

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1097/99

DATE OF DECISION: 21/01/2001

Shri Prakash Sitaram Kamble & Anr. Applicant.

Shri S.P.Kulkarni ----- Advocate for
Applicant.

Versus

Union of India & 3 Ors. ----- Respondents.

Shri V.S.Masurkar ----- Advocate for
Respondents.

CORAM:
Hon'ble Smt. Shanta Shastry Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

L-9-
(SHANTA SHAstry)
MEMBER(A)

abb

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 1097/1991
DATED THE 21 DAY OF July, 2001

CORAM: HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

1. Shri Prakash Sitaram Kamble,
S/o.Late Sitaram Kamble,
Working as Postman U, IIT Powai,
Mumbai - 400 076.
2. Smt.Kusum Sitaram Kamble,
Wife of Late Sitaram Kamble,
Retired as : Water Woman,
Mahim Head Post, Mumbai. Applicant

By Advocate Shri S.P.Kulkarni

v/s.

Union of India

Through

1. Chief Postmaster General,
Maharashtra Circle, Old G.P.O.
Building, Fort,
Mumbai - 400 001.
2. Welfare Officer (i.e. A.D.P.S.),
(Welfare) & Estate Officer,
Office of the Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building,
Mumbai - 400 001.
3. Senior Postmaster,
Mahim Head Post Office,
At Mahim P.O.,
Mumbai - 400 016.
4. Senior Superintendent of Post Offices,
North East City Division,
Bhandup, Mumbai - 400 042.

By Advocate Shri V.S.Masurkar.

(ORDER)

Per Smt. Shanta Shastray, Member(A)

The applicants have approached this Tribunal to direct the respondents to reconsider the case of the applicants for transfer of quarters allotted to the Applicant No.2 in the name of Applicant No.1 and not evict the applicants from the quarters.

••2•

2. The applicant no.2 is a widow of late Sitaram Kamble who was appointed as Full Time Water Woman at Mahim Head Post Office. She was allotted quarter No.P-9/3 in Santacruz, P&T Colony vide allotment order dated 11/11/1991. The Applicant No.2 was in occupation of the quarter till the date of filing of the OA. She retired on superannuation on 31/7/1999. She applied for transfer of her quarter in favour of and in the name of her son i.e. applicant no.1 for the first time on 12/6/96. It was also requested in the said letter to stop the drawal of HRA in favour of applicant no.1 and to recover the licence fee of the quarter from the pay of applicant no.1. Separately, the applicant no.1 also wrote to his Divisional Head on 20/10/98 to stop the HRA as his mothers application for transfer of the quarter in his name was pending with the Welfare Officer, Office of the Chief Post Master General, Mumbai submitted through the proper channel i.e. Mahim Head Post Office. The applicant no.1 had also addressed a letter on 19/10/98 to the Chief Post Master General, Mumbai-1 in same connection. He had also specifically written a letter on 17/10/96 to the Deputy Director(Admn) Pent Section, Mumbai G>P>O. stating that he was staying with applicant no.2 since May, 1996. The HRA being drawn be deducted from his salary. However, no action was taken. Finally, the respondents rejected the case of the applicants vide their letters dated 18/5/99, 25/5/99 and 19/6/99 stating that the applicant no.1 is not fulfilling the conditions for adhoc allotment of quarters from the main allottee and that applicant no.2 should therefore vacate the quarter immediately.

3. It is the contention of the applicants that though they had registered their case for adhoc allotment in favour of

applicant no.1 well in advance and they fulfill all the conditions and they had also intimated stoppage of HRA, yet the respondents have rejected their case.

