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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCH

O.A. No. 349/88 198
T.A. No.

DATE OF DECISION 27.7.1988

Atomic Energy Workers & Ors. Petitioner

Mr.P.Sankaranarayanan with Mr.S.Natarajan Advocate for the Petitioner(s)

Versus

Union of India and Another Respondent

Mr.V.S.Masurkar. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. AJAY JOHRI, Member (A),

The Hon'ble Mr. M.B.MUJUMDAR, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

[Handwritten signature]

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO.349 of 1988.

1. Atomic Energy Workers and
Staff Union,
Shed No.85, Bhabha Atomic
Research Centre, South Site,
Trombay,
Bombay - 400 085.

2. Phaniraj Venkatramiah,
C-5-13-4-1, Sector-5,
Konkan Bhavan,
New Bombay, 400 615.

...Applicants

V/s.

1. Union of India through
The Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Road,
Bombay-400 039.

2. Director,
Directorate of Estate Management,
Bhagirathi Building,
Anushakti Nagar,
Bombay - 400 094.

...Respondents.

Coram: Hon'ble Member (A), Shri Ajay Johri,
Hon'ble Member (J), Shri M.B.Mujumdar.

Appearances:

1. Shri P.Sankaranarayanan,
Advocate for the applicants.

2. Shri V.S.Masurkar, Advocate
for the respondents.

ORAL JUDGMENT

(Per Shri M.B.Mujumdar, Member(J))

Dated: 27.7.1988

Applicant No.1 is the Union of Non-gazetted
Employees of the Bhabha Atomic Research Centre, Trombay,
Bombay and applicant No.2 is serving as Tradesman 'C' in
Reactor Operations Division of that Centre. They have filed
this application under sec.19 of the Administrative Tribunals
Act, 1985 challenging clauses VI (f)(ii) and VI (h) of the
Allotment Of Government Residence (Department of Atomic
Energy), Bombay, Rules, 1982 (briefly, the Rules). They have
also challenged a Circular dt.22.4.1988 regarding allotment of
flatlets in the Efficiency Apartments building in Anushaktinagar.

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2. The rules have come into force with effect from 15.5.1982. Rule VI is regarding allotment of residence, Sub-rule (f) is entitled "Out-of-turn allotment on compassionate grounds." Sub-Clause (i) of that Sub-rule is not relevant in this case, but Clause (ii) which is entitled "Out of turn allotment on medical grounds/functional and hardship grounds", which is challenged in this case reads as under:

"Out-of-turn allotment on medical ground/functional and hardship grounds:

Not withstanding any-thing contained in these rules, residential accommodation maybe allotted on out-of-turn basis in the following cases at the per centage mentioned against each, in accordance with the procedure prescribed by DAE:-

- | | |
|--------------------------------|--|
| A) Medical grounds | 5% of the accommodation in Types A to E |
| B) Functional/hardship grounds | 10% of the accommodations in in Type A to E. |

Allotment of Accommodation on out-of-turn basis on medical and functional/hardship grounds shall be made in the type next below the type to which they are entitled under the provisions of Rule IV."

Then clause (h) of that rule which entitled "Maintenance of separate pool of accommodation for Scientists in training schools reads as follows:

Maintenance of separate pool of accommodation for Scientists from Training School.

1) Notwithstanding anything contained in these rules, a separate pool of accommodation of flat let type/- bachelors type accommodation shall be formed for providing residential accommodation to the scientists/- engineers coming out from the Training School on completion of their training.

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2) Number of residence to be placed in this pool shall be determined by DAE from time to time.

3) The Scientists/Engineers coming out from the BARC Training School on their successful completion of the training period, and posted to any of the units of DAE in Bombay shall be eligible for allotment of residential accommodation from this pool on the basis of their priority date".

