

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

27

O.A./~~XXX~~ No 1621/97

with

oa Nos. 1441 and 1591 of 1997

Decided on: 9.10.98

Mrs. Vinod Bibra and... Applicant(s)
Others

(By Shri B. Krishan and Advocate)
Shri surinder singh

Versus

U.O.I. & OthersRespondent(s)


(By Shri R.V. Sinha, Advocate)
Shir anand Mishra and shri S.M. Arif

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or yes
not?
2. Whether to be circulated to the other Benches no
of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1621 of 1997

with

O.A. No. 1441 of 1997

O.A. No. 1594 of 1997

New Delhi this the 9th day of October, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

O.A. 1621 of 1997

1. Mrs. Vinod Bibra
W/o Shri M.P. Bibra
R/o 5/612 Lodi Colony,
New Delhi-110 003.

2. Shri M.P. Bibra
S/o Shri Hari Ram Bibra
R/o 5/612 Lodi Colony,
New Delhi.

.....Applicants

By Advocate Shri B. Krishan.

O.A. 1441 of 1997

1. Smt. Chander Kanta Kasturia
W/o Shri O.P. Kasturia
R/o Sector-12/254,
R.K. Puram,
New Delhi-110022.

2. Shri O.P. Kasturia
S/o Late Shri Dev Raj
R/o Sector-12/254, R.K. Puram,
New Delhi-110 022.

.....Applicants.

By Advocate Shri Surinder Singh.

O.A. 1594/1997

Mrs. Matilda Tigga
W/o Late Shri Paul L.K. Tigga
R/o F-42, Moti Bagh,
New Delhi.

...Applicant

By Advocate Shri B. Krishan.

Versus

1. Union of India through its
Secretary, Ministry of Urban Development,
1st Floor, 'C' Wing,
Nirman Bhavan,
New Delhi-110 011.

2. The Director of Estates,
Directorate of Estates,
4th Floor, 'C' Wing,
Nirman Bhavan,
New Delhi-110 011.
3. The Estate Officer,
Directorate of Estates,
4th Floor, 'B' Wing,
Nirman Bhavan,
New Delhi-110 011.
4. The Law Secretary,
Land and Building Department,
Government of National Capital Territory of
Delhi,
'A' Block, Vikas Bhavan,
Indra Prastha Estate,
New Delhi-110 002. ... Respondents

Shri R.V. Sinha, learned counsel for respondents
in O.A. 1621/97 and O.A. 1594/97.

Shri Anand Mishra, learned counsel for respondent No.4 in
O.A. 1621/97 through learned proxy counsel with Shri M.R.
Mishra.

Shri R.V. Sinha, learned proxy counsel for Shri S.M. Arif,
Counsel for the respondents in O.A. 1441/97.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

These three applications seek similar reliefs
and are based on similar set of facts and are, therefore,
heard together and are disposed of by this common order.

2. Applicants seek to quash the respondent's O.M.
dated 27.12.1991 and also the eviction order passed by the
Estate Officer (respondent No.3) against them. Applicants
herein are all teachers in various schools under the
Government of NCT. While the applicant (1) in O.A.
1594/1997 seeks regularisation of the accommodation
allotted to her late husband, when he was in service in
the Union Government, the other applicants (1) in O.A.
Nos. 1441 and 1621 of 1997 seek regularisation of

30

accommodation allotted to their husbands, on their retirement from Central Government service. Respondents, in pursuance of the O.M. dated 27.12.1991, have held that the applicants were not entitled to either regularisation or allotment of the residences under the Central Pool, by the O.M. *ibid*. Since the school under the Government of NCT are not eligible offices for the purposes of allotment of General Pool accommodation, the applicants who are teachers in these schools cannot be allowed the regularisation/ allotment of residences, originally allotted to their husbands as Central Government servants. The respondents assert that the applicants have to seek accommodation under the NCT Government's own pool of accommodation. The impugned eviction orders have been passed in these cases, which have been stayed by the interim order of the Tribunal. The applicants, assail the Government Policy contained in the aforesaid O.M. dated 27.12.1991 on the ground that it is discriminatory, inasmuch as the respondents viz. Directorate of Estates has included several offices of the Government of NCT as eligible offices for the purposes of allotment of General Pool accommodation, but have excluded only the teachers in Government of NCT schools.

3. The learned counsel for the applicant in O.A. 1594/97 argued at great length and stressed the following:-

31

(i) The policy of excluding the teachers of Government of NCT Schools for allotment of General Pool Accommodation besides being discriminatory, is not based on intelligible differentia. Some of the teaching institutions like College of Engineering and Govt. Polytechnics are included in the list of eligible offices, and there is no ground to exclude the schools of Government of NCT.

(ii) The teachers of Government of NCT schools come under the jurisdiction of Directorate of Education, Government of NCT, which is an eligible office under the said O.M. dated 27.12.1991 and they are also part and parcel of the Directorate of Education, as teaching staff cannot be separate from other staff of the Directorate.

(iii) Under the provisions of SR 317 (B), the applicant in OA 1621/97 could not have applied for the accommodation in the NCT Pool, when she was already living in the accommodation allotted to her husband till his retirement. Her application for NCT Pool, after the retirement of the applicant is still pending.

(iv) The applicant has an actionable claim for regularisation and as her claim is liable to be accepted by respondents, the eviction proceedings are illegal and unwarranted.

32

(v) The respondents, in the past, have allotted General Pool accommodation to several teachers. He also has cited orders of the Tribunal in several cases particularly in the case of Smt. Maya Dubey in OA 201 of 1994.

