1223/96<br>JAGDISH CHAND<br>V/s<br>1. DTE.OF ESTATE<br>2. ESTATE OFFICER | 24.08.1992 | 25.09.1992 | 22.08.1994 | 1 YR.11 MONTHS & 5 DAYS | DELAY AS THE APPL WAS MINOR |

| SL. NO. | O.A. NO. | DATE OF DEATH OF FATHER IN SERVICE | DATE OF APPLICATION BY WIDOW/APPLICATION FOR COMPASSIONATE APPOINTMENT | DATE OF COMPASSIONATE APPOINTMENT OF APPLICANT | PERIOD BETWEEN COL.3 & 5 | WHETHER THERE IS A LETTER FROM RESPONDENTS REGARDING ADMINISTRATIVE DELAY IN APPOINTMENT |
|---|---|---|---|---|---|---|
| 10. | OA 1341/96<br>SMT. MOORI DEVI<br>V/s<br>1. M/O AGRICULTURE (DEP.OF A.H. & DAIRYING)<br>2. DELHI MILK SCHEME | 17.02.1991 | 16.03.1991 | 10.10.1995 | 4 YR.6 MONTHS | CASE FILED BY THE APPLICANT FOR COMPASSIONATE APPOINTMENT IN TRIBUNAL. IN THE JUDGEMENT DT.04.09.1992 THE RESPONDENTS WERE DIRECTED TO APPOINT THE APPLICANT WITHIN EIGHT WEEKS FROM RECEIPT OF THE JUDGEMENT. NO SEPERATE LETTER BY THE RESPONDENT FOR JUSTIFYING THE DELAY IN APPOINTMENT BUT IT IS MENTIONED IN THE REPLY TO THE PRESENT OA THAT DELAY WAS DUE TO LACK OF VACANCY. |
| 11. | OA 1624/96<br>ADITYA JOSHI<br>V/s<br>1. M/O URBAN AFFAIRS & EMPLOYMENT<br>2. DTE.OF ESTATE<br>3. D.G., GENERAL REVENUE | 26.02.1992 | 13.04.1992 | 15.07.1993 | 1 YR.4 MONTHS & 17 DAYS | NO |
| 12. | OA 326/96<br>S.K. PANDEY<br>V/s<br>DTE.OF ESTATE | 11.05.1993 | 17.05.1993 | 20.09.1995 | 2 YR.4 MONTHS & 9 DAYS | NO |
| 13. | OA 578/96<br>BALDEV RAY<br>V/s<br>1. M/O URBAN AFFAIRS & EMPLOYMENT<br>2. DTE.OF ESTATE | 02.11.1993 | 06.12.1993 | 27.03.1995 | 1 YR.3 MONTHS & 26 DAYS | YES (12.02.1996) |
| 14. | OA 1674/96<br>RAHUL JAIN<br>V/s<br>DTE.OF ESTATE | 14.10.1994 | DATE NOT MENTIONED | 30.07.1996 | 1 YR.9 MONTHS & 16 DAYS | NO |

3. In Rajendra Prasad Vs. Directorate of Estates (O.A. 1672/96) and Rahul Jain Vs. Directorate of Estates (O.A. 1674/96), the applicants have been appointed on compassionate grounds after the respondents have issued the O.M. dated 22.5.1996, i.e. on 31.7.1996 and 30.7.1996 respectively. No separate arguments were advanced by the learned counsel in these cases on this O.M. However, in all the 14 cases dealt with here the most important fact is that from the date of death of the father in service, the widow, son or other near relative has been appointed on compassionate grounds more than 12 months after that event, but they all continue to reside in the Government accommodation allotted to the deceased officer.

4. In some of the cases, namely, at Serial Nos 4,6,9 and 13 above, the respondents have not filed a written reply but the learned counsel submit that it was not necessary as the issues were the same as in the other O.As where pleadings are complete. They have, however, submitted oral arguments.