3. This application is filed on behalf of the Non-gazetted Employees of the Department of Atomic Energy at Bombay. ~~Initially~~ ^{Previously}, rules regarding allotment were framed in 1962. They were first revised in 1976 and thereafter in 1982. Rule 6(f)(ii) was there in the Rules since 1976. However, Rule 6(h) was inserted in 1982. The applicants have challenged these rules as being unfair, unreasonable and arbitrary and hence violative of Articles, 14, 16 and 21 of the Constitution of India.

4. The applicant has also challenged the Circular dt. 22.4.1988 (a copy which is attached as Ex.A to the application), but the respondents have subsequently withdrawn that circular and hence it is not necessary for us to consider the legality of that circular.

5. The respondents have filed the written statement on 20.6.1988. On the same day they have filed an additional written statement clarifying certain points. After hearing Mr.Sankaranarayanan, the learned advocate for the applicants and Mr.V.S.Masurkar, the learned advocate for the respondents we find no merit in this application.

6. So far as Rule.VI(f)(ii) is concerned it lays down that 5% of the accommodation in types 'A' to 'E' may be allotted on out-of-turn basis on medical grounds, in accordance with

the procedure prescribed by the Department of Atomic Energy. During the course of arguments Mr. Sankaranarayanan did not challenge this provision. However, he challenged the second provision in that sub-rule which says that 10% of the accommodation in types 'A' to 'E' may be allotted on out-of-turn basis on functional/hardship grounds.

7. Mr. Sankaranarayanan attacked the above provision mainly on the ground that the Department of Atomic Energy has not prescribed any procedure or principles for allotting these 10% of ^{quarters} ~~accommodation~~ on functional/hardship grounds on out-of-turn basis. But in their additional written statement respondents have stated that in considering cases of out-of-turn allotment on functional/hardship grounds the following grounds are considered on priority basis:- (1) employees coming on transfer to Bombay from outstation in the interest of public service, (2) essential services required to be provided on functional grounds; and (3) cases of genuine hardship. At one stage Mr. Sankaranarayanan stated that grounds (i) will not be applicable so far as the employees of the department of Atomic Energy are concerned because nobody comes to Bombay on transfer. This was challenged by the learned advocate for the respondents and considering the fact that this provision applies to accommodation in Type A to E, we feel that at least some higher officers must be coming to Bombay on transfer and if their difficulties are taken into consideration by the allotment committee, nobody can blame them. Ground (ii) applies to employees doing essential services who are required to be provided with accommodation near the place of duty on functional grounds. We do not find any fault in this ground also, because if difficulties faced by the employees doing essential services are to be taken into consideration by the department it will be in its own interest and hence in the

interest of the public. Ground (iii) is no doubt some what vague. But considering the fact that the actual allotment of quarters is made by a committee consisting of 5 other Senior Officers, we do not think that the vagueness in Ground.(iii) will affect the legality of the said provision. In fact Mr.Sankaranarayanan apprehended arbitrariness in the implementation of the provisions, but if some provision is not implemented properly it will not mean that the provision itself is illegal or un-constitutional. If the committee allots quarters contrary to the principles laid down or arbitrarily, that can be challenged before the higher authorities and ultimately by filing an application before this Tribunal.

8. For considering the validity of the attack on Rule VI(h) of the Rules, it will be necessary to state why that provision was inserted in 1982. The respondents have stated on affidavit in the written statement that the department of Atomic Energy are recruiting through various schemes on the basis of All India Open Competition, Scientific and Engineering Personnel to man, key positions of responsibility for ~~the~~ speedy ^{and} ~~effective~~ ^{and} implementation of its research and development programmes.

