

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 978 /1996

Date of Decision: 28.11.96

Smt. Dulari Bachanram,

Petitioner/s

Ms. R. M. Oza alongwith
Shri R.B. Jaiswal,

Advocate for the
Petitioner/s

V/s.

Union Of India & Another,

Respondent/s

Shri V. S. Masurkar,

Advocate for the
Respondent/s

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

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- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 978/96.

Dated this 28/11, the Thursday day of November, 1996.

C-ORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

Smt. Dulari Bachanram,
Qtr. No. 86/35-II,
Sector-VIII,
S.M. Plot,
Bombay - 400 087.

... Applicant.

(By Advocate Ms. R.M. Oza
alongwith Shri R.B. Jaiswal).

VERSUS

1. Union Of India
through Deputy Agricultural
Marketing Advisor Incharge,
Western Region,
Ministry of Rural Development,
New C.G.O. Building,
Bombay - 400 020.

... Respondents.

(By Advocate Shri V. S. Masurkar)

: O R D E R :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard Ms. R.M. Oza alongwith Shri R.B. Jaiswal
for the applicant and Shri V.S. Masurkar for the respondents
and considered the pleadings of the parties.

BS

2. The applicant in this O.A. was appointed on compassionate grounds on 07.02.1994 in place of her deceased husband who was employed as Watchman in the office of the Respondent No.1. The deceased employee was allotted quarter by the respondents in the year 1989 and he died while in service in the year 1991. Immediately after the death of her husband, she made a representation to the competent authority for compassionate appointment on 31.10.1991. The application was forwarded to the Ministry through proper channel for consideration immediately vide their letter dated 07.01.1992. The department vide its letter dated 22.12.1994 while forwarding the representation of the applicant specifically stated that the delay in the appointment of the applicant for compassionate appointment was due to the administrative delay beyond her control or that of this office and accordingly requested the higher authorities to consider the request of the applicant on compassionate grounds. Again, the respondents vide their letter dated 06.04.1995 reiterated that the delay, if any, was beyond her control and was due to administrative reasons and requested the Directorate of Estates to relax the condition of compassionate appointment beyond one year and regularise the allotment of quarter in her favour. Otherwise, the purpose of compassionate appointment will be defeated. The regularisation of the quarter in the favour of the applicant has been rejected only on the ground that she was not employed within a period of one year from the date of death of her husband. The matter was also heard before the Bombay City Civil Court and the Principal Judge vide order dated 25.03.1996 directed the applicant to hand over

the possession to the Estate Manager by 25.07.1996. The City Civil Court did not go into the merits whether the regularisation of quarter is justified or not. However, having come to know that the appeal/representation made by the Deputy Agricultural Marketing Adviser In-Charge, Western Railway, Bombay, has not been disposed of, directed the Directorate of Estates, Nirman Bhavan, New Delhi to dispose of the pending appeal within a period of three months and directed the applicant to vacate the quarter within a period of four months. Though the applicant was appointed on 07.02.1994, she made a representation on 02.09.1994 stating that the said flat be regularised in her name. Though her request was considered but not acceded to as it is not covered under the rules. A request was made by the appellant's department to relax the condition of compassionate appointment beyond one year and regularise the allotment of quarter in her favour. Though the City Civil Court did not go into the merits of the case, considering the contentions of the parties, directed the respondents to dispose of the pending appeal within a period of three months vide its order dated 25.03.1996. It is noticed that the Eviction order was passed by the respondents after compassionate appointment of the applicant. It is true, that by virtue of compassionate appointment, legally the applicant cannot claim the right of continuation and regularisation of the quarter.

3. The respondents in their reply have relied upon the O.M. of the department dated 13.07.1981 wherein it is stated as follows :-

" A request for adhoc allotment to an eligible dependant may also be considered in case the dependant gets an employment in an eligible office even after the death of the officer provided such an appointment is secured within a period of twelve months after the death of the officer and that the accomodation in occupation of the officer has not been vacated. Eviction in such cases will not, however, be delayed or consideration that the dependant is likely to get an appointment."

