

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 599/99

DATE OF DECISION: 8/12/2000

Shri P.T.Sandilyan

Applicant.

Shri V.D.Surve

Advocate for
Applicant.

Versus

Union of India & 2 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? | No
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. Yes ✓

Shanta S-
(SHANTA SHAstry)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:599/99
DATED THE 8th DAY OF DEC. 2000**

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

Shri P.T.Sandiyen,
residing at Quarter No.2759/206,
Type-B, Sector-3, Kanenagar,
Mumbai - 400 037. Applicant

By Advocate Shri V.D.Surve

V/s..

1. Union of India, through
the Estate Manager, having
office at Old C.G.O.Building Annex,.
Mumbai - 400 020.

2. The Director of Estates,
(Regions), Nirman Bhavan,
New Delhi-110 011.

3. The Material Superintendent,
Material Organisation,
Ghatkopar (W),
Mumbai 400 086. Respondents

By Advocate Shri V.S.Masurkar

(ORAL) (ORDER)

Per Smt.Shanta Shastry, Member(A).

The applicant is aggrieved by the letter dated 26/7/96 from the Director of Estates(R) informing him that it is not possible to regularise quarter No.2759/276, Kane Nagar in his name. He has been asked to vacate the quarters immediately to avoid eviction proceedings and damage rent. The applicant has prayed to declare the aforesaid letter as illegal, bad in law and not binding upon the applicant and to direct the respondent no.1 to regularise the aforesaid quarter in his name or to allot any other quarter as per his entitlement and to pay the cost of the application.

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(Signature)

2. The applicant had also asked for Interim relief by way of restraining the respondents from dis-possessing him from the aforesaid quarter. However, the same was not granted by this Tribunal as the eviction order had already been issued under the Public Premises (Eviction of Unauthorised Occupants) Act 1971.

3. The brief facts are that the applicants' late father was working in the Bureau of Sailors as U.D.Clerk. He was allotted quarter No.2759/206, Type-B, Sector-III, Kane Nagar, Mumbai in 1987. The applicant had been residing with his father since then. His father died of Heart Attack suddenly on 2/6/94 leaving behind the applicant's mother, himself and two other children. The applicant made an application to the Commander, Bureau of Sailors, Mumbai for appointment on Compassionate grounds. He was appointed as unskilled labour in the Department of Material Organisation, Naval Store Depot, Ghatkopar, Mumbai w.e.f. 10/2/96.

4. As per the allotment rules, the applicant being entitled for regularisation of quarter in his name, made an application through proper channel for such regularisation on 22/3/96. Though recommended to be considered as a special case, his request was not acceded to.

5. According to the applicable rules, as incorporated in the Circular dated 13/7/81, a request for adhoc allotment to a eligible dependents may also be considered in case the dependent gets 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 concerned and that the accommodation in occupation of the Officer has not been

vacated. Eviction in such cases will not, however, be delayed on consideration that the dependent is likely to get an appointment. In the present case, the respondents rejected the request of the applicant on the ground that he had secured appointment twenty months after the death of his father. After allowing for the permissible period of one year, the applicant's appointment was delayed by eight months and therefore the applicant could not get the quarter regularised in his name. In the meantime, eviction proceedings were initiated and the applicant was evicted from the quarter. His application for regularisation of accommodation in his name was rejected by Respondent No.2 by impugned order dated 26/7/96.

6. It is the case of the applicant that he was entitled for regularisation of quarter allotted to his father in his name. The delay of eight months which occurred in his getting the appointment after one year of his father's death was not attributable to him. The delay was administrative delay on the part of the respondents. The respondents have admitted that it was due to administrative reasons. The applicant has therefore requested to condone the delay and regularise the quarter in his name. The applicant has relied on the following judgments:-

- i) Shobha S Madke V/s. Union of India
OA-106/97 decided on 4/6/97 by Mumbai Bench.
- ii) Smt. Sharda C Lad V/s. Union of India
MA No.144/96 in the Bombay City Civil Court, Mumbai
dated 19/7/99 by the Principal Judge.
- iii) Dulari Bachhanram V/s. Union of India
OA 978/96 dated 21/11/1996.

