

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 201/1993

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New Delhi this the 11th Day of September, 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Shri Sushil Dogra,
Son of Shri Sunder Singh,
Working as a Sepoy in the
Narcotics Control Bureau,
Department of Revenue,
Ministry of Finance,
R.K. Puram,
New Delhi.

Applicant

(By Advocate: Shri B. Krishna)

Vs

1. The Director of Estates,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

2. Shri A. Bains,
The Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

Respondents

(By Advocate: Shri J. Banerjee Proxy
for Shri Madhav Panikar)

O R D E R (Oral)

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

This application is directed against the order
dated 7.4.1992 of the second respondent, passed under sub
section (1) of Section 5 of the Public Premises (Eviction
of Unauthorised Occupants) Act 1971, against the father of
the applicant and also against the inaction on the part of
the respondents in considering regularisation of quarter
No. 31/7 Andrews Ganj, New Delhi, in favour of the
applicant.

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2. The applicant's father Sh. Sunder Singh was a Group-D employee under the Central Government and retired from service on 31.1.1990. He was allotted the quarter No.31/7, Andrews Ganj, New Delhi. The applicant, son of Sunder Singh, was a casual labourer in the Office of the Chief Controller of Accounts, Department of Revenue, Ministry of Finance from 1.12.1986 onwards and was appointed as a regular Sepoy by order dated 17.9.1991 (Annexure A-2) w.e.f. 21.9.1992. After becoming a regular government servant w.e.f. 21.9.1992, the applicant made a request to respondent No.1 to make ad-hoc allotment of the quarter in question in his name, to which he did not get any reply at all. However, in the meanwhile, the first respondent passed the impugned order dated 7.4.1992 against the applicant's father, under sub section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The claim of the applicant is that as he was in government service w.e.f. 1.12.1986, he is entitled to have an ad-hoc allotment of the quarter in question since he has been residing with his father in the quarter allotted to his father. Even though the applicant was not appointed as a regular Sepoy when the impugned order of eviction was passed, the applicant contends that the government instructions of 1st May 1981, 11th February 1982 and 9th November 1987 entitled the applicant also for regularisation of ad-hoc allotment of the quarter in which he was sharing accommodation with his father who was a government servant and the allottee of the quarter in question. The action on the part of the respondents in not considering the claim of the applicant for ad-hoc allotment of the quarter and passing the impugned order of eviction is arbitrary, unreasonable and illegal, claims

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the applicant. It is with the above said allegations that the applicant has filed this application seeking to have the order dated 7.4.1992 quashed and for a direction to the respondents to regularise the allotment of the quarter No. 31/7, Andrews Ganj, New Delhi in the name of the applicant from the date of cancellation of the allotment in the name of the applicant's father.

3. The respondents resist the application. They contend that the applicant was not a regular government servant on the date on which his father retired and also on the date on which the order of eviction was passed and, therefore, the applicant is not entitled to any relief sought by him.

4. I have, with meticulous care, gone through the entire pleadings in the case and have heard Sh. B. Krishan, learned counsel for the applicant, at considerable length. I have also heard Sh. J. Banerjee, proxy counsel for Sh. Madhav Panikar appearing for the respondents. Sh. Krishan argued that the applicant satisfies all the eligibility criteria for ad-hoc allotment of the quarter in question because his father was a government servant to whom the quarter was allotted, that the applicant has been sharing accommodation with his father, the original allottee, and he has also been in government service since 1986. In accordance with the instructions contained in the OM of the Government of India, Ministry of Works & Housing, Directorate of Estates, dated 11th February 1982, even an ad-hoc employee whose services have been subsequently regularised is entitled to regularisation of ad-hoc allotment of a

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quarter. The office memorandum dated 9th November 1987 of the Government of India, Directorate of Estates also, according to the learned counsel, lends support to his claim for ad-hoc allotment.

