

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(20)

O.A.2527/92

Date of decision: 16-8-93.

Smt. S.S. Madan & Anr. Applicants

versus

Union of India & Ors. Respondents

Coram:-

The Hon'ble Mr. S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicants : Sh. B. Krishan, counsel

For the respondents : Sh. P.P. Khurana, counsel

JUDGEMENT

(delivered by Hon'ble Sh. B.N. Dhoundiyal, Member(A)

In this O.A., Smt. S.S. Madan and Sh. J.C. Madan have challenged the order dated 20.04.1992 issued by the Directorate of Estates Government of India rejecting their request for regularisation of Quarter No. B-56, Pandara Road in the name of Smt. S.S. Madan after the retirement of Sh. J.C. Madan as Deputy Development Commissioner, Development of Industrial Development, Ministry of Industry on 30.11.1991.

The brief facts of the case are that the applicant No.1 is the wife of applicant No.2 and has been in continuous service as a teacher under the Delhi Administration since 28.11.1960 and is presently working as a

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Selection Grade Trained Graduate Teacher entitled to the above type of accommodation. She has been sharing the above accommodation with her husband and has not been drawing any house rent allowance from her department. She could not apply for the allotment of accommodation from the Delhi Administration Pool in view of the embargo laid down in SR -317-B-4 which provides:-

"No officer shall be allotted a residence under these rules if the wife or the husband, as the case may be, of the officer has already been allotted a residence unless such residence is surrendered."

The following reliefs have been prayed for:-

(i) that the allotment of government residence bearing No.B-56, Pandara Road, New Delhi may be regularised in favour of applicant No.1 with effect from 1.12.1991 on payment of normal rate of licence fee;

(ii) That the applicants may not be made liable to pay any sort of penal rent/market rent/damages in respect of the said premises;

(iii) That the Office Memo dated the 27.8.1987 and 1.4.1991 may please be quashed;

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(iv) That the eviction order/eviction proceedings under the provisions of the Public Premises Act, 1971 in respect of the said premises may be quashed;

(v) Such other or further orders may also please be passed declaring the policy debarring the teachers of Delhi Administration for allotment of government accommodation from General Pool as null and void."

On 1.10.1992 an interim order was passed by this Tribunal directing the respondents not to dispossess the applicant from the government quarter subject to the liability to pay licence fee etc. in accordance with the relevant rules. This interim order is continuing till date.

The respondents have contented that the teachers working in the schools of Delhi Administration are not eligible for allotment of General Pool accommodation as per O.M. dated 27.12.1991. Sh. Madan retired from government service on 30.11.1991 and after the grace period was over damages are being charged in accordance with existing instructions. The eviction order has been passed by the Estate Officer as Sh. Madan is unauthorised occupant of the quarter w.e.f. 1.4.1992.

We have heard the learned counsel for the parties and have carefully perused the record. There have been frequent changes in the policy followed regarding allotment of houses from the general pool to the employees of Delhi

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Administration. An earlier ban in this regard was withdrawn vide O.M. dated 2.4.1976. In the O.M. dated 29.8.1989 the Directorate of Education continued to be an eligible office for allotment of general pool residential accommodation. There is some force in the argument that executive instructions issued on 27.12.1991 cannot abridge the statutory provisions of allotment rules as approved and circulated vide O.M. dated 29.8.1989. However respondents have mainly relied on O.M. dated 27.12.1991 issued by the Directorate of Estates (Annexure R-3). This memorandum was issued after the retirement of Sh. Madan on 30.11.1991 and submission of an application for regularisation on 6.12.1991. Had it been issued earlier, Mrs. Madan could have applied to Delhi Administration for allotment of a house in her own right. Also it clearly mentions that certain allotments have already been made in the past to the teachers of Delhi Administration and provides that allotment already made will not be disturbed and will continue to be treated as lawful allotments. The Directorate of Estates has clarified in this regard that the teachers and other staff of schools of Delhi Administration will not be eligible for initial allotment from General Pool in Delhi. A similar issue was raised in O.A.No.1226/91 which was decided on 19.5.1993 by a Single Member Bench of which one of us (Sh. B.N. Dhoundiyal, Member(A) was a Member. It was held that though O.M. dated 27.12.1991 prohibits the allotment from the General Pool Accommodation to the teachers working under the Delhi Administration, prior to this date allotments were being made to them. In this case also, applicant No.1 is a Selection Grade Trained Graduate Teacher of Delhi Administration

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working since November, 1960 and entitled to Type-D accommodation. She has not been paid any house rent allowance by Delhi Administration. Since she could not have applied for separate govt. accommodation for herself while sharing a quarter allotted to her husband, it will be too much to ask her to apply now for allotment of accommodation from Delhi Administration after surrendering the present General Pool accommodation, particularly in view of the fact that she is on the verge of retirement.

In view of these facts, we hold that this is a special case where initial allotment of General Pool accommodation to a teacher of Delhi Administration is not involved and regularisation of the accommodation in the name of an eligible spouse after retirement of her husband has to be allowed as a special case. In the light of this finding we refrain from considering the vires of the impugned circulars issued by the respondents from time to time on this subject.

The application is, therefore, disposed of with the following directions:-

(i) the impugned order dated 20.4.1992 is hereby quashed and set aside.

(ii) Applicant No.1 shall be deemed to be an eligible government servant in the General Pool Accommodation w.e.f. 1.12.1991 and Quarter

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No.B-56, Pandara road, New Delhi shall be regularised in her name. She will vacate the said accommodation on her retirement after availing the grace period allowed under rules.

(iii) Only normal licence fee shall be charged.

No order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 19/2/93

Member(A)

S.K.
(S.K. Dhaon)

Vice Chairman

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