

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

R.A. No. 137/98

in

O.A. No. 1002/97

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New Delhi this the 16 Day of October, 1998

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

Dr. Neelima Jain,
Wife of Dr. S.K. Jain,
R/o D-II/224, Kidwai Nagar (West),
New Delhi

Applicant

(By Advocate: Shri Shyam Babu with
Shri Pravir K. Jain)

-Versus-

1. Union of India through
Secretary
Ministry of Urban Affairs & Employment,
Nirman Bhawan, New Delhi.
2. Director of Estates,
Govt. of India,
Ministry of Urban Affairs & Employment,
Directorate of Estates,
Nirman Bhawan, New Delhi.
3. The Medical Superintendent,
Safdarjung Hospital,
New Delhi-110 016.

Respondents

(By Advocate : Shri R.V. Sinha)

ORDER

The applicant seeks review of order dated 5th June 1998 in O.A. No. 1002/97. The O.A. was filed by the applicant aggrieved by the order issued by the Directorate of Estates to vacate the Quarter D-II/224 Kidwai Nagar (West), New Delhi within 90 days. The said orders were purportedly issued in pursuance of the orders of the Hon'ble Supreme Court in Writ Petition No. 583/94 in the case of Shiv Sagar Tiwari Vs. Union of India and ors. The O.A. was disposed of with the following directions:

- 1) The applicant will be allowed to continue in the present accommodation till such time that a house of the category to which she

is entitled in terms of Supreme Court Orders is given to her either by the Directorate of Estates or by the Hospital authorities. This would be without prejudice to the right of Respondents to recover a enhanced/damage rent from her.

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- 2) The hospital authorities namely, Respondent No. 3 will offer her the first house to fall vacant of the type to which she is entitled as per rules and in her turn.

2. The applicant submits that the Tribunal has overlooked the submission of the applicant that in terms of Government Circular dated 18.2.1998 containing the recommendations of the Medical Board the out of turn allotment to the applicant has been found to be justified and that the said recommendations of the Medical Board have been accepted by the Government. The applicant submits that the controversy was thus limited to the question of directing the respondents to transfer the accommodation in question to the Safdarjung Hospital Pool with a further direction to the Superintendent, Safdarjung Hospital to surrender the first available accommodation similar to one in occupation with the applicant to the General Pool.

3. Pursuant to notice, the respondents also appeared and both parties have been heard.

4. Shri Shyam Babu, learned counsel for the applicant has argued that after the O.A was initially filed the position underwent a material change in that the request of the applicant for consideration of her case on medical ground was accepted and referred to the Medical Board constituted in pursuance of the directions

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of the Hon'ble Supreme Court in Shiv Sagar Tiwari (Supra). This Medical Board had found the out of turn allotment of accommodation to the applicant justified. Accordingly, an application was moved for amendment of the O.A. which was accepted by the Court. The position as regards the recommendations of the Medical Board were not disputed by the respondents. Hence, the only direction that was required was that the house in question allotted to the applicant be taken in the pool of Safdarjung Hospital where the applicant had since been posted. The learned counsel pointed out that similar directions were given in the case of Dr. Harsh Wardhan in O.A. No. 907/97. The learned counsel drew my attention to the application dated 2.5.1997, copy of which was annexed with the M.A. No. 1708/97 and pointed out that this clearly mentioned that the house allotted to the applicant was on Medical grounds relating to her ailing father-in-law, suffering from Ischaemic heart disease and being treated at AIIMS. The learned counsel said that this fact was overlooked by the Tribunal in its order dated 5.6.1998 when it observed in para 4 thereof that the out of turn allotment was on 'functional' grounds. He submitted that the allotment was on both functional as well as 'medical' grounds and the Medical Board had also now concluded that out of turn allotment on medical grounds was justified. In these circumstances the direction given in the impugned order that the applicant will vacate the house on allotment of category IV house to her should be recalled. The learned counsel also submitted that if the review is accepted then the

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applicant would seek permission to withdraw the O.A. as the respondents themselves were likely to grant the relief sought for by the applicant. (28)

5. Having considered the matter carefully, I am unable to find any merit whatsoever in the above submissions. The power of review is to be exercised only if there is a mistake or error apparent on the face of the record or because of the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. The so-called error is that the recommendations of the Medical Board have not been taken into account. On the contrary, notice was duly taken of these recommendations as para 4 of the order extracted below would clearly show:

"4. I have considered the matter carefully. I find certain contradiction in the statement of the applicant who claims that originally she was allotted the present house on out of turn basis on 'functional' grounds. On the other hand, the High Power Medical Board has justified the out of turn allotment on 'medical' grounds. This is however a matter for Respondent No. 2 to sort out. The fact remains that in terms of Supreme Court orders applicant is liable to eviction only on allotment of a house of the category she occupied earlier. The learned counsel for the applicant has stated that she was entitled to Type IV quarter on 'in turn' basis on the relevant date. On that understanding, I dispose of this OA with the following directions:"

