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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 521 of 1988
with
M. A. No. 183 of 1989

DATE OF DECISION 23-06-1989.

<u>Dr. A. S. Deshpande</u>	Petitioner
<u>Mr. Girish Patel</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Mr. J. D. Ajmera</u>	Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

[REDACTED]

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Dr. A. S. Deshpande,
M/5, Block No.10, Flat No.148,
Shashtrinagar,
A h m e d a b a d - 380 013.

.... Petitioner

(Adv. : Mr. Girish Patel)

Versus

1. Union of India, through
The Secretary,
Department of Space,
Government of India,
Kaveri Bhavan,
Bangalore - 560 009.

2. The Director,
Space Application Centre,
SAC Campus, SAC Post Office,
Ahmedabad - 380 053.

3. The Controller,
Space Application Centre,
I. S. R. O.,
SAC Campus,
SAC Post Office,
Ahmedabad - 380 053

4. Mr. G. E. Parmar,
Principal,
SAC Central School,
E-13, DOS Colony,
Vastrapur,
Ahmedabad.

.... Respondents

(Adv. : Mr. J. D. Ajmera)

JUDGMENT

OA/521/88
with
MA/183/89

23-06-1989

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman.

The petitioner Dr. A. S. Deshpande feels aggrieved by the action of the respondent No.2, Director, Space Application Centre, in not allotting to him 'E' type of quarter for which he contends that he has been repeatedly overlooked and now one 'E' type quarter has been allotted to Principal, Central School SAC, Mr. Parmar, respondent

No.4. He bases his claim on account of his seniority which makes him eligible and a circular dated 20th January 1982 in paragraph 3 of which the medical officer is designated to be one of the 4 officers for whom reservation of quarters operates. The petitioner contends that in the past he has been over looked in preference to one Mr.(Mrs.) Kalgaoker and now he has been over looked in preferring Mr. Parmar. In the separate M.A. he has urged that a quarter vacated by the Controller will fall vacant and should not be allotted before the disposal of this application. We have decided to take up this application along with the main case. The respondents have disputed and denied various contentions of the petitioner. Specially they have denied that the Director has reserved 4 quarters in terms of paragraph 3 of the O. M. dated 20th January 1982 and that any quarter has been given to senior Scientist or Engineer. They have stated that one quarter which has been taken by the applicant as included in 4 reserved quarters was specially constructed for the Director and is not to be included within the 4 quarters in paragraph 3 of the O.M, the respondents have also contested that although the applicant is medical officer he does not automatically become entitled to category 'E' quarter. They state that earlier he was already occupying category 'B' quarter and his place of work was nearer to his quarter and, therefore, Dr.(Mrs.) Kalgaoker was allotted the 'E' quarter after considering various factors. The respondents' reply regarding allotment of quarters to Mr.Mohan is that he was given this quarter under the 10% discretionary quota and not among the 4 quarters reservation in terms of paragraph 3 of the O. M. Regarding the allotment of the quarter to

the Principal, Central School, Mr. Parmar the respondents state that this is due to an agreement which was reached between the Space Application Centre authorities and the Kendriya Vidyalaya under which accommodation had to be allotted to the Principal and the staff to the extent of 100% requirement. The respondents state that the Director has not considered it necessary to reserve quarters for any one other than Controller in terms of paragraph 3 of the O.M. referred to. In the rejoinder and the reply of the petitioner he has pursued his contentions. He states that Mr. Parmar, the Principal, Central School like him was also occupying a 'D' type of quarter and there was no reason for allotting him a 'E' type of quarter because the requirement of the agreement with the Kendriya Vidyalaya does not make it necessary to do so. Similarly it is of no significance that the quarters are allotted ~~from~~ from discretionary quota of 10% or reservation quota in terms of paragraph 3 because the upshot of these actions still deprives of him of the quarters to which he is entitled inspite of his post being considered important enough for being specially mentioned for reservation quota eligibility. The respondents have stated that the petitioner was required to register his application anew every year and that for the allotment year 1988-89 he has not done so. The petitioner in paragraph 4 of his reply dated 12-12-1988 states that he has so applied but that through no fault of his the respondent authorities do not acknowledge that his application is registered.

2. The circular dated 20th January 1982 refers to a discretionary quota of 10% in each category in paragraph 2 thereof and reservation of 4 quarters in paragraph 3

thereof. As there were conflicting statements regarding the number of quota under discretionary and reservation quota, we had asked the respondents to file a clear statement categorywise showing the availability of the total quarters and the reservation under paragraph 2 and 3 respectively and the allotment made to the extent of the discretionary and the reservation quota respectively before 19th June 1989 and fixed 23rd June 1989 for judgment. No statement has been filed until the due date.

3. The allotment of residential quarters is a part of service conditions and availability of Government accommodation is increasingly becoming an important part of facilities and perquisites which are of material significance for the comfort, status and efficiency of the Government servants. They cannot be regarded as peripheral or marginal. It is, therefore, of the utmost importance that their allotment and disposal should be strictly regulated and defined and the scope for arbitrariness or favouritism should be minimised if not altogether eliminated. The employees should also be made aware of the precise extent of their rights and entitlements so that they know where they stand in making their claims and judging whether they or their colleagues have got their due or have been deprived of it. No doubt the concerned authorities may like to leave some elbow room for the exercise of discretion because contingencies may arise in which out of turn allotment may be necessary or unforeseen situations may require to be dealt with. Even for such purposes the scope for exercise of such discretion has to be strictly circumscribed and when such a scope still remains of a considerable extent in terms of houses or claimants it is wise to entrust such

discretion to the safeguard of a committee and guidelines
be
to/ laid down to prevent favouritism and arbitrariness. It
has also to be accepted that the claims for accommodation
always remain an area of ticklish decision for which
administrative considerations will have considerable play
and for that reason it is prudent for Tribunals to exercise
judicious restraint in interfering in this area of decision
making unless there is clear injustice or demonstrated
arbitrariness or menifest violation of rules. Above all
the onus of establishment of entitlement of claim has
to heavily to rest on the petitioners for securing any
relief.

4. In the above back-ground the rival contentions of
the parties have to be subjected to analysis. We will not
detain ourselves with the historical merits of the claim
of the petitioner vis-a-vis Dr.(Mrs.) Kalgaoker and the
injustice or otherwise of the decisions of the respondent
No.2 in allotting the quarter to her in preference to him.
The petitioner took his case to the Court and withdrew
it for personal reasons and there the matter rests so
far as that claim is concerned. We also will not engage
ourselves with the dispute regarding the petitioner having
applied for the allotment year of 1988-89 because the
petitioner has not disputed that the rules so require him
to register his application every year and the narrow
range of the dispute in this regard is only that the
petitioner claims that he has applied and the respondent
states that he has not. This is a matter in which the
petitioner has to prove x that he has applied and he
has not adduced any documentary proof.

5. The petitioner's contention that medical officer is entitled to one quarter out of the reservation of 4 quarters in terms of paragraph 3 of O.M. dated 20-1-1982 has to be examined first. The respondents state that far from allotting 4 quarters he has not chosen to allot them to the categories specified ~~in~~ except in the case of Controller because he has not thought it necessary to do so. Whether the director's quarter is included in the 4 quarters reserved in paragraph 3 or not has also no material significance because the respondents have stated that 4 quarters in the reserved category have not been allotted. The relevant part of the O.M. reads as follows :

"The Directors of VSSC/SAC/SHAR are also hereby authorised to reserve four quarters for allotment designationwise to Director, Controller, Medical Officer and a Senior Scientist/Engineer who assists the Director to be specified by the Director. Where the Director or the Controller chooses not to accept the quarters there will be no compulsion."

It is clear that the Director is only authorised and not obligated and when the Director is authorised it is upto him to allot or not, to any of the category included as eligible. The Concise Oxford Dictionary defines "authorise" as "sanction" "give authority to" "Commission (person to do)". The respondents have clearly stated that except the Controller he has not considered any other category to be deserving to be allotted the reserved quarter and so far as the Director is concerned he has a separate quarter specially constructed for himself and is not included in this category. We do not read into this part of the O.M. any obligation on the Director to reserve a quarter for the medical officer if he does not consider that to

be necessary.

6. There is a discretionary quota of 10% available in terms of paragraph 2 of the same O.M. the Director of the Centre has to constitute appropriate committee and frame proper guidelines in deciding the merits in such application. The relevant part of the O.M. is reproduced below :

"It has since been decided that in the case of SHAR/SAC/VSSC the Director of the Centres may also exercise discretionary powers for out of turn allotment to the extent of 10% of the quarters in each category. For this purpose, the Director of Centres may constitute appropriate committee and frame proper guidelines in deciding the merits of applications for such allotment. Specific quarters in each category upto 10% of the number may be ear-marked for the purpose. Where there are no deserving applications for allotment under discretionary quota, such quarters will be allotted under the general quota as per normal rules."

From the pleadings and from submissions made during the hearing it was not at all clear whether guidelines have been framed and whether the petitioner's case was considered in terms of the allotment under this paragraph. The respondents did not file the statement required ~~to~~ of them as stated above. There is no reason why the petitioner who admittedly is eligible to category 'E' should not be considered or have been considered in terms of paragraph 2. The respondent has stated that in the case of Mr. Mohan this quota has been resorted to. We do not see any reason why the Director cannot consider the petitioner's case and give a reasoned order regarding

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him in terms of the discretionary quota in paragraph 2.

7. So far as Mr.Parmar, Principal, Central School is concerned the merits of the case are almost equally divided. There is no doubt that the respondent authorities have served the interests of their institution by locating a Central School on or near their premises and for doing so they had to agree to provide cent percent accommodation. The Principal was given 'D' type of quarter. The respondents think that if he was eligible to 'E' type of quarter that should be given to him when it fell vacant and they have done so. However, if the petitioner was entitled to the 'E' type of quarter although he was occupying 'D' type of quarter it is not clear whether there was any special obligation cast upon the respondents to prefer Mr.Parmar over him, although if the respondent authorities have done so we cannot regard their action to be so illegal or grossly wrong as to warrant any interference on our part if the petitioner's claim was for out of turn allotment.

8. To sum up, we feel that the petitioner has no claim for 'E' type of quarter in terms of paragraph 3. He has a case for consideration in terms of paragraph 2 of the O.M. referred to for discretionary allotment of 10% of 'E' type of quarters. We do not hold that he has a claim superior to respondent No.4 in regard to the allotment made to respondent No.4 and decline to interfere with the decision of respondent No.2 for such allotment. We, however, direct that the respondent No.2 considers the case of the petitioner for discretionary quota of 10% and passes a speaking order detailing the persons to whom 'E' type of quarters have been allotted and how their

claims have been judged to be superior to that of the petitioner. We also direct that the respondents file along with the speaking order the Constitution of the committee and guidelines framed in terms of paragraph 2 if they have done so. In case the respondents have not framed the guidelines or constituted a committee we direct that they do so within a period of 2 months and would ask that committee to consider the case of the petitioner in terms of such guidelines and make appropriate recommendations which should also be filed with the said speaking order. We direct that such a speaking order be passed by the Director within four months of the date of this order. There shall be no order as to costs.

9. With the above directions we hold that the petition has merit to the extent stated above. The Miscellaneous Application ~~is~~ is disposed of accordingly.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman