

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 493/99

18-11-99
Date of Decision:

R.P.Tolani

Applicant.

Shri A.N.Kotangle along with Shri S.Suryawanshi
Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? +
- (2) Whether it needs to be circulated to 7 other Benches of the Tribunal?
- (3) Library +

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 493/99

Dated this the 18th day of November 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

R.P.Tolani,
Judicial Member,
Income-tax Appellate Tribunal,
CGO Bldg., 4th Floor,
101, M.K.Road, Mumbai.

...Applicant

By Advocate Shri A.N.Kotangle
alongwith Shri Sangram Suryawanshi

V/S.

Union of India through

1. The Secretary,
Ministry of Urban Affairs
and Employment, New Delhi.
2. The Director of Estates(Regions),
Directorate of Estate,
Govt. of India,
Nirman Bhavan,
New Delhi.
3. The Estate Manager,
Pratiksha Bhavan,
101, M.K.Road,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-



O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant on being selected to the post of Judicial Member of the Income Tax Appellate Tribunal was appointed as per the Memo dated 20.2.1998 at Delhi. He was then transferred to Mumbai and took charge at Mumbai on 10.2.1999. The applicant applied for allotment of the Government quarter on 15.2.1999 to Estate Manager, Government of India, Mumbai with a request to allot entitled accommodation of Type-VI on priority and out of turn as per Government of India Circular dated 24.7.1986 and 27.12.1995. After repeated reminders to the Estate Manager, the applicant was advised that Type-V quarter is not vacant and Type-IV (Special) can be readily allotted in Hyderabad Estate, Mumbai on the undertaking the applicant is willing to accept Type-IV accommodation. The applicant submits that under compulsion and by misrepresentation by the Estate Manager, the applicant gave consent for the offer of Type-IV (Special) flat allotment and occupied the same. In the seniority list published for the month of February, 1998, the name of the applicant is shown at Sr.No.203 for Type-V flat and at Sr.No.37 for Type-VI flat. The case of the applicant is that applicant is entitled for Type-VI quarter as per rules and if Type-VI was not readily available, at least Type-V quarter should have been allotted to him in Hyderabad Estate. The applicant has filed the present OA. on 15.6.1999 seeking the following reliefs :-

(a) to direct respondents to allot Type-VI quarter to the applicant or in the alternative Type-V quarter on priority basis forthwith only in Hyderabad Estate or Warden Road, Mumbai.

(b) to direct respondents to dispose of the representations of the applicant dated 15.2.1999 and 19.2.1999.

2. The applicant has based his claim stating that ~~he~~ being a judicial officer, it is incumbent on the part of the Government to provide accommodation in terms of the judgements of the Rajasthan High Court and Hon'ble Supreme Court in the case of All India Judges Association vs. Union of India. He has submitted further that keeping in view the availability of the staff car ~~only~~ within a distance of 9 kilometers from the place of residence, the applicant deserves to be allotted accommodation in South Mumbai only for efficient discharge of his judicial functions.

3. The respondents have opposed the application by filing written statement through the Assistant Estate Manager, Mumbai. Respondents submit that the highest type of accommodation available in Mumbai is Type-VI and the applicant is entitled for the same as per his emoluments. Since the applicant is very junior in terms of date of priority for Type-VI, he is entitled

for Type-V accommodation in terms of O.M. dated 14.9.1992. As regards allotment of Type-V accommodation, the initial allotment of the accommodation is to be made at Ghatkopar or New Mumbai in terms of SR-317-B-7 as there is huge waiting list for Hyderabad Estate. The applicant made a request for allotment of Type-IV (Special) accommodation in Hyderabad Estate explaining the hardships faced by him pending allotment of Type-V/VI quarter as per regular turn. This request was forwarded to Directorate of Estates, New Delhi and on his approval, the applicant was allotted flat No. H-25, Hyderabad Estate. The applicant has occupied the same. The applicant has been wait listed for Type-V/VI as per his seniority. As regards the reference to Apex Court's judgement, the respondents contend that the same has been complied with by offering Type-IV quarter which the applicant accepted and has occupied as this judgement does not give any direction as to type of quarter and the locality. In respect of interim order of Rajasthan High Court, SLP No.6906/1998 has been filed before Hon'ble Supreme Court, the respondents have also relied upon the judgement of Mumbai High Court in the case of K.Shivaram vs. Union of India dated 6.3.1997 in W.P.No.2464 of 1996.

4. The applicant has not filed rejoinder reply for the written statement.

5. Heard the arguments of Shri Ashok Kotangle along with Shri Sangram Suryavanshi for Kotangle & Co. counsel for the applicant and Shri V.S.Masurkar for the respondents.

6. It is admitted fact that the applicant as per his pay scale and pay is eligible for allotment of Type-VI accommodation which is the highest type of accommodation available at Mumbai and the applicant's name has been placed on the waiting list as per his date of registration. Further, as stated by the respondents, the applicant is entitled for Type-V accommodation on out of turn allotment on the basis of next below category on adhoc basis in terms of the O.M. dated 14.9.1992 (Exhibit-'R-1' of the written statement). The applicant has already accepted the offer of Type-IV quarter on out of turn basis in Hyderabad Estate and occupied the same. With these facts and keeping in view the rival contentions as detailed earlier, two questions which call for deliberation are :-

(a) Whether the applicant is estopped from claiming allotment of Type-V Flat on out of turn basis on next below category basis when he has already accepted and occupied Type-IV flat on his own request?

