

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
O.A.903/96

9th this the Thursday day of JANUARY, 1997

CORAM:

HON'BLE SHRI B.S.HEGDE , MEMBER(J),

1. V.B.S.Negi,  
Tradesman D  
Central Workshop,  
BARC, Trombay,  
Mumbai - 400 085.

2. S.S.Negi,  
36, Pampa  
Anushaktinagar,  
Mumbai - 400 095

By Advocate Shri S.Natarajan

.. Applicant

-versus-

1. Union of India  
through  
Secretary,  
Department of Atomic Energy,  
GOI Anushakti Bhavan,  
CSM Marg,  
Mumbai - 400 039.

2. The Director  
Construction & Service Group  
Vikram Sarabhai Bhavan,  
2nd Floor, North Wing,  
Anushaktinagar,  
Mumbai - 400 094.

By Advocate Shri B.Ranganathan for  
Shri J.P.Deodhar

.. Respondents

-: O R D E R :-

(Per B.S.Hegde, Member(J))

In this O.A. the applicant No.1 is praying for the allotment of quarter which was allotted to his father i.e. applicant No.2 in his favour. Applicant No.2 retired from service w.e.f. 30-4-96 whereas applicant No.1 was appointed as Trainee in the Central Workshop, BARC on 1-4-1987. After satisfactory completion of the training he was appointed as Tradesman B w.e.f. 1-4-89. Applicant No.2 was allotted a quarter in the year 1982 and was in occupation of 'C' type quarter at the time of his retirement at Anushaktinagar, Mumbai. It is further

stated that applicant No.1 was residing with his father and continued to reside with him even after his employment. He had at no time drawn HRA since 1989. Therefore he seeks adhoc allotment of quarters on retirement of his father as per the existing scheme. In this O.A. he also seeks quashing and setting aside of the letter dt. 8-8-96 whereby the respondents considering the request of the applicant No.1 intimated that his case has been duly considered by the appropriate committee but his request for adhoc allotment of quarter on compassionate ground could not be acceded to.

2. Heard the argument of learned counsel for the applicant as well as counsel for the respondents. During the course of hearing learned counsel for the applicant drew my attention to Ex.R-1 which refers to out of turn allotment on compassionate grounds which reads as follows :

"OUT-OF-TURN ALLOTMENT ON COMPASSIONATE GROUNDS: "

1) When an allottee of residential accommodation allotted from the common pool of this Department retires from Govt. service on attaining the age of superannuation or retire on medical incapacitation or dies while in service, his/her son, daughter, or wife or husband as the case may be, may be allotted residential accommodation on priority, on adhoc basis, provided the said relative is an employee of the DAE or its units and eligible for allotment of common pool accommodation and has been continuously residing with the retiring/deceased officer for at least six months preceding the date of (3 years) retirement or death.

If, however, such dependent relation is not already an employee of the DAE but obtains employment within the concessional period for retention of accommodation, after the retirement/death of the allottee, as provided in Rule IX, he/she may also be allotted residential accommodation, on

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priority, on adhoc basis.

The eligible dependent will be allotted accommodation one type lower than his/her entitlement provided that in no case, except otherwise specified, will allotment be made in a higher type of residence than the one in occupation of the retiring/deceased allottee. Provided further that when the eligible dependent is entitled to type 'B' or any higher type of accommodation he/she shall be allotted accommodation in Type 'B' on adhoc basis even if the retiring/deceased allottee was in occupation of Type A accommodation.

The above concession of allotment of accommodation on adhoc basis will however be not available in cases where the retiring/deceased officer or any member of his/her family owns a house or plot of land near his/her place of posting or duty."

3. The first objection of the learned counsel for the applicant is that the committee appointed by the department for the purpose of allotment is not in accordance with the rules and the recommendation is not binding on the respondent department. Secondly he urges that pursuant to the scheme of allotment since the applicant has been residing with applicant No.2 right from beginning and even after his employment he was not drawing any HRA therefore he is entitled for adhoc allotment on compassionate grounds and he fulfills all the required conditions for the purpose. Insofar as the other condition i.e. the concession of allotment of accommodation on adhoc basis will however be not available in cases where the retiring/deceased officer or any member of his/her family owns a house or plot of land near his/her place of posting or duty is concerned he submits that the word near has to be

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read with reference to his posting i.e. at Anushaktinagar. If the employee has a house or plot near to his posting say about 5Kms. in that event he is not entitled to any out of turn allotment whereas in the instant case applicant No.2 has got a house at Kalyan which is nearly 45Kms. from the place of posting thereby the interpretation given by the respondent department that the applicant's request has been rejected by the appropriate committee is not tenable and interpretation given by the respondent is very narrow moreover since the applicant fulfills all other conditions except the condition of his father's residence he should not be denied the out of turn allotment which is otherwise due to him.

