

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 403/96

Date of Decision: 25-06-97.

D.N.Waghmare & one anr.

.. Applicant

Shri M.S.Ramamurthy

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble M.R.Kolhatkar, Member(A)

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to X
other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.403/96

Pronounced, this the 25th day of June 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Shri D.N.Waghmare,
Retd.Office Supdt., Gr.II

2. Smt.Sonika S.Tambe

Both residing at
Room No.1, Bldg.No.P-6
NAD(R)Colony,
Mankhurd,Trombay,
Mumbai - 400 088.

By Advocate Shri M.S.Ramamurthy

.. Applicant

-versus-

1. Union of India
through
The Secretary
Ministry of Defence,
Govt. of India,
New Delhi.

2. The Flag Officer Commanding-in-
Chief,
Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai - 400 001.

3. General Manager(T)
Naval Armament Depot,
Trombay,
Mumbai - 400 088.

4. Commodore Bureau of Sailors,
Cheetah Camp,
Mankhurd,
Mumbai - 400 088.

5. Chief Staff Officer
(Personnel & Administration)
Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai - 400 001.

By Counsel Shri V.S.Masurkar

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

No.1

In this OA the applicant is the retired
office superintendent working with respondent No.3.
Applicant No.2 is the married daughter of applicant

No.1 and employed with respondent No.4. Applicants have impugned the communication dt. 3-4-1995, at Ex.'C', page 34 on the subject of allotment of accommodation in SPDC/NAD Colony, Mankhurd to Smt.S.S.Tambe, LDC on ad-hoc basis. The same also deals with the request of applicant No.2 ~~for~~ consideration of temporary accommodation afresh in para-4 but so far as the issue of regularisation of the quarters on father to daughter basis is concerned, paras 2 and 3 are relevant and the same are reproduced below:

"2. The request of Mrs.S.S.Tambe, LDC for Government accommodation has been noted. in this connection it is intimated that as per existing rule when a Government servant who has been allotted Govt. accommodation retires from service, or dies while in service his dependent family members (i.e. Husband/wife, son un-married daughter) can be allotted Govt. accommodation on ad-hoc basis, provided that he/she should have been residing continuously with the retiring Govt. servant for at least 3 years before the date of retirement of death and during this period he/she should not have been drawing HRA.

3. Mrs.S.S.Tambe, LDC is not full-filling the condition of non-drawal of HRA for three years. Further she is not dependent of her father Shri D.N.Waghmare, O/S.Gr.II an allottee of Govt. accommodation quarter No.P/6-1 NAD Colony, Mankhurd, controlled by General Manager N.A.D. Trombay. As such she is not entitled for transfer of above accommodation on ad-hoc basis to her name. "

The contention of the applicant is that the impugned order is illegal and vitiated firstly because it proceeds on the basis that regularisation requires that the person in whose favour the regularisation is sought must be a dependent of the retiring Govt. Employee.

According to applicant there is no such condition

in the relevant rules and what is stated in para-3 to the effect that she is not dependent of her father and this is one of the grounds for rejection is not at all borne out by rules but ^{secondly, and} basically the application appears to have been rejected on the ground that applicant No.2 did not continuously reside with retiring Govt. employee for atleast three years and did not draw HRA for three years. It is not disputed that applicant No.1 retired on 31-5-1995 and applicant No.2 was employed w.e.f. 22-3-1993 and therefore applicant No.2 had stayed with her father only for two years two months and nine days. and even if she had not drawn HRA for ~~the whole of this period, the same is stated to fall~~ short of the three year period laid down in the rules and therefore the application appears to have been rejected. According to applicant the respondents have misconstrued the applicability of the rules. The rules which apply are "Allotment of Residences (Defence Pool/Accommodation for Civilians in Defence Services) Rules, 1978 and the same are to be seen at Ex. 'A' to the rejoinder and Rule-20 of these rules states as below :

"20. Allotment to certain relations in certain cases-(1) when a Government servant who has been allotted Govt. accommodation retires from service or dies while in service, his son, daughter wife, husband or father be allotted Govt. accommodation on an adhoc basis provided that the said relation is Govt. servant eligible for Govt. accommodation and had been sharing accommodation with the retiring or deceased officer for atleast six months before the date of retirement or death."

