

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.2711/93

Dated this the 3rd of January, 1995.

Shri P.T. Thiruvengadam, Hon. Member(A)

Mrs. Chinmoyee Ghosh,
C-107, Minto Road Complex,
New Delhi.

...Applicant

By Advocate: Shri George Paricken.

versus

1. Union of India through
Director,
Directorate of Estates,
Nirman Bhawan,
New Delhi.
2. Director,
Song and Drama Division,
Ministry of Information and Broadcasting,
8th Floor, Sechna Bhawan,
C.H.O. Complex, New Delhi 110 003...Respondents

By Advocate: Shri Hari Shanker proxy counsel for
Shri Madhav Panicker, counsel for
respondent No.1.

Shri P.H. Ramchandani, counsel for
respondent No.2.

O R D E R

(By Shri P.T. THIRUVENGADAM)

The applicant's husband expired on 2.8.89. He was in occupation of a Type-III quarter, which was allotted to him when he was working as a Staff Artist in the office of Respondent No.2. The applicant has also been working in the same office and in the same capacity. The applicant sought regularisation of the quarter in her name. The regularisation has been done only w.e.f. 6.1.93. But the applicant has been asked to pay a total of Rs.59,133/- as damage rent. This OA has been filed for a direction to regularise the allotment w.e.f. 2.2.90 i.e. from the date of cancellation of the allotment in the name of the applicant's husband and for quashing the order of recovery of Rs.59,133/-.

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2. The respondents in their reply have explained the back ground of the case. Based on the application for adhoc allotment by the applicant, the respondents offered a Type-II quarter on 20.4.90 and again on 2.9.90 but the applicant failed to accept the same. She continued to occupy the higher type quarter unauthorisedly. As per instructions, only one type below quarter could be allotted on adhoc basis, in such cases, like the death of the husband. The applicant was trying to get the higher type of quarter regularised in her name and ultimately the regularisation of a Type-III quarter was approved by the Urban Development Minister on 7.1.93. The applicant was allowed the benefit of retention of the accommodation for a period of one year from 2.8.89 and was charged damage rent only beyond 2.8.90 and upto 6.1.93. It was argued that the regularisation of the higher type was approved by the Minister only in June 1993 and there is no case for regularising the same from an earlier date. Accordingly the charging of damage rent from 2.8.90 to 6.1.93 is in order.

3. The learned counsel for the applicant mainly advanced 2 grounds in support of the case of the applicant. He referred to the OM dated 9.11.87 issued by the Director of Estates on the subject of adhoc allotment to dependents of deceased officials.

Para-I(vi) of this Memorandum reads as under:-

"Date of regularisation:

It has been decided that the date of regularisation should be from the date of cancellation in case the eligible dependent is already in Govt. service and is entitled for regularisation and not from the date of issue of the orders which was the practice being followed till now."

4. It was argued that the date of regularisation should be from the original date of cancellation and not from

(13)

January 1993, by invoking the above para.

5. This argument was countered by the learned counsel for the respondents, who stated that the provisions of the above para apply only in cases of regularisation of the same accommodation. In the case in question, the applicant was eligible only for adhoc allotment and such allotment could be only in Type-II i.e. one type below the normal eligibility as per pay slab of the applicant. I find this argument of the respondents convincing.

6. The 2nd ground advanced by the learned counsel for the applicant was that in certain similar cases, regularisation has been allowed even though regularisation was in a higher type. A few instances have been quoted in the rejoinder. The learned counsel for the respondents argued that the rejoinder was just handed over to him on the previous day and matters of fact should have been raised well in time and not by filing a rejoinder one day before the final hearing, thereby, leaving no time for the respondents to look into the details. Apart from this, it was also argued that retrospective regularisation may have been ordered in the circumstances of the individual cases. Rules by themselves do not cater for regularisation of a higher type and any regularisation made in special circumstances cannot be quoted as/precedent. In the circumstances I find that this ground cannot also be sustained.

7. The learned counsel for the applicant then sought liberty for filing a representation to the Hon. Minister for regularisation from a date earlier to January 1993. While dismissing this OA, this liberty as sought for, is granted. Interim order, if any, stands vacated. There will be no order as to costs.

P.J. 2/2
3/1/95

(P.T. Thiruvengadam)
Member(A)