(b) Whether the claim of the applicant for allotment of Type-V flat in South Mumbai area only is tenable?

7. Taking the first question, it is noted that the applicant is entitled for a flat in terms of O.M. dated 14.9.1992 on next below category on out of turn basis. Since in Mumbai the highest category of accommodation available is Type-VI only, the applicant is entitled for Type-V on out of turn basis in terms of O.M. dated 14.9.1992 as admitted by the respondents. Keeping this entitlement in view, I am of the considered opinion that ~~that~~ respondents' contention that the applicant having occupied Type-IV flat on his own request on out of turn basis cannot claim Type-V quarter allotment is not tenable. This cannot operate as an estoppel. The applicant has submitted that the applicant accepted Type-IV quarter out of compulsion and misrepresentation of the facts by the Estate Officer. With the status of the applicant in terms of pay scale and pay, he is entitled for Type-V quarter as per rules and merely by occupying the lower type of quarter does not take away his vested right until and unless the respondents come out with any rules that once Type-IV quarter is occupied on out of turn basis, the extant rules prohibited for any further change on out of turn basis. The respondents have not cited any such rules. In the light of these facts, I have ^{therefore} ~~no~~ ^{no} hesitation to hold that ^{the} applicant is entitled for Type-V flat on out of turn basis as per the provisions of O.M. dated 14.9.1992.

8. The applicant has put forward strongly his claim for allotment of the Type-V quarter in South Mumbai Area. The respondents in the additional affidavit which they were directed to file to bring out as to what is hindrance in allotment of Type-V quarter on out of turn basis have come out that the applicant can be allotted Type-V quarter on out of turn basis but not in Hyderabad Estate as claimed by the applicant. The respondents have taken the stand that as per the provisions of SR-317-B-7, out of turn allotment is to be done only in the area where there is no waiting list for change. It is further contended that there is long waiting list for change for Type-V quarter for Hyderabad Estate and therefore Type-V quarter can be allotted only at Ghatkopar or New Mumbai. The applicant has however put forward his case for allotment of accommodation in South Mumbai area stating that for Ghatkopar or New Mumbai, staff car would not be available for commuting and this will cause serious hardship in discharging his judicial functions. After careful reading of the SR-317-B-7 and the O.M. dated 14.9.1992, I am not inclined to accept the stand of the respondents. O.M. dated 14.9.1992 provides for out of turn allotment for next below category and such allotment is to be done without putting the eligible officers on the normal adhoc waiting list. This would imply that such officers who are entitled for next below category are not to be governed by the normal waiting list rules. These instructions therefore do not envisage any locality restriction. Further, Rule 317-B-7 (1) only lays down that preferably the

allotment for a particular locality is to be considered for those desiring change of accommodation. This stipulation is not mandatory but only 'preferably'. Further, I find considerable force in the plea of the applicant with regard to availability of the staff car which is available to the Members only on sharing basis. Keeping in view the status and the functions to be discharged as a JUDICIAL Member, this aspect needs to ^{be} given due consideration. I am therefore of the view that the claim of the applicant is just and deserves to be allowed. In this connection, I refer to case of Shri G.C.Gupta, Member of the same Tribunal in OA.No.252/98 where respondents have allotted Type-V quarter on out of turn basis recently to him.

9. The respondents have placed reliance upon the judgement of the Bombay High Court dated 6.3.1997 in the W.p.No.2464/1996. I have carefully considered the same. In this judgement, the W.P. has been disposed of on the statement made by the Additional Solicitor General on Behalf of the Central Government and no finding have been recorded by the court. It is noted that Government had stated that Type-V quarter is being given on out of turn basis to the Members of Income Tax Appellate Tribunal on priority basis without restriction of locality in terms of SR-317-B-2, i.e. the same stand as taken in the present OA. However, in view of the deliberations above and considering the facts and circumstances of the present case, I am of the opinion that the applicant deserves the relief prayed for.

10. In the result of the above, OA. is allowed with the direction to the respondents to allot Type-V flat to the applicant in South Mumbai area in terms of O.M. dated 14.9.1992 taking the original date of registration as a reference for allotment on out of turn basis. No order as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

mrj.

30-6-2000 (42)

Both counsel present.

Adjourned to 28-8-2000.

B.N.Bhadar

m(A)

R.G.Vaidya

nc

59) O.A.493/99

Date: 28.8.2000

Mr.Jayant Gaikwad for
M/s.Kotangale & Co. for the
applicant. Mr.V.S. Masurkar,
Counsel for the respondents.

Counsel for the
respondents submits that Hon'ble
High Court has granted ~~the~~ stay
order against the Tribunal's Order
dated 18.11.1999, and therefore in
our opinion Contempt Petition
No.57/99 does not survive.

In view of the above,
Contempt Petition No.57/99 stands
dismissed. Contempt notices
issued on the respondents has been
discharged. *are hereby*

S.L.Jain
(S.L. Jain)

Member (J)

D.S.Bawej
(D.S. Bawej)

Member (A)

H.

dt 28/8/00

order/Judgement despatched
to Applicant/Respondent(s)
on 15/9/00

B
18/9/00