4. The learned counsel for the respondents argued that as a matter of policy it was decided that Teachers in Government of NCT Schools were not made eligible for General Pool accommodation. These teachers are, however, eligible for NCT Pool of accommodation according to their seniority and there was no bar for applying for the same. The learned counsel pointed out that in these cases, these applicants have sought for regularisation of the General Pool accommodation which was allotted to their husbands and this is not permissible in terms of the O.M. dated 27.12.1991. The learned counsel pointed out that, the Apex Court in Shiv Sagar Tiwari's case had considered the cases of some teachers of NCT Schools and on being pointed out the decision in O.M. dated 27.12.1991, had not interfered with the same and had ordered the concerned teachers to vacate the General Pool accommodation.

5. We have heard the learned counsel for the parties and have perused the record.

6. The learned counsel for the applicants have challenged the vires of O.M. dated 24.12.1991, annexed by the applicants. From this circular it is made clear that the teachers of schools of Delhi Administration were not

(33)

declared eligible. However, it is stated therein, that since the Delhi Directorate of Education is one of the eligible offices, certain allotments were made in the past on the basis of certificate issued by Delhi Administration. It is further stated that the question of declaring these schools as eligible offices has been specifically considered on the representation of teachers and other staff working in Govt. Schools and it has been decided that teachers and other staff of Delhi Administration will not be eligible for initial allotment (in turn as well as ad hoc) from General Pool in Delhi. It is also provided that allotment already made will not be disturbed. The Apex Court in S.S. Tiwari's case had specifically considered the above decision in the aforesaid O.M. and held that this O.M. cannot have retrospective operation. From the impugned O.M. dated 24.12.1991, it is seen that although there was an earlier practice of allotting general pool accommodation to the school teachers of Government of NCT, Delhi, the matter had been specifically reviewed in the light of various representations and a conscious decision was taken not to include Delhi Government Schools as eligible offices. We are not persuaded by the argument that the respondents have included certain other offices including the offices in the nature of educational institutions. The respondents, no doubt, would have to take into account the large number of teachers who would become otherwise eligible if such schools are also declared as eligible offices and the number of quarters available under the general pool. It is also to be noted that it is not as

h

(B4)

though school teachers of Government of NCT go without any eligibility for any type of accommodation. They are eligible for the NCT Pool of accommodation according to their seniority. The applicants in some of these cases have, in fact, applied for such accommodation. In the reply filed by respondent No.4 in OA 1621/97, the respondent No. 4 has only taken the objection that the applicants case is a case of regularisation of general pool accommodation and not for fresh allotment and as far as fresh allotment is concerned, the applicant did not apply within the time limit and her name did not appear in the seniority list of Government accommodation. The contention of the applicant is that under SR 317(b)(iv) applicant whose husband was allotted accommodation under the general pool is barred from applying for any other pool of accommodation. We have seen this rule. It only provides that if the wife or the husband of the officer has already been allotted a residence, the officer shall not be allotted a residence unless the allotment of the residence of wife or husband is surrendered as the case may be. The intention of the rule is very clear. At the same time, both the husband and wife are not entitled to two allotments under the General Pool accommodation under this rule but it is also provided that where two officers in occupation of separate residence at the same station one under these rules and another where these rules do not apply marry each other any one of the residences may be surrendered within one month of the marriage. It is admitted that the allotment of Delhi Government NCT Pool accommodation is governed by separate set of rules and the

W

35
rules relating to General Pool Accommodation is incorporated under SR 311 to SR 317 (b)(24). Therefore, in our view there is no specific bar for applying for Government accommodation under the NCT Pool separately by the spouses of the Government servants who have been allotted residence under the General Pool and as and when such allotment takes place, they should surrender either of the allotment.

7. We have also seen the cases relied upon by the learned counsel for the applicants, in O.A. 1121/97 and OA 1574/97. In these cases, the material fact is that the relief has been given in consideration of the fact that there was an interpool exchange of accommodation between the Delhi Administration and the Directorate of Estates or between the hospital pool and the general pool. Besides the vires of Government of India O.M. dated 27.12.1991 was not specifically challenged in the above applications. We have also to take into account the fact that the Apex Court has duly taken note of the aforesaid O.M. while disposing of number of cases in Shiv Sagar, Tiwari and Others VS. U.O.I. and Others Writ Petition No. 585 of 1994. In the light of these facts and circumstances, we cannot hold that the impugned O.M. of 27.12.1991 is illegal or ultra vires of the provisions of Constitution or of any statute. Besides, we are also of the considered view that the decision not to include Government of NCT Schools as eligible offices for allotment of accommodation under the General Pool involves a broad question of policy and the Courts and Tribunals could not interfere with such

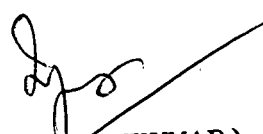
policy. Moreover, the Government School Teachers are also entitled for a separate pool of accommodation and they have to seek allotment under that pool. It is possible that they may not have applied in time under the impression that they were not entitled to apply.

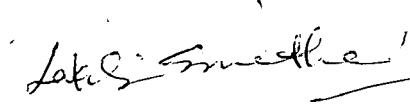
8. Taking all the above facts into account, we dispose of these applications with the following directions:-

(i) The prayer for quashing the impugned OM dated 27.12.1991 is rejected.

(ii) Respondent No.4 is, however, directed to consider the applications of the applicants for allotment of accommodation under NCT Pool in accordance with rules, taking into account their seniority without reference to the actual date of application for consideration of allotment.

In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh