

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.1051/92

1. Shri T.L.Paul

2. Smt.Stella Jose,
D-3/Patliputra,
Anushaktinagar,
Bombay - 400 094.

.. Applicants

-versus-

1. Union of India
through
The Chairman,
Atomic Energy Commission
and Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
Bombay - 400 039.

2. Estate Officer and Director
Directorate of Estate
Management,
Dept. of Atomic Energy,
Vikram Bhavan, Anushakti Nagar,
Bombay - 400 094.

.. Respondents

Coram: Hon'ble Smt.Lakshmi Swaminathan, Member(J)

Appearances:

1. Mr.M.S.Ramamurthy
Advocate for the
Applicants.

2. Mr.V.S.Masurkar
Counsel for the
Respondents.

JUDGMENT:

(Per Smt.Lakshmi Swaminathan, Member(J))

Date: 22nd Dec. 1993.

This application has been filed by two applicants viz. Shri T.L.Paul and his daughter Smt.Stella Jose in which applicant No.1 has prayed for quashing of the impugned order of eviction dt. 29-9-92 and applicant No.2 has sought a direction to the respondents to allot a suitable accommodation to her, and for directions for payment of normal licence fee for the occupation of the present accommodation earlier allotted to applicant No.1.

2. The applicant No.1 Shri Paul retired from service of respondent No.1, B.A.R.C. on 30-6-1989. While in service he had been allotted

18/

Flat No.D-3/Patliputra,Anushaktinagar,Bombay.

Applicant No.2 is his married daughter who is also employed in BARC as Junior Stenographer from January,84. She has been residing in this flat with her father, applicant No.1. The applicant No.1 has stated that he is not looked after by his son who is residing separately but that it is applicant No.2 who is looking after him.

Applicant No.2 had applied for allotment of quarters on out of turn basis on 20-6-89 in terms of Rule VI(f) of the Allotment of Govt. residence (Department of Atomic Energy)Bombay Rules,1982.

It appears that she was allotted a quarter by letter dt. 21-7-89 which was later on cancelled by a further letter dt. 26-7-89. Against this withdrawal of allotment of quarters in her favour applicant No.2 made representations to the respondents. The Director^{or} of Estate Management, BARC vide their letter dt.14-8-89 have stated that the "DAE allotment Rules provide for allotment of departmental accommodation on ad-hoc basis to dependent son, daughter or wife or husband as the case may be when an allottee of residential accommodation allotted from the common pool of this department retires from Govt. service on attaining the age of superannuation or retires on medical incapacitation or dies while in service. Since Smt. Stella Jose is married and her husband is working in a private firm in Bombay, she is not considered as a dependent of the retired employee, her father. As such, she is not eligible for allotment of departmental accommodation on ad-hoc basis." Applicant No.1 also made a representation in which he mentioned the same facts requesting

that his daughter may be allotted suitable accommodation under the 1982 Rules since certain other persons similarly placed had been allotted quarters by BARC. These requests were, however, turned down by the respondents on the ground that under the DAE Allotment Rules, married daughters are not eligible for ~~either~~ allotment of departmental accommodation on adhoc basis after the retirement of Govt. servant. They have sought to distinguish the other cases where married daughters have been allotted quarters on adhoc basis on the ground that one was a very "special case" which was done with the approval of the DAE because the father of the allottee was medically incapacitated before his retirement, and in the second case the allotment was made to an allottee sometime in January, 1985 without assigning any reason, and in the third case, the allottee was unmarried at the time of making the allotment.

3. After issue of showcause notice to applicant No.1 under the provisions of the Public Premises(Eviction of Unauthorised Occupants)Act,1971 and granting a personal hearing to him the Estate Officer passed an eviction order dt.2-3-1992. In this order it was mentioned that applicant No.2 had been informed that married daughters are not entitled to get adhoc allotment in the event of retirement of their parents under the departmental allotment of Govt. residence rules. Since applicant No.1 had requested the Estate Officer to retain ~~him~~ the quarter from 22-8-90 for a period of three months, The Estate Officer granted ^{him} permission to retain the flat.