5. Shri B. Krishan, learned counsel for the applicants in O.A. 408/96, who also opened the arguments in all these cases, submits that while rejecting their request for regularisation of the quarter, the Director of Estates has done so without application of mind and without consideration of the circumstances under which the compassionate appointment has been granted. According to him, the power

of relaxation of the Rules under SR 317-B-25 i.e. the power of the Government to relax all or any of the provisions for reasons to be recorded in writing in the case of any officer or residence or class of officers or type of residences has not been effected which is still available to the applicants. He, therefore, submits that the Tribunal should exercise its powers to give necessary guidelines to the respondents in respect of regularisation of the quarters in such circumstances, where admittedly the rules do not apply, in order to assist the persons like the applicants whose cases have to be looked into most sympathetically. He submits that as laid down by the Supreme Court in **S.P. Sampath Kumar Vs. Union of India & Ors.** (ATR 1987(1) SC 34) (See also **K.P. Gupta Vs. Printing and Stationery** (AIR 1996 SC 408)) and **H.P. Electricity Board Vs. Tirath Raj** (AIR 1996 SC 615), since the Tribunal has been contemplated as a substitute of the High Court in service matters, the Tribunal should exercise the powers under Article 226 of the Constitution to lay down the guidelines for the respondents to exercise the powers of relaxation in these cases where the appointment on compassionate grounds is more than 12 months from the date of death of the Government servant.

6. Another argument advanced by the learned counsel for the applicants was that admittedly the respondents have not given the appointment to the applicants

within one year after the death of the father, although they have applied well in time, but for this lapse on the part of the respondents they should not be penalised. He relies on para 5 of the O.M. dated 13.4.1989 and submits that where the facts justify ad hoc allotment of the quarter in individual cases on extreme compassionate grounds, then the Hon'ble Minister-in-Charge should apply his mind and decide each case on merits. He has referred to the Supreme Court decision of **S.S. Tivari's case (supra)** in **T.J. Paul's case** where, according to him, the daughter who had been appointed on 21.7.1995 after the death of the father in December, 1992, got the house which had been earlier allotted to her father regularised in her name. He submits that the Hon'ble Supreme Court vide their order dated 21.9.1995 had directed the daughter to contact the Director of Estates and deposit the penal rent for this purpose. They also relies on the orders given in the case of **W.D.J. Imti in S.S. Tivari's case.** However, in that case the Supreme Court directed the Directorate of Estates to offer the accommodation of the entitled type to Mrs Tiala who was also ordered to vacate the house No. D-II/85, Kidwai Nagar on or before 31.10.1995. This case will, therefore, not assist the applicants.

7. He also relies on the judgements of the Supreme Court in **Smt. Phoolwati Vs. Union of India** (AIR 1991 SC 469) and **Sushma Gosain Vs. Union of India** (AIR

1989 SC 1976). He submits that in cases of compassionate appointment there should be no delay in the appointment and, therefore, any delay on the part of the respondents to make the compassionate appointments in favour of the applicants cannot be held against them for no fault of theirs. Thereafter, the right for consideration for regularisation of the quarter in their names will arise only from the date of such appointment. Further relying on certain decisions of the Tribunal, namely, **Shadi Zaman Vs. Union of India** (O.A. 345/90, decided on 1.2.1991), **Sitabi Devi Vs. Union of India** (O.A. 2139/95 decided on 10.4.1996), **Swaran Lata Bahal Vs. Union of India & Ors.** (O.A. 3477/93, decided on 3.5.1995) and **Sushma Verma Vs. Union of India & Ors.** (O.A. 1375/93 decided on 3.5.1995), the learned counsel submits that judicial propriety requires that the Division Bench judgements of the Central Administrative Tribunal should be followed by this Bench as there was need for consistency of decisions.

8. The learned counsel for the applicants in the other connected cases who were present in the Court also made their submissions more or less on the above lines. In addition, Shri B.B. Raval, learned counsel for the applicant in **Sunil Negi's case** (O.A. 877/96), has strenuously argued the point that it was not possible for the applicant to procure the appointment within the stipulated period of 12 months.

In this case, he has also submitted that the respondents have admitted their fault in the delay for which this applicant in any case should not be penalised and the respondents should, therefore, be directed to regularise the quarter in his name.

8. The learned counsel representing the respondents in the above cases have submitted that in the aforesaid cases the matter is settled by the Hon'ble Supreme Court in recent decision in **S.S. Tiwari's case** and in particular the judgement in **Kehar Singh's** case.

**9.** **The applicants have, on the other hand also, relied on the same case where the Supreme Court had** permitted the applicant to make a representation to the Director of Estates in accordance with the rules by the order dated 16.10.1995. However, by the order dated 12.12 1995 the Court had ordered the son of Shri Kehar Singh to vacate the house in his possession and hand over vacant possession to the Central Public Works Department (CPWD) on or before

6.1.1996. The respondents have, therefore, submitted that since the Supreme Court had ordered vacation of the quarter in all these cases where the dependent got appointment after the permissible period of 12 months after the death of the Government servant, the present cases also merit no consideration and rejection on the same lines. They have also submitted that in the case of **T.J. Paul** who died in 1992 and his daughter Shairly Paul who got appointment in July, 1995, she has also been held as not entitled for regularisation of the quarter by the Supreme Court's order dated 12.12.1995. The respondents have in the counter affidavit in O.A. 408/96 submitted that the applicant's case is covered under O.M. dated 13.4.1989, but keeping in view the interim orders dated 17.7.1995 passed by the Hon'ble Supreme Court suspending the powers of relaxing the allotment rules under SR 317-B-25, the applicant's request cannot be acceded to.

10. We have carefully considered the arguments advanced by the learned counsel for the applicants and the respondents.

11. In the present cases, the applicants are seeking regularisation of the Government accommodation which had been earlier allotted to their father while in service. As per the existing instructions contained in O.M. dated 13.4.1989 read with O.M. dated 13.7.1981, such a request for ad hoc allotment to an eligible dependent may be considered in case the dependent

gets employment in an eligible office even after the death of the officer provided such an appointment is secured within a period of 12 months after the death of the officer and accommodation in occupation of the officer had not been vacated. In all these cases, even though the period between the death of the father/deceased employee and the appointment of the eligible dependent on compassionate grounds has been well over the period of 12 months, the family of the deceased has continued in occupation of that quarter when as per the rules they had no legal right and could have been evicted, if the respondents had taken action in time as they were required to do. This is so, because others who are in turn entitled to allotment of government accommodation have been denied their rights for no fault of theirs.

12. The main contention of the applicants in these cases is that since they have all been appointed on compassionate grounds which required extreme sympathy, therefore, in terms of para 5 of the O.M. dated 13.4.1989, a decision should be taken by the competent authority, i.e. the Government to further relax the allotment rules under SR 317-B-25 in each of these cases on merits as their cases should be considered sympathetically. The learned counsel for the applicants have submitted that the very fact that the dependents of the deceased employees have been given appointments on compassionate grounds show that these people are very deserving cases for

consequent relief of relaxation of the allotment rules so that the quarter they have been occupying for a number of years could be regularised in their names. While it may be correct to say that the persons obtaining appointment on compassionate grounds on the death of the Government employee in service fulfil the criteria laid down by the Government in the Scheme for such appointment, including the criteria of indigent circumstances deserving consideration of their case favourably, that by itself does not, in our opinion, entitle them for other benefits of ad hoc allotment/regularisation of the quarter allotted to the deceased Government servant unless they fulfil the conditions laid down in the latter Scheme. May be, in such cases, it is also possible that some delay has occurred on the part of the respondents in making the compassionate appointments, but in some of these cases it is also possible that even in spite of the best efforts, because of more deserving cases which had to be accommodated earlier, the applicants' appointments might have been delayed beyond the permissible period of 12 months. Besides, even if a compassionate appointment has been secured after 12 months after the death of the government officer, that still helps

