

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 834/96

Date of Decision : 3<sup>rd</sup> October '01.

N.A.Ambati & Anr. \_\_\_\_\_ Applicant

Shri A.I.Bhatkar \_\_\_\_\_ Advocate for the  
Applicant.

VERSUS

Union of India & Ors. \_\_\_\_\_ Respondents

Shri V.S.Masurkar \_\_\_\_\_ Advocate for the  
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S.Tampi, Member (A)

(i) To be referred to the reporter or not ? *yes*

(ii) Whether it needs to be circulated to other No  
Benches of the Tribunal ?

(iii) Library *yes*

*P.L.J.*  
(S.L.JAIN)  
MEMBER (J)

*mrj:*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.834/96

Dated this the 3<sup>rd</sup> day of October 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S.Tampi, Member (A)

1. N.A.Ambati
2. Ambati Ashanna

R/o Qr.No.1886,  
3rd Floor,  
Sector VI, Kane Nagar,  
Mumbai.

...Applicants

By Advocate Shri A.I.Bhatkar

vs.

1. Union of India through  
the Secretary,  
Ministry of Urban Development  
(Director of Estate),  
Govt. of India,  
Nirman Bhavan,  
New Delhi.

2. The Estate Manager,  
Govt. of India,  
Old C.G.O.Building Annexe,  
3rd Floor, 101, M.K.Road,  
Mumbai.

3. The Admiral Superintendent  
Naval Dockyard,  
Lion Gate,  
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

S:V

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8.(a) This Hon'ble Tribunal will be graciously pleased to call for the records pertaining to the issuance of the eviction order dated 7.8.1996 and after going through the legality of the same quash and set aside the same.

(b) This Hon'ble Tribunal will be graciously pleased to declare that the O.M. dated 155.3.1994 is not at all applicable in the case of the applicants.

(c) This Hon'ble Tribunal will be graciously pleased to direct the respondents to transfer/regularise the Government accommodation in the name of the applicant No. 2 with effect from 1.4.1995 in accordance with the Rules.

(d) This Hon'ble Tribunal will be pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.

(e) That the cost of this application be awarded to the applicants."

2. At the time of commencement of hearing, the learned counsel for the applicants states that he is pressing only relief mentioned at para 8 (c).

3. The Applicant No. 1 is the father of the Applicant No. 2. The Applicant No. 1 who was in service in Naval Dock Yard, retired from Government service after attaining the age of Superannuation on 31.3.1995, was in occupation of a Government

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accommodation allotted by Respondent No. 2 vide allotment Order No. I (2050-B)185 EMB dated August, 1986. The Applicant No. 2 was appointed in the Naval Dock Yard as Mason from 7.7.1986, was residing with Applicant No. 1 in the same accommodation after informing the said fact to the authorities concerned and since 10.6.1991 was not drawing House Rent Allowance from the Government. The Applicant No. 2 submitted application in the prescribed form on 29.11.1995 to Respondent No. 1 for regularising the accommodation in his name along with various Annexures:

4. The Respondent No. 2 issued a show cause notice dated 15.1.1996 under Section 4 of the P.P. Act, 1971, the Applicant No. 2 submitted the reply dated 29.1.1996 to the same defending the case on ground of claim of regularisation. On 23.2.1996, the Applicant No. 2 was transferred from Naval Dock Yard, Mumbai to Fleet Maintenance Unit. An application dated 24.2.1996 was submitted by the Applicant No. 2 to Respondent No. 2 with a request to regularise the Government accommodation in his name. The Respondent No. 2 passed the Eviction order dated 7.8.1996.

5. The perusal of the pleadings of the applicants and Respondent Nos. 1 & 2 and Respondent No. 3 makes it clear that the Respondents have taken into consideration the O.M. dated 15.3.1994 and clarification dated 15.3.1996 issued by Government of India, Directorate of Estates for rejection of the claim of the applicant for regularisation which read as under :-

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" The undersigned is directed to say that it is understood that the office of Naval Dockyard has got departmental pool of accommodation for making allotment to its own officers. The position of continued allotment to the officers of Naval Dockyard from a general pool has been reviewed by the Government keeping in view the percentage of satisfaction in the departmental pool of Naval Dockyard vis-a-vis the same in the general pool and it has been decided to declare the officers of Naval Dockyard as ineligible for allotment from general pool at Bombay with immediate effect. This is for information of all concerned."

6. On a careful perusal of the said O.M. dated 15.3.1994, we are of the considered opinion that it restricts the allotment and not the regularisation. The terms regularisation and allotment the concept & effects thereof are not one and the same. In case of regularisation, the accommodation occupied by the employee who has superannuated, remains in occupation of his son/daughter but in case of allotment, the accommodation which is in common pool has fallen vacant, is allotted to the person entitled called allottee and the vacant possession thereof is handed over to him. The allotment and regularisation are governed by separate Rules and different considerations exists/arises for allotment and regularisation. In case of regularisation, the general pool does not loose an additional accommodation while in case of allotment, it looses one additional accommodation. Probably keeping in view the same situation, the officers of Naval Dock Yard are allowed a change of accommodation in view of clarification dated 15.3.1996.

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7. On perusal of an order passed in OA.No.3/97, Brundaban Mangulu Sahu & Anr. vs. Union of India & Ors. decided on 17.4.1997 by this Bench wherein the said O.M. and the clarification was the subject of consideration, in para 4 of the order principle of Equality was invoked, the right flowing from Govt. of India orders under SR-317-B-26 which stand on Higher Footing than the Administrative decision taken by Directorate of Estates. Therefore the right protected by F.Rs. S.Rs. stand on a higher footing than the power of the department to make certain employees ineligible for allotment from a particular date was upheld.

8. The learned counsel for the applicant relied on an order passed by this Bench in OA.NO.172/96, Anthony Mathew & Ors. vs. Union of India and others wherein O.M. dated 15.3.1994 was the subject of consideration and regularisation was ordered.

9. The learned counsel for the respondents argued that the orders passed in these OAs. are subjudice before the Apex Court of the Land and stay order is operating in respect of the orders passed by this Tribunal. The matter being subjudice or stay order is operating does not debar the tribunal to decide another matter based on same question of law following the earlier view which appears to be correct one.