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upto 30-9-90. He was, however, asked to pay an amount of Rs.5,500/- towards damage and allied charges against the above premises upto that period. It was also mentioned in the order that the application submitted by his daughter, applicant No.2, for adhoc allotment had been placed before the special committee constituted for the purpose alongwith other applications, and the committee had after due consideration not recommended her case for adhoc allotment.

4. The applicants challenged the eviction order before the Principal Judge, Bombay City Civil Court. The Court vide its order dt. 29-6-92 remanded the case to the Estate Officer with certain directions to proceed and complete the hearing according to the guidelines given in the order. Accordingly the applicant No.1 presented his case before the Estate Officer and thereafter the Estate Officer passed the impugned order dtd.29-9-92. In this order the Estate Officer also asked Shri Paul to pay the outstanding amount of Rs.11,923.57/- towards licence fee and allied charges.

5. The learned counsel for the applicant has assailed the eviction order passed against applicant No.1 on the grounds that the eviction order does not disclose any reasons for his eviction and has proceeded on the basis that applicant No.2 being ^a married daughter is not eligible to be allotted any accommodation on adhoc basis and, therefore, applicant No.1 should also vacate the quarter. He has also stated that no proper proceedings for recovery of licence fee and other charges has been taken by the officer.

6. As regards the refusal for allotment of quarters to applicant No.2, they have relied on the judgment of this Tribunal in Parmeshwaran Bharathan and another vs. Union of India in T.A. 467/86 decided on 13-2-90. In this case the Tribunal held that "we have the least hesitation in holding that the instructions contained in the letter of the Railway Board dt. 27-12-1982 making ineligible the married daughter of a retiring/deceased railway servant for adhoc, out-of-turn allotment of quarter is per-se unconstitutional as it suffers from the twin vices of gender discrimination and discrimination among women on account of marriage." The impugned instruction issued on 27-12-82 were struck down and the order rejecting the request of the second applicant for allotment of the quarter occupied by her on out of turn basis was also quashed. The Tribunal following the judgment of the Supreme Court in Miss. C.B. Muthamma v. U.O.I. (AIR 1979 SC 1868) further held that the impugned instructions making ineligible a married daughter of retired govt. servant for out of turn allotment of quarter was in total disregard of the Supreme Court judgment. In that case the Supreme Court had struck down the rule as discriminatory whereby ^a women member of the Service had to obtain the permission of the government before she marries, which did not apply to a male member. In this case the Tribunal held that it cannot be presumed that in all cases that after marriage the daughter becomes a member of the family of the husband. The impugned instructions disqualifying a married daughter of a retiring railway servant for out of turn allotment of quarter was therefore, held to be irrational. The appeal filed

by the Union of India against this judgment was dismissed by the Supreme Court by its order dt.

8-7-91. The ~~another~~ ground taken by the applicants was that two other married daughters of BARC employees had been given out of turn allotment of quarters and the rejection of ^a similar request by applicant No.2 was, therefore, discriminatory and not sustainable in law.

7. In reply the learned counsel for the respondents has taken the following pleas viz: that in view of Rule 10 of CAT(Procedure) Rules,1987 the applicants cannot file this single application for plural remedies. According to the learned counsel for the respondents the reliefs ^{and} asked in para. 8(a)(b) of the application are separate and the reliefs asked by applicants 1 and 2 cannot be clubbed together. Whereas prayer (a) of applicant No.1 deals with eviction under Public Premises (Eviction of Unauthorised Occupants) Act,1971, the prayer of applicant No.2 deals with departmental rules and policy of the Govt. of India and, therefore, there is no common cause of action. The respondents have contended that the applicant No.1 had already been given sufficient leniency in allowing him to continue in the quarter much after his date of retirement till 30-4-90, although he had agreed to pay double rent. As far as applicant No.2 was concerned even as far back as in September,89 she was aware that her previous allotment letter of quarter had been cancelled but she had filed this application in the Tribunal only on 14-10-92. Hence the application was also barred by time. Another ground urged by the

respondent was that since applicant No.1 has three children, including a son who has his own house, applicant No.2 was not entitled for out of turn allotment under the departmental rules. It was also their contention that only a dependent family member is entitled to accommodation on adhoc basis. They also referred to proceedings of ^{the} special committee for allotment of flats and stated that this committee after due consideration had rejected the proposal made on behalf of applicant No.2 for such allotment.