7. According to the applicant in all these cases, the delay was condoned by the Hon'ble Courts and the quarter was regularised in favour of the applicant. In Dulari Bachhanram's case, the delay was of about 2 and half years in getting the appointment.

8. The respondents have opposed the OA. The respondents have taken the plea that the application has not been file within the limitation period. The applicant is challenging the respondents order dated 26/7/96 in July,99. The application therefore suffers from delay and laches. The respondents have cited the following judgements in support of their contention that the application not filed within the limitation period prescribed under Section-21 of the Administrative Tribunals Act, 1985 is not maintainable.

- 1) L.Chandrakumar V/s. Union of India 1997(2) SLRSC 1
- 2) Ex-Captain Harish Uppal Vs. Union of India 1994 (20 SLJ 177)
- 3) Secretary to Govt. of India V/s. S.M.Gaikwad (1995)30ATC 635
- 4) Bhoop Sing Vs. Union of India AIR 1992 SC 1414
- 5) S.S.Rathore Vs. S/O MP 1989(2)ATC 521
- 6) Ram Chandra Samantha Vs. Union of India 1994(26)ATC 228
- 7) P.S.Sadasivaswamy Vs. S/O.Tamil Nadu AIR 1974 SC 2271
- 8) Jacob Abraham & Ors. A.R.Full Bench Judgements 1994-1996.

8a Further after being evicted under the Public Premises Act, the applicant had filed MA in the City Civil Court at Mumbai against the Eviction Order. Later on the appeal was withdrawn on receipt of the impugned letter dated 26/7/96. The allotment of the quarter was cancelled w.e.f. 2/6/95 after taking action under

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the PP Act, the final order of eviction was passed on 21/1/95. The application is thus hit by limitation. The learned counsel for the respondents is further relying on the Division Bench judgement of the Tribunal in the case of Phool Singh and Anr. v/s. Union of India 1997(1)ATC 175. The Tribunal was required to interpret the rule which is on issue namely SR-317-B 25. The Full Bench observed in the case as follows:-

"If similar consideration is to be given in case of appointment taken beyond the period of 12 months, then this will lead to unfair discrimination against other regular employees waiting for normal allotment in their turn."

9. I have heard both the learned counsel for the applicant as well as respondents. I have carefully considered the arguments advanced by both sides and I have perused the judgements relied upon. It is a fact that the applicant got the appointment twenty months after the death of his father though he had immediately applied for the same. Thus, there was a delay of eight months after deducting the period of one year which is permissible. I find that the applicant's case is similar to the case of Shobha Madke(supra). In the judgement, in this case, the various judgements cited both by the applicant as well as respondents were discussed at length. In the case of Dulari Bachhanram, the delay was of two years and five months. In Phool Singh and Others, the gap was of two years and two months. It was held in the case of Shobha Madke that each case needs to be decided on the facts and circumstances of that particular case. It was held that merely because the Government have self imposed the limit of one month to relaxation, that does not preclude the Tribunal from going into the facts of an individual case and giving appropriate

directions. The judgement in the case of Rama Shankar Chaubey's V/s. Union of India reported at 1987(3)ATC 389 was relied upon. Therefore although the respondents had invoked the authority of the Division Bench judgement in Phool Singh's case relying upon the case of Rama Shankar Chaubey, the judgement in which case was prior to Phool Singh's, the application was allowed.

10. I am inclined to go by the judgement in the case of Shobha Madke. Later on the Government of India have now raised the limit of one year to two years for getting appointment after the death of breadwinner of the family for getting accommodation regularised. Though it has only a prospective effect, it recognises the fact that there can be administrative delays in giving appointments.

11. In my view therefore the applicants prayer for regularisation of the quarter allotted to his later father deserves to be considered favourably in relaxation of the time limit prescribed.

12. The respondents have raised plea of limitation, the applicant has submitted MP for condonation of delay. Considering that the applicant's request is a genuine request, I am inclined to overlook the objection regarding limitation in this case.

13. In the facts and circumstances of the case, the respondents are directed to consider giving adhoc allotment of the quarter as per the entitlement of the applicant within a period of three months from the date of receipt of copy of this order. The OA is allowed. No costs.

Shanta Shastray

(SHANTA SHAstry)
MEMBER(a)