

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2407/1994

New Delhi, this 29th day of May, 1995

Shri P.T.Thiruvengadam, Hon'ble Member(A)

1. Shri Shankar Prasad
s/o late Shri Hira Lal Prasad
2. Smt. Krishna Devi
w/o late Shri Hira Lal Prasad
both r/o D-593, Mandir Marg, New Delhi .. Applicants

By Shri D.R. Gupta, Advocate

versus

Union of India, through

1. Secretary
M/Urban Development
Nirman Bhawan, New Delhi
2. The Director of Printing
M/Urban Development
Nirman Bhawan, New Delhi
3. The Asstt. Manager(Adm/Estates)
Govt. of India Press, Minto Road
New Delhi

.. Respondents

By Shri M.K. Gupta, Advocate

ORDER

This OA has been filed for a direction for appointment of Applicant No.1 on compassionate basis and for regularising the quarter in favour of Applicant No.1 on his appointment.

2. As regards compassionate appointment, it has been submitted by the learned counsel for the applicant that the father of Applicant No.1 died in harness on 6.9.93 leaving behind a family comprising 6 persons with no earning member in the family. At the time of death all the children were minors, the date of birth of the applicant who is the eldest among them being 29.9.72. It was conceded that the respondents have advised vide their letter dated 7.4.95 (Annexure R-4 at page 40 of the paper book) that the name of

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Applicant No.1 has been included in the list of deserving cases for the category of LDC and that he will be offered the post/appointment in his turn according to his seniority and subject to the availability of vacancy against compassionate appointment quota. It was, however, argued that the case of Applicant No.1 deserves special sympathy in view of the large family and the fact that he belongs to ST community.

3. The learned counsel for the respondents mentioned that the scheme of compassionate appointment for wards of those dying in harness from the Government of India Press (Respondent No.3) had been evolved pursuant to the directions of this Tribunal in some other OA. The list of deserving cases is prepared based on the scheme and relevant factors have been taken into account before including the name of Applicant No.1 in the waiting list.

4. I note that the present legal position is that the Courts and Tribunals are not expected to issue mandamus for employment but may only direct the respondents concerned to consider the case. It is not disputed that the case of Applicant No.1 has been considered and his name included in the waiting list. Hence, no further directions are warranted with regard to the relief regarding compassionate appointment.

5. It was then strenuously urged that the accommodation allotted to the deceased employee should be allowed to be retained by the family on normal rent for a period of two years unless in the meanwhile the compassionate appointment is given. The prayer for this relief was opposed by the learned counsel for the respondents. He pointed out that

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this prayer is not included in the main reliefs. It is, however, the case of the other side that such a relief has been included in the interim relief. I am inclined to agree with the objection of the learned counsel for the respondents but in the interest of avoiding further litigation and keeping in mind the general relief clause namely "any other relief as may be deemed fit", I am proposing to deal with the issue raised.

6. In support of his case, the learned counsel for the applicant referred to the orders passed by the Hon'ble Supreme Court on 16.11.92 in Writ Petition 918/91 in the case of Smt. Shirpa Bose & Anr. Vs. UOI. The relevant portion is reproduced below:

"We understand that the petitioners are at present occupying the Government quarter. They are given two years time to vacate the same unless in the meanwhile the petitioner's son gets employment with the respondents. The respondents will not charge to the petitioner rent in excess of the rent which was being charged when the deceased was in service"

7. The learned counsel also mentioned that the above concession has been extended in a number of similar cases decided by this Tribunal. Extension of concession of normal rent for two years was, however, opposed by the respondents, who argued that the concessions have been directed by the courts as exceptions in the facts of each case and the reckoning of 2 years from the dates of order of the courts may result in advantage to those who approach the court late.

8. Order dated 3.1.95, passed by me, in MA 3902/92 in OA 2389/94 (Annexure R-III page 26 of the paper book) was then referred to by the learned counsel for the respondents. This order reads as under:

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"The learned counsel for the applicant relies on certain sympathetic consideration shown in some of the earlier cases.....

"2. The learned counsel for the applicant then drew my attention to the orders passed by this Bench in OA 980/92 delivered on 16.2.93, where the continued retention of the accommodation to further two years was allowed.

"3. Since the current instructions already allow retention for a period of one year extendable by another six months in special circumstances and this liberalisation has only taken place recently and these instructions have not been struck down by the orders referred, I have to hold that the case referred cannot be taken as a binding precedent. I also observe that in the operative portion, it has been mentioned that in the circumstances of the case the orders mentioned are being passed.

"4. Their Lordships of the Hon. Supreme Court have observed in the case of LIC Vs. Mrs. Asha Ramchander Ambekar & Anr. (JT 1994(2) SC 1830) that the courts are to administer law as they find it, however inconvenient it may be."

9. It was further argued that even in the case of Smt. Shirpa Bose, in whose case the apex court had allowed retention of accommodation for two years on normal rent, prayer for further retention till appointment on compassionate basis was rejected by the Hon'ble Supreme Court. The orders of the apex court dated 4.1.95 enclosed at Annexure R-II (pages 24-25 of the paper book) were read out. "The application is dismissed subject to the condition that the petitioners may not be evicted from premises for a period of 3 months from today. No further applications for extension of time will be entertained."

10. While noting ^{the} above, I have to also refer to the observation of the apex court in State of Punjab & Ors. Vs. Surinder Kumar & Ors. reported in 1992(19) ATC 500. It had been observed that only decisions on question of law are to be followed.

11. The learned counsel for the respondents again referred to SR 317 as per which retention of accommodation by the family members of the deceased employee is permitted for a period of one year only. Since these instructions have not been questioned nor struck down in any of the citations relied upon by the applicant, the consequences of the instructions can not be wished away.

12. It was then argued by the other side that the respondents are allowing retention for two years in such cases as a policy. It was mentioned that in some of the replies in the OAs before this Tribunal, the respondents have conceded that they were allowing the applicants to retain accommodation for two years. This was rebutted by stating that no such policy decision has been taken. The observation of the Supreme Court in its order dated 10.1.95 in Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr. as reported in (1995)1-SCC-745 were relied upon. It has been observed therein that "Generally speaking, the mere fact that the authority have passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that the such illegal or unwarranted order can not be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order". It was argued that any concession that

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might have been extended in one case can not be claimed to be extended universally. I find that the stand taken by the respondents cannot be faulted.

13. In the circumstances, the relief prayed that the applicants may be allowed to retain the accommodation on normal licence fee for a period of two years can not be granted.

14. To sum up, the OA is disposed of as infructuous, since the main relief with regard to compassionate appointment has already been dealt with by the respondents who have included the applicant's name in the relevant waiting list. Interim orders, if any passed in this OA, stand vacated. There shall be no order as to costs.

P. J. Thiruvengadam
29/5/95
(P. T. Thiruvengadam)
Member(A)

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