5. It is clear therefore that the recommendation of the Medical Board were duly taken note of. The anomaly of such a recommendation when the allotment was on 'functional' grounds was also noticed. The Hon'ble

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Supreme Court in Shiv Sagar Tiwari Vs. Union of India, 1996(9) SCALE P.680 had noted that the Director of Estates had produced the lists of out of turn allottees and put them in 11 categories. As some of the allottees represented against their categorisation, the Supreme Court set up a Committee as the following extract from the judgement would show:

"6. For better appreciation of the various representations which had been received from these allottees, who came to be categorised in eleven categories by the Director, and bearing in mind the submissions of the learned counsel assisting the Court that categorisation made by the Director was not exhaustive and knowing of the complaints by many that they had not been categorised correctly, the Court decided on 31.7.1996 to constitute a three-member Committee headed by Shri D.P. Gupta (the then Solicitor General of India) to "further examine all the aspects of the matter and look into the complaints and suggestions received from any quarter" and place before this Court their final recommendations within four weeks. Shri M.S. Srinivasan, Joint Secretary in the Ministry of Urban Affairs and Employment and Shri K.T.S. Tulsî, learned Additional Solicitor General, were requested to be the other members of the Committee. This three member Committee submitted its report relating to Type IV and above on 26.9.1996, whereafter a need for giving hearing by the Court to those recommended to be evicted by the Committee having been felt, they were so noticed and were heard on 9.10.1996. The report relating to Type III was placed before the Court on 4.11.1996. The incumbents recommended to be evicted in this category were heard on 9.12.1996, which was the date notified for their appearance in person or through counsel. By that date, submissions of all concerned had also been heard on various facets involved in the case."

7. The Committee reports one relating to Type IV and others concerned Type III were taken by the Hon'ble Supreme Court as the basis of its direction from time to time. For the purpose of the present R.A., two such categories may be mentioned.

Re

Category - VI : Medical cases
outside the existing
policy.

Category - X : Functional grounds.

8.. It has been stated by the respondents and not denied by the applicant that the name of the applicant was placed in 'Category X i.e., ('functional ground' by Gupta Committee). The Supreme Court ordered in respect of Category X that they "require eviction of persons included in this category." The Hon'ble Supreme Court observed that -

"38. The star question as to who should face eviction is, therefore, answered by stating that it would be all those whose names find place in Categories IV, VI, IX, X, XI and such of VII who had not become actually entitled to in-turn allotment by the date(s) the respective reports were submitted. Those IAS, IPS and IFS and other officers who are occupying General Pool quarters, despite being eligible for quarters in the Tenure Pool, would also to be evicted."

9. Shri Shyam Babu contended that the Supreme Court order required that those who were given out of turn allotment on 'medical grounds', their cases should be examined by a High Power Medical Board. This direction has been given by the Hon'ble Supreme Court in Para 29 of its order which is also reproduced below:

"29. We find no justification to accept this category, because this includes medical cases outside the existing policy. No body, not even a Minister, can be allowed to depart from the policy; and so, despite the fact that some of the persons belonging to this category might be suffering from "serious

cases of life threatening diseases", as put by the Committee in its Report, we feel constrained to state that these incumbents have to be dealt with like those falling in Category-IX. We, however, give liberty to the Government to get their cases examined by a high-powered Medical Board to ascertain its views whether out-of-turn allotment to them was justified. This would be done within two months. Follow up action would be taken as per the views of the Board. In future, no allotment, even on medical ground, would be made de hors the policy." (Emphasis supplied).

10. The question is then whether the applicant can take the benefit of the directions of the Hon'ble Supreme Court for those whose names were included in Category VI. The answer would clearly be 'no' because her name figured in Category X and not category VI approved by the Supreme Court. It was for this reason that in the order of the Tribunal dated 5.6.1998 which is sought to be reviewed, it was observed that it was for Respondent No. 2 to sort out as to how when she was given out of turn allotment on functional allotment her case has been justified by High Power Committee on Medical Grounds. Nothing has been pointed out to me by either side to show that the list approved by the Hon'ble Supreme Court in regard to categorisation of out of turn allottees has since been altered with the approval of the Hon'ble Supreme Court. In the absence of such an indication that the Hon'ble Supreme Court has allowed the alteration and transferred the applicant or others from one category to another, this Tribunal cannot treat the applicant as an out of turn allottee in Category VI entitled to have her case placed before the High Power Medical Board and then to avail to their recommendations. In other words there is no error in the impugned order.

On

11. In the result, I find no merit in the R.A.
which is hereby dismissed.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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