These Officers are given intensive training for a period of one year in Bhabha Atomic Research Centre Training School and elsewhere in the operating plants and thereafter they are placed to serve the department for 3 years under the bond taken from them. It was experienced by the department that many of these Officers were reluctant to continue service after expiry of the period mentioned in the bond and were leaving services mainly due to want of residential accommodation. In view ~~view~~ of this background, the government appointed a high power committee consisting of Senior Officers including the Chairman of Atomic Energy Commission. The committee in its report submitted in November, 1981 recommended various measures

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including construction of bachelor/family/hostel/flatlet/type accommodation, so that the young Scientists and Engineers could be provided with small flatlets as accommodation, which may serve as an incentive for them to remain in the department. It was thereafter that the department constructed 304 flats in an 18 storeyed building which is named as Efficiency Apartments. Each flatlet consists of one room, kitchen and a toilet having a total area of 460 sq.ft. only. These flatlets are specifically constructed for accommodating the Scientists and Engineers who completed their training from the training school till they became eligible for regular allotment subsequently when their turn comes. It may be noted that even a Class III employee who is entitled for type III(C) quarter is entitled to a flat of 600 sq.ft. consisting of a living room, one or two bed rooms, kitchen and toilet and bath. Similarly, ^{an} employee who is eligible for allotment of type II(A) flat is entitled to a flat of 484 sq.ft. consisting of a living room, bed room, kitchen, toilet and bath. This shows that the flatlets in the Efficiency Apartment building do not fit in with the entitlement of any class III employee. In fact it is clear that the Scientists and Engineers who have completed their training from the training school are treated as a class by themselves because of their education, training and responsibilities which they are expected share in their future career. We feel that treating them separately than the Class III and Class IV employees for whom this application is filed is in no way unfair or arbitrary.

9. Mr. Sankaranarayanan submitted that only about 25% ^{quarters} of the Class III employees of the department are allotted by the respondents. But generally speaking class III and class IV employees are recruited locally. The respondents have stated in para 10 of the written statement as to how many quarters are constructed for different categories of employees. They have stated that during the 6th Five Year Plan they have constructed 1,466 flats of Type 1-A, II-B, III-C, and IV-D categories.

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They have further stated that they have not constructed any flats or houses for higher categories, viz., E, E1 and E2 during the 6th Five Year Plan period. During the 7th Five Year Plan they proposed to construct 696 flats in categories I(A), II(B) and III(C) and 300 more flats for lower categories. This shows that the respondents are trying their best within their financial limits to provide accommodation to their as many employees as possible. According to Mr.Sankaranarayanan it is the duty of the government to provide accommodation to each of its employees. He went to the length of submitting that this is a fundamental right of each employee. We do not agree with this proposition. We cannot ignore the fact that ~~every man~~ ^{the Government} is not meant only for ^{its} employees. It has other responsibilities to fulfill. At the same time the respondents are not oblivious of the difficulties experienced by their employees, especially Class III and Class IV employees for whose benefit this application is filed. If we ^{well} ~~have~~ to accept the argument of Mr.Sankaranarayanan we shall have to direct the respondents to construct flats and houses for each one of their employees. For obvious reasons we cannot do so.

10. Shri Sankaranarayanan cited a number of cases in support of his argument, the cases were: (1) General Manager, Southern Railway v. Rangachari A.I.R. 1962 S.C.36; (2) Lilly Kurian v. Sr.Lewina and others A.I.R. 1979 S.C.52; (3) Delhi Veterinary Association v. Union of India A.I.R. 1984 S.C. 1221; (4) Central Inland Water Transport Corporation Ltd., v. Brojo Nath A.I.R. 1986 S.C. 1571; (5) Daily rated Casual Labour v. Union of India (1988)(1) S.C.C. 122; and (6) President Association of Allottees of Requisition Premises, Bombay v. State of Maharashtra, 1986(Supp) S.C.C. 567.

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Mr.Sankaranarayanan read all the relevant portions from the judgment. But after hearing him and considering these case we do not think that there is anything in any of these cases which helps the applicants before us and which would entitle us to hold the impugned provisions of the Rules as unconstitutional.

11. We therefore, find no merit in this application and hence dismiss the same with no order as to costs.

अजय जोहरी

(AJAY JOHRI)
MEMBER (A)

M.B. MUJUMDAR

(M.B. MUJUMDAR)
MEMBER (J).