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Central Administrative Tribunal, Principal Bench

O.A.No.1057/96.

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

New Delhi, this 18th day of February, 1997

Ghulam Sabir
s/o late Shri Ramzan Khan
C-249, Minto Road Complex
New Delhi - 110 002:, Applicant

(By Shri Asrar Ahmad, Advocate)

Vs.

1. Union of India through
- The Secretary to the Ministry
of Urban Development
Govt. of India, Nirman Bhawan
New Delhi.
2. The Director of Estates
- Directorate of Estates
Ministry of Urban Development
Govt. of India, Nirman Bhawan
New Delhi. Respondents

(By Shri M.K.Gupta, Advocate)

O R D E R

The applicant's father was a permanent Government employee of All India Radio in Delhi, when he was allotted a Government accommodation No.C-249, Minto Road Complex, New Delhi. He took the possession of the said quarter on 4.4.1994 but unfortunately he expired within a short period on 29.5.1994. The applicant was given compassionate appointment within one year of the death of his father on 19.4.1995 and he made an application for ad-hoc allotment of the accommodation allotted to his father on 21.4.1995, which was received by the respondents on 1.5.1995. The request for the adhoc allotment made by the applicant was also rejected by the impugned order of rejection. The applicant has now come before this Tribunal.

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2. The applicant states that since his father, allottee of the house, died within a short period of being allotted the Government accommodation, it had not been possible for him to get his ration card and CGHS card transferred to the new accommodation from ~~Shilampura~~ ^{Saif} where he had earlier stayed in rented accommodation. The change of ration card was effected from 28.2.1995. The applicant contends that the respondents did not take into account the facts and circumstances of the case while passing the impugned order.

3. The respondents state in reply that not only the ration card was made on 28.2.1995 but even the death certificate of the deceased Government employee shows his address in ~~Shilampura~~. This in the view of the respondents clearly establishes that the original allottee had not yet shifted to the Government accommodation at the time of his death.

4. I have heard the counsel on either side and perused the record. The father of the applicant died within two months of being allotted the Government accommodation. In the circumstances the explanation that he did not have sufficient time to get a CGHS card changed would appear plausible. However, it is not established one way or the other, whether the original allottee of the accommodation had actually moved to the new premises. There is then the matter of death certificate in which the address is shown as original private accommodation where the father of the applicant was living prior to the allotment of the Government accommodation. This again would not be a conclusive proof whether shift had taken place or not. It is of course correct as contended by the learned counsel for the respondents that the Tribunal would not go into the question of fact adjudication. Nevertheless,

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it was incumbent upon the Director of Estates before passing the impugned order to give an opportunity to the applicant, in case he had any doubt, to produce any additional proof to establish that his father had moved to the new premises. On the other hand, the impugned order itself is totally ~~bad~~ ^{sold} so far as the grounds of rejection are concerned. All that it states is that the request has been very carefully considered but it has not been found possible to accede to the same. The applicant had a *prima facie* case under the rules inasmuch as he obtained the compassionate appointment in the same department within the stipulated period of one year. Normally the presumption would be that he was staying in that premises with his father. If a contrary view was being taken by the respondents then they should have atleast given the reasons for coming to such a view. This as has been noted above, was not done.

5. In the facts and circumstances of the case, the impugned order is set-aside. The respondents will give an opportunity to the applicant to produce such further proof as may be required to support his claim that the family had shifted to the allotted premises. To that end, the applicant may file further representation to the respondents within a period of one month from the date of receipt of a copy of this order. Thereafter the respondents will dispose of the representation with a speaking order within a period of one month ^{fuller or} thereafter. The applicant will not be disturbed from his possession till then nor will be charged more than the normal licence fees. No costs.

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

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