5. On a careful scrutiny of these three government orders, I am not convinced that the applicant has a valid claim for ^{ad hoc} allotment of accommodation in question because, according to the OM dated 1st May 1981, a person claiming ad-hoc allotment should be a government servant eligible for government accommodaton in general pool. The office memorandum dated 11th February 1982 of the Ministry of Works & Housing, Directorate of Estates only states that the benefit of ad-hoc allotment would be available to a person who has been continuously working on ad-hoc basis without break till the date of his regularisation. This does not extend to a casual labourer. The office memorandum of 9th November 1987 has no relevance at all to the facts of the case because it only states that non-drawal of House Rent Allowance would arise only in case the person who seeks ad-hoc allotment was posted in the same station.

6. The applicant became a government servant eligible for allotment of government accommodation from general pool only w.e.f. 21.9.1992 when he was appointed as a Sepoy. Prior to that, he was working only as a casual labourer and was not in regular service of the government. A government accommodation can be allotted only to a regular government servant and not a casual labourer. On

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this point, learned counsel for the applicant referred to a decision of the Principal Bench of the CAT in OA No. 1856 of 1990 decided on 10.1.1992. That was a case in which the claim of a casual labourer in a government department who was subsequently regularised for regularisation of accommodation occupied by his father was allowed. Going through the facts of the case, I find that there is a world of difference between these two cases. In the application No.1856 of 1990, the applicant had alleged that he was residing with his father for more than 3 years, that he had been employed in a government department, that he had not drawn any House Rent Allowance, that he did not own any house in Delhi and he was thus eligible for accommodation in the General Pool since 2.2.1984. He had also applied for allotment of quarter on 6.3.1989 and had paid upto 31.12.1989 a sum of Rs. 14,127/-. It was with those allegations that the applicant in OA No. 1856/90 had filed that application praying that a direction might be issued to regularise the quarter in question. That application was admitted and eviction was stayed by an interim order. Though the respondents in that case were given sufficient opportunities to file reply and though they were informed of the date of final hearing, none appeared for the respondents and no reply opposing grant of prayer was filed by the respondents. Under the circumstances, the Bench accepted the case of the applicant that having rendered more than 3 years of casual service prior to the

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date of retirement of the applicant's father on 31.8.1987, the applicant would be deemed to have become eligible for ad-hoc allotment of the government quarter. It was thus in the special facts and circumstances of the case that the Tribunal ordered that the applicant should be treated on par with ahoc employees for his entitlement to adhoc allotment of acommodation on the retirement of his father and a direction in that regard was given.

7. In this case, there is no case for the applicant that the applicant had acquired eligibility for adhoc allotment of the quarter and was entitled to be treated on par with an ad-hoc government servant. On the contrary, in paragraph 4.14 of the application, the applicant has in unambiguous terms stated that at the time of passing the impugned order dated 7.4.1992, the applicant had not acquired the lawful right for regularisation of ad-hoc allotment of the quarter in question in his name and, therefore, an appeal was filed before the District Judge against the order of eviction, which was subsequently withdrawn. While the applicant/ has stated that on 7.4.1992, he had not acquired the lawful right for regularisation of the quarter in his name, the applicant in OA No.1856/90 vehemently contended that he had acquired the right of regularisation. Therefore, the facts of the case on hand are entirely different from the facts of the case in OA No.1856 of 1990.

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8. Learned counsel for the applicant, Sh. B.Krishan referred to another ruling of the Principal Bench of the CAT in Ravinder Kumar Vs. Directorate of Estates (OA No.2716 of 1992) decided on 2nd December 1993. That again was a case in which the applicant before the Tribunal, who was working as a Muster Roll Khalasi w.e.f. the year 1982 was denied the benefit of ad-hoc allotment of the quarter in which he was sharing accommodation with his father who retired from service on 30.9.1988. The applicant in that case was appointed as a regular Khalasi on 2.5.1991. In that case also, the respondents, though served with notices, did not file any reply refuting the allegations made in the application. However, at the final hearing of the case, the respondents were represented by Standing Counsel Sh. P.P.Khurana. Sh. Khurana argued that the applicant was not entitled to ad-hoc allotment of the quarter as he was not in regular government service and not even ad-hoc government employee to be entitled to the benefits of the Office Memorandum dated 13.4.1982. This plea was not accepted by the Bench. It was observed that "Sh. Khurana contends that a muster roll khalasi cannot be considered to be working on an ad-hoc basis. On practical plain, I fail to distinguish between a muster roll khalasi and a khalasi working on an ad-hoc basis. Moreover, a Division Bench of this Tribunal in OA No.1856 of 1990 decided on 10.1.1992 has taken the view that a casual labourer should be put at par with an ad-hoc employee for his entitlement to the government accommodation on the retirement of his father. This decision is apposite and is binding on me."

