

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.808/2000

Dated this Wednesday, the 14th Day of March, 2001.

Shri P.M.Padwalkar Applicant

(Applicant by Shri K.S. Kalappura, Advocate)

Versus

Union of India & 5 Ors. Respondents

(Respondents by Shri R.R.Shetty Advocate for Shri R.K. Shetty, Sr.Central Govt. Standing Counsel)

CORAM

Hon'ble Shri B.N.Bahadur, Member (A),

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *Yes*

B.N.Bahadur
(B.N.Bahadur)
Member (A)

sj*

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.808/2000

Dated this, Wednesday , the 14th Day of March, 2001.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Mr. P.M. Padwalkar,
FGM (SK)
MES - 188978,
3/4, M.E.S. Block,
Navy Nagar, Colaba,
Mumbai 400 005.

.... Applicant

(Applicant by Shri K.S. Kalappura, Advocate)

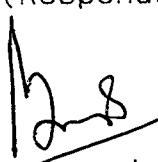
vs.

1. Union of India, through
The Secretary
Ministry of Defence
South Block,
New Delhi 110 001.
2. Engineer-in-Chief
Army Headquarters,
DHQ, P.O. New Delhi 110011.
3. Chief Engineer,
HQ. Southern Command,
Engineer's Branch, Pune 411001.
4. Chief Engineer (Navy),
Mumbai, 26 Assaye Bldgs.
Colaba, Mumbai 400 005.
5. Commander Works Engineers
Naval Works
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
Mumbai 400 005.
6. Garrison Engineers (Naval Works)
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
Mumbai 400 005.

.... Respondents

(Respondents by Shri R.R.Shetty, for Shri R.K.Shetty, Advocate)

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O R D E R (ORAL)

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Shri P.M. Padwalkar seeking the relief from this Tribunal for the quashing and setting aside of impugned order dated 13.11.2000, through which order the earlier order dated 9.11.2000 allotting Govt. Quarters to the Applicant is cancelled. The facts of the case, as brought forth by the Applicant, are that he is a Fitter General Mechanic (FGM), and is entitled to Quarter Type II, and works on the establishment of R.6. Also that he is classified as "key personnel" by the Competent Authority for the purposes of provision of accommodation. The Applicant further avers that he was allotted Quarter No. 3/4 by the order dated 9.11.2000, and, consequently, took possession of the said quarter on the same date i.e. 9.11.2000 and lives there with his family. However, vide the impugned order, the allotment of this accommodation is cancelled, and he has been directed to vacate the quarter by 15.11.2000. The Applicant is before us seeking to challenge this action as discriminatory and *mala fide*, and thus seeks the relief as already noted above. The Applicant thereafter has given further details in the O.A. to press and justify his case. *I.R by way of status quo was provided.* *Ans*

2. The Respondents have filed a written statement, in reply, where their defence is as follows: They submit that the Applicant has been erroneously allotted Type II quarter,

Ans

and this error is evident from the order itself at page 12. It is further stated that certain key personnel who are senior to the Applicant are still in Type II Quarters and it is their right to get accommodation allotted in priority compared to the Applicant. Respondents further set out the position of rules and the various instructions, and rely on them. The main contention is that an error has been committed and all that they are seeking to do by the impugned order is to correct it.

3. I have heard learned Counsels on both sides -- Mr. K.S. Kalappura for the Applicant, and Shri R.R.Shetty for Shri R.K.Shetty for the Respondents. The case was adjourned once to enable both sides to take instructions or to procure additional documents.

4. Arguing the case on behalf of the Applicant, his learned Counsel, Shri Kalappura, alleged that rules were not followed and that the Respondents are working under pressure from the Unions. He also sought to take me over various papers filed to make the point that the Applicant is, in fact, senior to the persons who are shown ahead to him in the waiting list for the accommodation. He is entitled to Type II and once an allotment is made, any order which seeks to dispossess him of the house would be illegal. Support was sought from Ex. R.4 which sets out the Accommodation Policy as also from the judgement of the Supreme Court in the matter of *Motilal Sugar Mills vs. State of U.P.* reported in AIR 1979 SC 621 para 23.

5. Learned Counsel for the Respondents Shri R.R.Shetty, reiterated the defence set out in detail in the written statement and argued the point that a mistake has been made and

Ans

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accommodation; also that Type II accommodation is provided only on change and there is a separate waiting list, which was due to him.

6. I have seen the papers in the case and considered the arguments made before me by learned Counsels on both sides. At the first instance, it must be stated that I find no evidence of any malafide on the part of the Respondents in making the impugned orders. Nor do I find any *prima facie* evidence that seniority lists has been wrongly made. Well as the applicant may be senior in service, seniority of key personnel for the purpose of house allotment can well be assigned on other criteria as per the stand taken by the learned Counsel for Respondents.

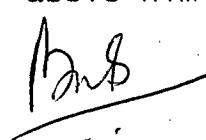
7. However, one thing is clear with reference to argument of error correction that this is not a case of promotion or seniority etc. It is a case of Govt. accommodation being given by what has been termed as a mistake. Also it is not that some new facts have come to the notice of respondents, which were not available to them at the time when they made the order of allotment. Neither is it the contention taken that there is any *malafide* action on the apart of the applicant in providing any wrong information or his being in any manner being guilty of a conduct on false claim that on his part contributed to the mistake regarding initial allotment. It is a mistake *per se* by the Respondents.

Bns

8. Also that the applicant is entitled to Type II accommodation. However, Respondents are within their right to have a system where Type I accommodation is allotted first and later betterment provided on change. This is in fact, a well accepted policy followed by Directorate of Estates and other such Govt. Agencies. The fact of the matter is however, that he is provided with accommodation. He lives there with his family. It is also undisputed that he is a key personnel, perhaps lower in priority. Under the circumstances, dispossessing him from a house and that too in 2/3 days' notice and in a city like Mumbai, is under the circumstances clearly harsh. There would be a kind of estoppel that would operate on the Respondents, and there is some truth in the contentions of learned Counsel Shri Kalappura vis-a-vis the relevant para in the judgement of Supreme Court cited and referred to above.

9. Learned Counsel for Respondents Shri Shetty made the point that any direction to continue the Applicant either in Type I and Type II will make for infliction of injustice on the person who is one above him in the waiting list of Type I accommodation and who is not a party in the O.A. Once the above position has been explained, it is not as though this would trample on seniority or such other rights of the person referred to. Had it been a case of promotion, seniority, pay scale etc. the matter would have been seen in a different light. Here the balance of convenience clearly lies in favour of the Applicant given to these circumstances of the present case especially in a clear mistake of Respondents. Surely, perhaps the person above him might have to wait a little, but the balance of

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convenience clearly goes in favour of the applicant, to the extent he cannot be dispossessed without giving alternate accomodation. However, while right to accommodation becomes justified, the right to a higher accommodation cannot be justified in the same manner. Under the circumstances the Respondents shall be in full liberty to provide him with Type I accommodation or any other similarly suitable accommodation for the applicant (not below Type I/ equivalent). Under the facts and circumstancesw discussed above we feel that the following orders will meet the ends of justice.

10. The impugned order dated 13.11.2000 (Ex.B) is hereby quashed and set aside. Liberty is provided to the Respondents to offer accommodation of Type I or any other suitable accommodation equivalent to Type I, to the Applicant whereupon applicant shall shift to the said accommodation. Till such time this is done, the applicant shall continue in the present accommodation allotted to him. The O.A. stands disposed of accordingly with no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

sj*