4. The respondents in their written statement have clearly stated that they did not receive any application of the applicant no.2 dated 12/6/96 as claimed by the applicants. They also deny the receipt of applications submitted by applicant no.1 on 19/10/98. Similarly, the application dated 17/6/96 submitted by applicant no.1 is addressed to the Deputy Director, Rent Recovery Section of Mumbai GPO. He is only concerned with the recovery of rental dues from the allottee and has no jurisdiction over stopping of drawal of HRA of the official. Applicant no.1 failed to address a letter to the Senior Superintendent of Post Offices, Mumbai city, North East Division, Bhandup, Mumbai who is the real controlling authority. That apart, the applicants have failed to pursue the matter afterwards till 13/11/98. Issue of subsequent reminders only appears to be an afterthought and is deemed to intentional and motivated exercise in order to show that he is fulfilling all prescribed conditions for adhoc allotment of quarter in his name. The respondents have further pointed out that the ration card produced does not specify the date from which the applicant no.1 is residing in the given address. Even the form for change of CGHS dispensary bears the date of application by the applicant no.1 as on 2/4/98. It shows that the applicant was residing at Police Patil Chawl, Room.No.2, Agra Road, Ghatkopar(W), Mumbai. The two main conditions for such adhoc allotment of the quarter in the name of the son employed under the same authorities are that the concerned employee must be staying with the allottee atleast for a period of

three years prior to the retirement of the allottee and he should not draw HRA. In the present case, the applicant no.1 continued to draw HRA and also there is doubt about his residing with the applicant no.2 since 1996, i.e. 3 years prior to the retirement of applicant no.2 and therefore the respondents have rightly rejected the request.

5. The learned counsel for the respondents also made a point that no legal right vested in the applicant to get adhoc allotment of quarter. The learned counsel has drawn attention to the judgement in the case of Harishchander V/s. Chandigarh Administration 1998(1)SLR 353 P&H The Hon. High Court held that the out of turn allotment from father to son is not a hereditary right which can be enforceable in a court of law.

6. The learned counsel for the applicant reiterated that the applicants had in good faith applied in time and had requested to stop the HRA. It is not the fault of the applicant if the same was not stopped. The learned counsel is relying on the judgement of the Hon. High Court of Mumbai in WP-1302/97 in the matter of Jaganath Bikaji Mayekar V/s. CPMG, Maharashtra Circle and Ors. In this case the petitioner was allotted a quarter in October, 1981, his son started residing with the family only from 1/7/84 and therefore on that ground only the transfer of allotment was not permitted. It was also found therein that the son had been drawing the HRA from the date of his appointment on 20/1/92. The Hon. High Court allowed the petition by holding that the petitioner and his son were entitled to the benefit of transfer of allotment under the policy of the Government on the express understanding that the son would refund the HRA for a period of 3 years as claimed by the department. The learned counsel for the

applicant states that the case of applicants being similar to the one decided by Hon. High Court, they are also entitled to the transfer of the allotment.

7. It is seen that though the applicants claim to have applied for the transfer of the allotment of quarter in the name of applicant no.1 on 12/6/96, the same was not received by the competent authorities concerned. Moreover, the copy of the letter produced which is at Exhibi-H of the OA shows that the request was only for transferring the quarter in the name of applicant no.1 and to recover the rent towards the quarter from the pay of the son i.e. the applicant no.1. There is no mention regarding stopping of the HRA in this application. There appears to be stamp of the Mahim Head Post Office of having received the letter dated 12/6/96. In the letter dated 17/6/96, which was wrongly addressed to the Deputy Director by the applicant no.1 there is a reference to the stopping of HRA. However, this letter had not been received by the Competent Authority in the matter. There is therefore doubt as to whether the applicant had at all instructed to stop the HRA. Nothing prevented the applicants from pursuing the matter with the right authorities. The applicants failed to get the HRA stopped. The applicants have now expressed willingness to refund the entire HRA for the three year period.

8. I find that the applicants definitely intended to stop the HRA though application was addressed wrongly to the Deputy Director, who was not concerned, the fact remains that the applicant no.1 had advised stopping the HRA from his pay bill. No doubt he failed to pursue the matter till 1998 but according to me, that should not be held against the applicant as there is

atleast one document to show that he had really advised to stop the HRA. Merely because he has applied to the CGHS dispensary about the change of his address later in 1998, does not prove that he was not staying with his mother.i.e. applicant no.2. Following the judgement of the High Court of Mumbai, in the case of Jagannath Bikaji Mayekar stated above, I am inclined to grant the relief. The respondents are therefore directed to reconsider the request of the applicants for transfer of the quarter allotted to applicant NO.2 in the name of applicant no.1. Applicant no.1 shall refund the HRA for the entire period of three years prior to the retirement of applicant no.2 in the name of applicant no.1.

9. In the result, the OA is allowed. No costs.

Shanta F
(SHANTA SHAstry)

MEMBER(A)

abp.