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9. For more than one reason, this judgement is also not a precedent to be followed. For one thing, the question whether a casual labourer who got subsequently regularised is entitled to ad-hoc allotment of accommodation which he was sharing with his father did not fall for consideration. The request of the applicant before the Tribunal for regularisation of the accommodation in his name was turned down not on the ground that he was not eligible for allotment of government accommodation. The claim of the applicant in that case for allotment was turned down since his father, the allottee of the quarter, had retired from an ineligible office. A principle of law discussed and decided which was also necessary for adjudication of the issue involved in a proceedings alone will be the ratio decidendi for being followed. In the case under citation, the Tribunal was called upon to decide only whether the applicant's father was at the time of retirement an employee of an ineligible office for the purpose of allotment of quarter, as there was no other disputed questions, whatever further observations were made can be treated only as obiter dicta which do not have a binding force. Further, it is not possible to agree to the presumption of the law that a casual labourer is not different from an ad-hoc government servant. Though it may be difficult to distinguish between a Muster Roll Khalasi and a Khalasi working on ad-hoc basis, on practical plain on legal effect, these two have two different and separate status. An ad-hoc employee is holding a post whereas a casual labourer does not hold any post though if he is regularised he may hold a post. There is no prohibition in the rules in regard for allotment of government accommodation to an ad-hoc

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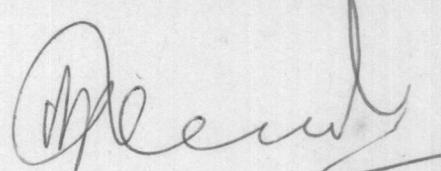
employee whereas a casual labourer who may be given work intermittently is not entitled to allotment of a government accommodation. While an ad-hoc employee is eligible for allotment of government accommodation, a casual labourer is not so eligible. So if an ad-hoc employee satisfies other eligibility criteria for adhoc allotment as prescribed in the OM dated 1st May 1981 in view of OM dated 11th February 1982 on his regularisation in service without break, he becomes eligible for ad-hoc allotment of a government accommodation whereas such a benefit cannot be extended to a casual labourer. Therefore the ruling relied on by the learned counsel for the applicant does not apply to the facts of the case and can be distinguished in the light of what is stated above.

9. Learned counsel for the applicant with considerable vehemence argued that the order dated 7.4.1992 is arbitrary and unsustainable, for, the Estate Officer has not formed the requisite opinion after hearing all those who were interested in the quarter in question. The applicant's father who was the original allottee of the accommodation was served with a notice. It was after hearing him that the order was passed. As the allotment stood cancelled w.e.f. 31.5.1990, occupation of the second applicant, Sh.Sunder Singh thereafter was properly and validly treated as unauthorised. It is in the public interest to evict any occupant of the Public Premises if such occupant is found

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in any unauthorised occupation. Therefore, the second respondent has formed an opinion that the applicant's father and all those who stay with him were liable to be evicted on valid and proper grounds. The application has no valid claim because in the application itself, in para 4.14, it is stated that the date on which the impugned order was passed, he had not become eligible for ad hoc allotment of the government accommodation.

10. In the light of what is stated above, find ^{my} no merit in the application, the OA is dismissed, leaving the parties to bear their own costs.


(A.V. Haridasan)
Vice Chairman (J)

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