The contention of the learned counsel for the respondents is that the applicant made an application for compassionate appointment immediately after the death of her husband and the same was forwarded to the higher authorities and after due consideration, she was given an appointment at Rajkot as Peon but she did not accept the same. The said contention is denied by the applicant's counsel, stating neither that she had ~~not~~ received any intimation nor any notice of transfer to Rajkot. ^{was issued} The respondents have come out only with the reply without any corresponding letter in this behalf. Infact, the respondents have not given a transfer/appointment order to Rajkot sofar. Further, the respondents have given a copy of the reply only today to the applicant's counsel. The only contention raised in the reply is that, since the applicant did not get the compassionate appointment within a period of twelve months, the regularisation of quarter in her favour cannot be acceded to. In this

connection, the learned counsel for the respondents drew my attention to decision of this Tribunal in O.A. No. 387/94 P.R. Jagtap V/s. Union Of India decided on 27.07.1994 and further contended that though the applicant's husband died on 07.09.1991, the applicant has been employed on 07.02.1994, after a lapse of 2½ years and hence the request of the applicant cannot be acceded to.

4. As stated earlier, so far as the applicant is concerned, there is no delay on her part and in the absence of any transfer/appointment letter issued by the respondents to Rajkot, it cannot be said that there was a delay on her part to seek for compassionate appointment. It is an admitted fact that delay if any, was on the part of the respondents, which is clear from their correspondence. Except stating in the written reply that the applicant has been transferred to Rajkot, no documentary proof is furnished by the respondents in this behalf. Now the applicant has already been appointed on compassionate grounds and she is continuing in Bombay and being a lady and as she belongs to a poor strata of society, the question of her sending out of Bombay or to vacate the quarter at this stage does not appear to be justified. In this connection, the learned counsel for the applicant relies upon the following decision in support of her contention that the mere fact that the applicant was not appointed within a period of one year of the deceased employee, her compassionate appointment as well as regularisation of quarter in occupation should not be

rejected on technical grounds. The 1983 circular states that a person can retain quarter occupied by the deceased railway employee provided she is appointed within a period of 12 months from the date of death of the railway employee. In O.A. No. 284/86 decided on 09.12.1986 (Ms. Christiana Bargavas V/s. Union Of India) the Tribunal while allowing the O.A., directed the respondents to allow her to retain the same quarter and to regularise the same according to rules. Again in another decision of the Patna Bench Rama Shankar Chaubey V/s. Union Of India (1987) 3 ATC 389, it was held that the time limit mentioned in the 1981 circular will not apply when the delay in the appointment was mainly due to the stand taken by the railway authorities. Therefore, the learned counsel for the applicant urge that ^{since} the facts and circumstances of the present case is similar to the cases cited above, the rejection of the regularisation of quarter in occupation, by the respondents on the ground that the applicant was not appointed within a period of 12 months after the death of her husband is not tenable and such a plea is not sustainable. I am in agreement with the contention of the applicant's counsel because in this case, the only objection by the respondents in regularising the quarter in question is that the applicant was not appointed on compassionate ground within a period of 12 months of her husband's death. As stated earlier, the delay in securing the appointment if any, was on the part of the respondents.

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5. For the reasons stated above and considering the case law on the point referred to by the parties, I am of the opinion, that the rejection in regularising the quarter in occupation by the applicant vide letter dated 26.06.1996 is not justified and accordingly, the O.A. is admitted and disposed of at the admission stage itself by passing the following orders :

The interim relief granted earlier is made absolute and allow the O.A. Consequently, the order passed by the respondents vide letter dated 26.06.1996 is hereby quashed and set aside.

The respondents are hereby directed to regularise the quarter in occupation of the applicant within a period of one month from the date of receipt of a copy of this order, by relaxing the rules, if required but no order as to costs. However, this cannot be treated as an authority on regularisation but considering the facts and circumstances of this case, I am compelled to pass the aforesaid order.


(B. S. HEGDE)
MEMBER (J).