4. Respondents on the other hand read out the reply which has dealt with the circumstances under which the applicant's case could not be considered for out of turn allotment and states that the application filed by the applicant is misconceived and the reliefs sought by the applicant is not tenable. Further applicant No.1 is <sup>to be considered</sup> entitled for allotment of residential accommodation only when his turn comes according to <sup>his</sup> priority date.

He is not eligible to be considered for any out of turn allotment on compassionate ground in terms of Rule VI(f) of the Allotment of Govt. Residence (Department of Atomic Energy) Bombay Rules, 1982, since such a concession of allotment of accommodation on ad-hoc basis is not available in cases where the retiring officer (applicant No.2 who is the father of applicant No.1) owns a flat at Kalyan and hence his request for out of turn allotment of accommodation to his son in service could not be recommended by the Sub-Committee constituted for this purpose vide DAE O.M. dt. 19-1-1996. The applicants have

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sought to make out a grievance in respect of this decision on the ground that Kalyan is about 45km from Bombay and is situated beyond the Municipal limits of Bombay and Thane without bringing out that it is a part of Thane District which is adjacent to the Bombay Municipality. As a matter of fact the applicant's application for out of turn allotment of accommodation to him on a father to son basis was duly considered as per Rules and it was found that his request was beyond the purview of the allotment rules in this regard and could not be acceded to. Applicant No.1 cannot seek out of turn allotment merely on the basis of his staying with his father before his retirement whereas it could clearly be seen from the rules that it is a concession to be allowed by the competent authority if he is satisfied that the applicant fulfills all the prescribed conditions laid down by the DAE allotment rules. The committee only assists the competent authority to scrutinise the various applications and recommends to the competent authority for taking decision. They do not take any decision whether to grant out of turn allotment or not. Since the applicant's application is not covered by the rules the question of allotting him out of turn accommodation does not arise.

5. It is an admitted fact that the applicant No.2 has got an accommodation at Kalyan which is a part of Thane district and Rules do not provide for a concession of ad-hoc allotment. Allotment of father to son basis is given as a concession in order to accommodate aged parents if they do not have any accommodation or plot after their retirement. The very purpose of incorporation of last para in Rule VI(f)(1) of the Allotment for Govt. residence(DAE)Bombay Rules,1982<sup>is</sup> that the concession

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will not be available in case the retiring/deceased officer or any member of his/her family owns a house or even a plot of land near his/her place of posting or duty. In the instant case applicant No.2 who owns a flat at Kalyan which is in Thane Dist. is within the vicinity of Bombay therefore the question of out of turn allotment in favour of his son is not in accordance with the rules.

In the light of above, one thing is certain that out of turn allotment on father to son is given with regard to his father who is retired/deceased and if he does not own any property, house or plot near the place of posting. In that event in order to accommodate the parents the out of turn allotment is given in favour of his son/daughter if they are employed in the same organisation. On perusal of the records I find that it is not the committee which takes a decision but it only scrutinise the application for out of turn allotment their recommendation is put up before the competent authority for taking a decision. Therefore, the argument of the applicant that the decision taken by the committee is not valid is without any merit.

6. In the rejoinder filed by the applicant 16 persons name has been mentioned who are similarly placed like the applicant and who has been allotted out of <sup>turn</sup> accommodation which has been denied by the respondents during the course of argument and stated that the records of the department do not indicate that 8 persons owned any house and in the 4 cases the allotment is on special consideration of

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hardship/compassion and not merely routine ~~ad~~hoc allotment on the basis of dependents of deceased employees and one, with the order of the Tribunal and in one case the allotment was made on seniority basis and another case on Essential/hardship grounds and in one case no details ~~xxx~~ were available. It is also stated that necessary action will be taken against them to evict the persons who are not otherwise eligible to be allotted. That by itself does not give any right so far as applicant No.1 is concerned. In this case applicant No.2 owns a house at Kalyan and in my view the last condition laid down in Rule VI(f) squarely applies to the facts of the case thereby the rejection by the competent authority is in accordance with the rules and cannot be ~~xxx~~ set aside. The very purpose of out of turn allotment is that if the retiring employee's son/daughter employed in the same organisation and ~~if~~ the retiring officer does not own any house or ~~xxx~~ plot near the place of posting he should be accommodated along with his son/daughter in order to overcome the hardship of accommodation. The same yardstick cannot be extended so far as applicant no.1 in this case is concerned who is otherwise not eligible to be allotted any out of turn accommodation.

7. In the result, I do not find any merit in the O.A. and the interim relief passed on 7-10-96 stands vacated. Respondents have already issued showcause notice under PP Act and it is open for them to take appropriate action in cancelling the accommodation allotted in favour of

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applicant No.2 in accordance with the rules. Nothing survives in the O.A. Accordingly O.A. is disposed of with above direction.

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(B.S. HEGDE)  
Member(J)