

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. OA 2032 of 1989

Date of decision: 4.8.89.

Shri S.K. Berry & Another

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Applicants

Vs.

Union of India & Another

....

Respondents

PRESENT

Shri B. Krishan, counsel for the applicants.

Mrs. Raj Kumari Chopra, counsel for the respondents

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunal filed by Shri S.K. Berry, Field Assistant, Cabinet Secretariat, and his father, Shri Inderjeet Berry, retired U.D.C., Directorate General of Employment & Training, Ministry of Labour, against impugned order dated 18.6.87 (Annex. P-3) sanctioning ad hoc allotment of Type A accommodation to applicant No.1 instead of regularising Government residence No. D-807(239), Netaji Nagar, allotted in the name of the retiring father (Applicant No.2) and the order of eviction dated 8th April, 1988 passed by the Estate Officer (Annex. P-7).

2. The brief facts, as stated in the application, are that applicant No.2 retired from Government service on 31.12.1985 and the allotment of his residence D-807 (239), Netaji Nagar, New Delhi, was cancelled in the name of applicant No. 2 on 1.2.86. As applicant No.1 was entitled to Type II accommodation, he applied for the regularisation of the said quarter, but instead of regularising the quarter, he was allotted Type A accommodation. Eviction proceedings were started against applicant No.2 on the basis of the cancellation of the allotment. The Estate Officer declined to examine the question of eligibility of the applicant No.1 for regularisation of allotment of the said premises on grounds of limitation of his powers, the applicant filed an appeal before the appellate authority, namely, the Additional District Judge, Delhi, who extended the

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time of eviction upto 31.10.1988 on compassionate grounds. The applicant No.2 was made to give a statement before the Additional District Judge, Delhi, to the effect that in case the allotment of the premises at D-807, Netaji Nagar, was not regularised in the name of applicant No.1 by the respondents, he would vacate the said premises by October, 1988. The applicant occupied Type 'A' residence under pressure but continued to represent for allotment of a Type 'B' quarter. He cited the case of Shri Pramod Kumar Sharma working in the same office of the applicant No.1 and being in the same position has been allotted a Type 'B' quarter in Pushpa Vihar on retirement of his father who retired from service on 31.1.1987. Therefore, there has been a clear case of discrimination adopted by the respondents allowing Shri Sharma to live in a Type 'B' quarter while allotting him a Type 'A' quarter although Shri P.K. Sharma is junior to him in the same organisation and drawing the same salary.

3. As far as the regularisation of the quarter earlier occupied by applicant No.2 is concerned, this has become infructuous as the applicants have already vacated that quarter and are now living in a Type 'A' quarter.

4. The case of the respondents is that the applicant was not entitled to Type 'B' quarter at the time of the retirement of applicant No.2. The entitlement for different type of residences was determined as per emoluments on 1.10.84 which is the relevant ^{priority date} ~~period~~ for this purpose. On that date, the salary of the applicant did not entitle him to the allotment of Type 'B' accommodation. Applicant No.2 retired on 31.12.85 during the allotment year 1.4.85 to 31.3.87 and, therefore, regularisation could not be done in the name of the applicant No.1 as the crucial date would still be 1.10.84.

5. As far as Shri P.K. Sharma is concerned, it has been stated that he has been drawing the basic pay of Rs. 990/- p.m. which makes him eligible for Type 'B' accommodation for the current year from 1987 to 1989. The basic difference is that whereas applicant No. 2 retired on 31.12.85, the father of Shri P.K. Sharma who was living in Type 'C' accommodtion

retired on 31.1.87, when the crucial date had changed and Shri Sharma had become eligible to a Type 'B' quarter.

6. As the applicants have vacated the house earlier occupied by applicant No.2, the question of regularisation of that house would not arise and the applicant No.1 has to await his turn for getting a Type 'B' quarter in the normal course. He was, however, allotted a Type 'A' house immediately as he was eligible only for that type of house at the time of retirement of applicant No.2. As such, there is no discrimination and Shri P.K. Sharma was also not given the house occupied by his father as he was not eligible to Type 'C' quarter, but at that time he had become eligible to Type 'B' quarter and, therefore, was allotted that category in lieu of Type 'C' quarter.

7. Learned counsel for the applicant has sought permission to amend the application on the ground that he has been wanting a Type B accommodation on the same analogy as was granted to Shri Parmod Kumar Sharma who was junior to him and drawing the same salary and under the similar conditions he was allotted type B accommodation. It was stated by the applicant that Shri Sharma had not been allotted any other accommodation but his father was living in Type C accommodation although on the analogy of the applicant, Shri Sharma should have also been allotted Type A accommodation and this amounts to discrimination. No counter has been filed by the respondents to the amended petition but it was agreed that the case would be argued by the learned counsel for the applicant as well as respondents without any counter or rejoinder.

8. I have heard the learned counsel for the applicant as well as respondents. Shri B. Krishnan, learned counsel for the applicant has drawn my attention to para 5.1. of the amended application wherein, it has been stated that the present allotment year commenced on 1.1.1988 and the crucial date is 1.7.87. It has been further stated that the father of the applicant No. 1 and Shri P.K. Sharma retired prior to 31.1.1987. The allotment to Shri P.K. Sharma was

made in October, 1987. Prima facie, if the allotment was made after 1.7.1987, Shri P.K. Sharma had become entitled for type 'B' accommodation. No office order changing the crucial date from 1.7.1987 was produced but even if it is accepted that the allotment of Type B house to Shri P.K. Sharma was not correct the question before me is not the allotment of Shri P.K. Sharma, but non-allotment of type B house to the applicant. Relief can be allowed only if the applicant can establish his right to type B accommodation. Admittedly the applicant was not entitled to Type B accommodation on the crucial date applicable to him and as such the respondents were justified in allotting a type A accommodation to the applicant. If the allotment of Shri P.K. Sharma has been done wrongly, it is for the respondents to take action in that case separately. Merely because there is an allegation of wrong allotment to a colleague, it cannot entitle another person to get similar allotment on a wrong basis. It is also noticed that the applicant's father who was allotted ^{the} of the accommodation in question had given an undertaking before the Additional District Judge, New Delhi saying that in case the house was not regularised in favour of his son he would hand over ^{the} vacant and peaceful possession of the house on or before 31.10.1988. As the applicant has already moved to Type A house, there is no case now for providing him any relief at this stage. The application is dismissed accordingly. There will be no orders as to costs.

B.C. Mathur
(B.C. MATHUR) ^{Y. S. S.}
VICE CHAIRMAN