the family to tide over the financial crisis and having a bread winner, if not a ready roof on their heads. The observation of the Supreme Court in **S.S. Tiwari's case** of **Mrs. Bhakti Sharma** dated 16.10.1995 is relevant on this point. If, as submitted by the applicants in all such cases of compassionate appointments beyond the period of 12 months, the cases have to be dealt with on merits in individual cases in relaxation of the allotment rules under SR 317-B-25, then it is possible that relaxation will become the rule rather than an exception which cannot be the intention of the framers of the rules. We also find that the period of 12 months provided in the relevant rules/ instructions for retention and regularisation of the quarter in the name of the near relative on the death of a government servant in service is neither arbitrary or unreasonable. Any extension of this period will have to be uniformly applied as a policy decision to be taken by the Government of India taking into account the relevant factors like the average number of compassionate appointments for a year, the availability of houses, the period other employees are waiting for allotment of quarters who are appointed in similar posts, and so on. As at present, the persons who get appointment on compassionate grounds by relaxation of the rules, for example, regarding age and educational qualifications cannot also get benefit of allotment of a quarter on out of turn/ ad hoc basis unless they satisfy the conditions for such allotment. In such a situation, it is also very much necessary to keep in view the recent orders/judgements of the Hon'ble Supreme Court in **S.S. Tiwari's case (Supra)** more popularly known as the 'Housing Scam Case'.

13. The Supreme Court in **S.S. Tiwari's case** and in particular in **Kehar Singh's case** by the order dated 12.10.95 had allowed the applicant to make a representation to the Directorate of Estates to consider his case in accordance with the rules. The facts of the above case are that Mr. Kehar Singh was allotted H.No.1084,LR Complex. He died in harness on February 23, 1994. His family was permitted to stay in the house till February 24, 1995. Meanwhile, his son Satish Singh Narial had been given a Class-IV job on compassionate grounds. The Court has stated in this order that normally, a person living with his deceased father who is given employment on compassionate grounds, is entitled to the transfer of the house in his name, but the Directorate of Estates has, however, stated that this could only be done within one year of the death of the allottee. In the circusmtance, the Court had ordered the Directorate of Estates to consider the representation of the applicant.

14. In a later order dated 19.10.1995 in the case of **Mr. Keshar Singh**, Mr. Keshar Singh was allotted House No. 843, Sector-II, Sadiq Nagar. He expired on December 31, 1993. His son Mr. Virender Singh Rawat got a job of Khalasi Electrical in CPWD on April 17,1995. The status of the job has not been mentioned. The Supreme Court held, 'In any case since he got employment more than one year after the death of the original allottee he is not entitled to the transfer of the house in his name. We direct Mr. Virender Singh Rawat and the family members of Mr. Keshar Singh to vacate the premises before December 15, 1985 and hand over vacant possession to the CPWD'. (Emphasis added) Below this case there is a note which reads as under:

> "There are a large number of cases where after the death of the Government servant, his ward/ dependent got Government service on compassionate

grounds more than one year after the death. Mr. K.T.S. Tulsi has invited our attention to the Government Memorandum which states that a ward/dependent who gets employment on compassionate grounds one year after the death of his parent/guardian, he would not be entitled to the transfer of the house in his name. We have been passing orders following this Rule. Mr. Tulsi has brought to our notice that on earlier occasions we have passed 2-3 orders where regularisation has been made in favour of those dependents who got job on compassionate grounds more than one year after the death of the allottee Government servant. He may bring all those cases to our notice by way of a review application so that consistency is maintained by this Court".

The respondents have in the reply in O.A. 408/96 submitted that the Supreme Court in the case of Mr. Kehar Singh vide their order dated 12.12.1995 directed as under:

> "Mr. Tulsi states that Mr. Satish Singh Narial got govt. appointment more than one year after the death of Mr. Kehar Singh and as such he is not entitled for regularisation of the house. We direct Mr. Satish Singh Narial to vacate the house in his possession and hand over possession to CPWD on or before January 31st, 1996".

