

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.358/2000

Dated: 8-8-2000

V.M.Rautabai

Applicant.

Shri S.S.Karkera

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

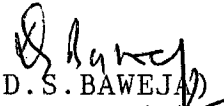
CORAM :

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

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

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

(3) Library? ✓


(D.S. BAWEJA)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.358/2000

this the 8th day of August 2000.

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

V.M.Raut,
8/68 Type - B Special,
CGHS Colony,
Ghatkopar (W),
Mumbai - 400 086.
(By Advocate Shri S.S.Karkera)

...Applicant.

Vs.

1. The Union of India,
through the Director of Estates,
Directorate of Estates,
Govt. of India, Nirman Bhavan,
New Delhi.
2. The Estate Manager,
Govt. of India, 3rd Floor,
Old C.G.O. Building, Annexe,
101, M.K.Road,
Mumbai.
3. The Principal Director of Audit,
Indian Audit and Accounts Department,
Audit Bhavan C-25, Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051.

...Respondents.

(By Advocate Shri V.S.Masurkar)

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

The applicant had earlier filed OA 566/97 challenging non-regularisation of quarter occupied by his father at the time of retirement on father to son basis as per the extant rules. This OA was decided as per order dt. 12.3.1998 with the following directions:

"The O.A. is, therefore, disposed of with the direction that the Applicant No.2 is entitled for consideration of allotment of quarter from father to son basis. Accordingly, the Applicant No.2 is permitted to retain Type - II quarter of his father till a Type-I quarter is allotted to him.

...2.

The dispute between the Audit Department and the Estate Manager should be resolved through their official channel. The Estate Manager would be free to allot a Type - I quarter temporarily to Applicant No.2 to get the Type - II quarter vacated by Applicant No.1 till the dispute as to who will finally allot the quarter to Applicant No.2 is resolved by the Audit Department and Estate Manager. The O.A. is disposed of with the above directions. No costs."

The respondents, however, had filed a Review Application (M.P. No.43/98 seeking review of the order. This Review Application was rejected as per order dt. 15.4.1999. After the Review application was Group 'C', the respondents did not allot entitled quarter to the applicant as directed in the order dt. 12.3.1998. In the meantime, the applicant appeared for selection to the post of LDC and was declared passed in the written test as per the result notified on 30.12.1997. Thereafter, the applicant was finally promoted in Group 'C' as per the order dt. 1.7.1998. Since the applicant had already been promoted in Group 'C' and entitled for Type - II quarters which was allotted to his father, the applicant made a representation on 7.9.1998 for regularisation of the Type - II quarter occupied by him instead of allotting Type-I quarter as per his earlier entitlement when he was in Group - 'D' service. The applicant made another representation on 19.4.1999 and on not getting any reply, the present OA has been filed on 29.5.2000 seeking the following relief:

"seeking a relief of directing respondents to regularise the Type - II quarter in the name of the applicant which is in his possession."

2. The respondents have filed written statement opposing the application. The respondents submit that the applicant is not entitled for regularisation of Type - II quarters as at the time

...3.

of retirement of his father, he was Group 'D' employee and therefore he is entitled for regularisation of Type - I quarter only in his name. It is further added that the applicant has already been allotted a Type - I quarter during the pendency of the OA as per order dt. 26.7.2000. The applicant is therefore required to move to newly allotted Type - I quarter from and vacate the Type-II quarter which is being occupied by the applicant.

3. The applicant has not filed any rejoinder reply to the written statement.

4. I have heard the arguments of Shri S.S.Karkera and Shri V.S.Masurkar, the learned counsel for the applicant and respondents respectively.

5. The applicant has been made eligible for regularisation of the quarter on father to son basis in terms of the order dt. 12.3.1998 in OA 566/98. The respondents were therefore required to allot Type - I quarter which the applicant was eligible at the time of retirement of applicant's father. However, during the pendency of this action by the respondents, the applicant has been promoted to Group 'C' as per order dt. 1.7.1998. It is the claim of the applicant now that since he has become entitled for Type - II quarter on promotion to Group 'C' post, the quarter which is under his occupation may be regularised in his name instead of allotting Type-I quarter. It is also noted that the respondents during the pendency of the OA have allotted a Type-I quarter to the applicant to enable him to vacate the Type - II quarter under his possession. Therefore, the short question which requires to be decided is whether the applicant's claim for regularisation of Type - II quarter in his possession can be allowed. The respondents have opposed this stating that

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eligibility of the applicant has to be determined based on the date on which the applicant's father retired. Since the applicant was working in Group 'D' at that time, it is the contention of the respondents that the is entitled to only Type I quarter. The plea of the applicant on the other side is that since the applicant has become eligible for Type-II quarter before the Respondents could allot the Type-I quarter, he is entitled for regularisation of Type - II quarter which is already in his possession. In this regard, he has placed reliance on the following two orders of this Bench of the Tribunal :

- (a) H.M.Nimal & Anr. Vs. Union of India & Ors.
(OA 1037/94 decided on 16.8.1996).
- (b) Vijendra Abhimanyu Ayre Vs. Union of India & Ors.
(OA No.900/97 decided on 18.12.1997).

The above two orders have been cited by the applicant in the OA in para 5.6. However, the respondents have not commented on the same in their written statement. On going through the order dt.18.7.1997 in the case of Vijendra Abhimanyu Ayre, it is noted that this decision is based on the ratio of what is held in the earlier order in the case of H.M.Nimal & Anr. in OA 1037/94. On going through the facts of the case of Vijendra Abhimanyu Ayre, it is noted that the facts are almost the same as in the present OA. In this case also before the allotment of accommodation of the entitled class, the applicant had been promoted to a higher post which entitled him to for type of accommodation which he is occupation. The Bench has taken a view referring to the earlier Order in the case of H.M.Nimal & Anr. that subsequent developments can be taken into account and since the applicant had been promoted to a higher post which entitles him a



Type - II quarter, i.e. type of quarter in his possession. In the present case, the situation is the same. I am in respectful agreement in what is held in this order and hold that the ratio of what is held in this case applies to the case in hand. In view of this, the applicant's case has a merit and he is entitled for regularisation of Type - II quarter at present in his possession.


6. The counsel for the respondents during the hearing, raised the issue of res-judicata stating that the present OA is barred by principles of res-judicata. This plea has not been taken in the written statement. However, the counsel for the respondents submitted that in the earlier OA viz. OA No.566/97 a clear direction has been issued that the applicant is to be allotted Type - I quarter as per his entitlement. Therefore, raising of issue of allotment of Type - II quarter now in the present OA will be barred by principles of res-judicata. This plea of the respondents is not tenable. In the earlier OA, the applicant had challenged non-regularisation of quarter on father to son basis and the issue was not with regard to regularisation of Type - II quarter. In the present OA, the applicant has sought regularisation of Type - II quarter based on the subsequent developments. In this connection, I again refer to the order in the case of Vijendra Abhimanyu Ayre. In this O.A. also the same ground of res-judicata was raised by the Respondents but the same was rejected by the Bench as recorded in para 7 of the order. In view of these observations, the plea of

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the OA being barred by res-judicata raised by counsel for the respondents does not have any merit.

7. In the result of the above, the OA is allowed. The Type-II quarter in possession of the applicant will be regularised in his name. The allotment of Type - I quarter as per order dt.26.7.2000 stands cancelled. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

B.