M

2. Counsel for respondents however contend that the case has been decided correctly. In this connection attention is invited to the communication dt. June '95 addressed by Sr. Staff Officer to the office of Chief of the Naval Staff in which a clarification is sought regarding period of six months as referred in SRO 308/78 para 20 (the rules referred to above) and the three years specified in Ministry of Works and Housing letter dt. 1-5-1981 (ex.R-12) from which it is seen that the previously specified period of six months was extended to three years, in respect of Govt. servants who retire on or after 7-11-1979 and that the Chief of Naval Staff office had confirmed that Ministry of Works & Housing order dt. 1-5-1981 would apply vide Ex.R-11, dt. 28-8-1995.

3. Counsel for applicants however contends that rules framed under SRO cannot be amended by way of ^aclarification and the period of six months which is laid down in the SRO cannot by means of a clarification be read to be ^aperiod of 3 years on the analogy of the general instructions of Ministry of Works and Housing. According to him therefore in the absence of a formal notification the clarification issued by office of Chief Naval staff is required to be ignored and the SRO as it stand is required to be given effect to and therefore the Tribunal should quash the impugned order.

4. Learned counsel for the respondents state that the Ministry of Housing and Works department is the all other nodal Ministry so far as Govt. departments are concerned and therefore the clarification was sought and therefore the department was right to reject the application of the applicant for regularisation of the quarters. Counsel for respondents has further

argued vehemently that the applicants have not come with clean hands. In this connection he states that the applicant No.1 had in his letter dt. 15-3-96 and other representations made several statements which are not borne out by the record. According to the counsel for respondents the applicant cannot be said to have rendered efficient service. He was warned several times for his incompetence. The applicant had owned a house at Nerul, New Bombay of which he took possession from CIDCO in 1985 which he let out and collected regularly monthly rent and in addition he has booked another house through CIDCO of which he was likely to take possession in May, 1996. This is against CIDCO rules. Applicant also owns a house at his native place for which he had obtained advances from provident fund. He also obtained several advances from provident fund even for non-urgent reasons like observance of birthdays of daughters etc. The applicant therefore cannot be said to be a poor person without any shelter who requires any leniency from this Tribunal. Further it is stated that so far as applicant No.2 is concerned she has been residing unauthorisedly separately at various other quarters in the same NAD(R) colony namely at quarter No.P-15/4 sharing with one Shri G.S.Kante and thereafter at quarter No.P-13/4 sharing with one Shri M.T.Lokhande. In this connection respondents have also invited attention to inspection report dt. 3-10-96 at R-1 to the sur-rejoinder which shows that the applicant along with her husband were staying in quarter of N.T.Lokhande.

5. In my view the contentions of the respondents regarding the service record of the applicant and the drawal of GPF by him for

....6/-

various purposes ^{are} ~~is~~ not a matter in issue.

The contentions of the respondents ~~in this~~ regard even if substantiated by records are not relevant.

The main issue to be decided is whether the respondents were right to reject the request for regularisation of the quarter on the ground that applicant No.2 has not stayed continuously with the retiring employee (applicant No.1) for at least three years. In my view the circulars relied upon by the respondents are of no avail in the face of the statutory rule ~~relied upon~~ by the applicant which has not been formally amended. I must therefore hold that ~~that~~ according to the statutory rules the sharing of accommodation ^{required} and non-drawal of HRA is only to the extent six months which the applicant No.2 has undisputably fulfilled. Applicants are therefore entitled to the relief.

6. The contention of the respondents however ~~that~~ the applicant No.2 is not staying in quarters of her father in respect of which the ~~interim relief~~ was granted ^{and that} ~~she is~~ staying in some other quarter belonging to a colleague may be relevant to the extent respondents want to proceed against the applicant No.2 but that would be a separate issue. I therefore dispose of the OA by passing the following order:

-: O R D E R :-

O.A. is allowed. The letter dt. 3-4-95 at page 34 is hereby quashed and set aside. Respondents are directed to regularise the quarters of applicant No.1 in favour of applicant No.2 on the footing that she fulfills the requisite conditions at the time of retirement of her father.

Applicant No.2,^{is} of course, expected to abide by the terms and conditions of the licence on the allotment and the respondents are at liberty to proceed against the applicant No.2 according to rules in case she is found in breach of conditions of allotment.

There will be no orders as to cost.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

M