15. We also note the submissions made by the respondents that the Supreme Court vide order dated 17.7.95 have suspended the powers of the Govt. to relax the allotment rules under SR 317-B-25 and hence the

applicants' request for consideration of their cases under this power cannot be acceded to. None of the counsel for the applicants has disputed this position nor anything has been placed on record to the contrary. It is settled law that the decision of the Supreme Court is binding on all Courts under Article 141 of the Constitution of India. There is also no doubt that the facts and situation before the Supreme Court and those raised here in these cases before us are similar and in the light of the aforesaid orders of the Supreme Court, we do not think that it will either be proper or justified for this Tribunal to pass any orders to the contrary. The Supreme Court has also not made any distinction on the question whether the delay beyond 12 months has been caused as a result of any delay or wrongful action of the respondents and, therefore, we do not think that at this stage we can give a direction to the respondents to relax the rules in individual cases as claimed by the applicants. Out of the 14 cases before us, we note that in 8 cases the delay is between one and two years and in the other cases it is beyond 2 years and in one case (O.A.1341/96 - item No.10), the period is $4\frac{1}{2}$ years, although the applicant got the appointment in pursuance of the judgement of the Tribunal dated 4.9.1992. Looked at from another angle, it means that the family of the deceased Government servant continued to stay in the quarter beyond the permissible period of 12 months, thereby illegally depriving another Government servant for allotment of Government quarter in turn.

20. Shri B.B. Raval, learned counsel for the applicant in O.A. 877/96 laid much stress on the fact that the respondents have admitted their fault in causing delay in giving the compassionate appointment for which the applicant should not be made to suffer. In the letter dated 13.9.1995 issued by an officer of Respondent 2 to Respondent 3, he has stated that the applicant could not be offered the post immediately after the death due to administrative formalities/reasons. We are unable to agree with the allegations made by the applicant that the respondents have admitted their 'fault' in this case. We are also not impressed by the above argument. Even assuming that in a case an officer in the respondents' office accepts his default and tardiness in doing his duty, in that case it is a matter for the concerned department of the Government to look into the matter as to whether necessary action should be taken against that officer for his admitted default; but that admission by itself, however, will not assist the applicant. In the context of the facts and judgement of the Supreme Court in S.S. Tiwari's case, the need to curb such ad hocism and pick and choose methods is of paramount importance in the general interest of upholding the rule of law and the interests of other deserving government employees in public interest.

21. Regarding the question of issuing guidelines, as expressed by the learned counsel for the applicants, we are of the view that it will be for the respondents to formulate the same taking into account the relevant factors including any further directions/orders which will be issued by the Supreme Court in the matter subjudice before them in **S.S. Tiwari's case** and it is not for this Tribunal at this stage to give any directions to the respondents(See also the observations of the Supreme Court in **Common Cause: A Registered Society Vs. Union of India & Ors.** (JT 1996(8) SC 613) in which it has been held that Government should lay down guidelines and policy as to how preference be assigned to the persons in same category or class and the need to follow the guidelines and procedures).

22. **In the facts and circumstances of the case, and having regard to the aforesaid orders/judgements** of the Supreme Court in **S.S. Tiwari's case** and considering also that this matter is still subjudice before the Hon'ble Supreme Court, we at this stage do not think that it will be in the fitness of things to order the respondents to consider regularisation of the quarters in the case of the applicants who do not strictly fall within the provisions of the O.M. dated 13.4.1989, by further relaxing the allotment rules under SR 317-B-25. The claims of the applicants are, therefore, rejected. The applicants are directed to hand over vacant possession of the quarters occupied by them and their families to the competent authority, i.e. the Director of Estates within a period of 30

days and in any case on or before 4th .12.1996.

23. The aforementioned O.As are dismissed, as above. No order as to costs.

(Smt.Lakshmi Swaminathan)
Member(J)
4/11/96

(S.R.Adige)
Member(A)

'SRD'

Attested
Sivaprakash
5/11/96
CC(11)