8. Looked at ^{from} any angle, from the above facts it is clear that the claims of both the applicants had been dealt with together at all material times by the respondents. It cannot, therefore, be said that the reliefs sought by them are unrelated. Hence, the first contention of the respondents that this combined application is not maintainable is rejected. The other preliminary question of limitation can also be disposed of by reference to the proceedings of the special committee for allotment of flats held on 27-11-91. It is not disputed that even as late as 27-11-91 the special committee had considered the claim of applicant No.2 for out of turn allotment of quarter and informed that her request has not been accepted. This application was filed before the Tribunal on 14-10-92. Therefore, the plea of limitation is also rejected.

9. The learned counsel for the respondents has contended that since the special

committee for allotment of flats has duly considered and rejected applicant No.2's claim, she has no further grievance, since she being entitled for Type 'B' quarter, for which the allotment is presently being made for those employees ^{serving} since the year 1978, she will get ^{it} in her turn.

10. Rule VI(f) of the Allotment of Govt. residence(DAE)Bombay Rules,1982 reads as follows :

"VI(f) Out of turn allotment on compassionate grounds:

1)When an allottee of residential accommodation allotted from the common pool of this Department retires from Govt.service on attaining the age of superannuation or retires on medical incapacitation or dies while in service, his/her son, daughter, or wife or husband as the case may be, may be allotted residential accommodation on priority, on adhoc basis, provided the said relative is an employee of the DAE or itsunits and eligible for allotment of common pool accommodation and has been continuously residing with the retiring/deceased officer for at least six months proceeding the date of retirement or death.

If, however, such dependent relation is not already an employee of the DAE but obtains employment within the concessional period for retention of accommodation, after the retirement/ death of the allottee, as provided in Rule IX, he/she may also be allotted residential accommodation, on priority on adhoc basis.

The eligible dependent will be allotted accommodation one type lower than his/her entitlement provided that in

28

no case, except otherwise specified, will allotment be made in a higher type of residence than the one in occupation of the retiring/deceased allottee. Provided further that when the eligible dependent is entitled to type 'B' or any higher type of accommodation he/she shall be allotted accommodation in Type 'B' on adhoc basis even if the retiring/deceased allottee was in occupation of type A accommodation.

The above concession of allotment of accommodation on adhoc basis will however be not available in cases where the retiring/deceased officer or any member of his/her family owns a house or plot of land near his/her place of posting or duty."

11. As regards the allegation that applicant No.1's son owns a residence in Chembur, Bombay, the applicant has ~~not~~ specifically denied this. The applicant No.1 has stated that his son ~~is residing~~ in the flat of his father-in-law and ~~that~~ his other married daughter is residing in the rented premises along with her brother-in-law and family. Applicant No.2 herself does not own any house or plot of land near BARC, her place of posting. ~~So~~ on this ground I am satisfied that that on the facts of the case the applicant No.2 cannot be denied the allotment of accommodation on adhoc basis as per the rules.

12. On perusal of the various letters sent to applicant No.2 rejecting her request for out of turn adhoc allotment of quarter, it becomes amply clear that the same has been done on the ground that as per the DAE allotment rules married daughters are not eligible. The rules extracted

above, do not make any such distinction between married and unmarried daughters. Besides, the respondents have not denied that they have made such allotment of quarters to other married daughters in similar circumstances. My attention was also drawn to the Ministry of Urban Development (Directorate of Estates) O.M. No.12035(14)/82-Pol.II (Vol.II) dt. 17-12-1991, wherein the concession of adhoc allotment of quarters which was earlier extended to ^{un}~~married~~ daughters was extended to married daughter of a retiring official in case ^{where} he does not have a son or in case ^{is} the married daughter ^{who is} ~~was~~ the only person prepared to maintain the parent(s). In the instant case applicant no.2 has been all along staying with applicant no.1 even after her marriage. She is an employee of BARC. No case has been made out that the son of applicant No.1 is in a position ^{or willing} to maintain the father. Apart from the fact that DAE has stated ^{that} applicant no.2 is a married daughter, no other grounds have been alleged for not allotting her ^{on} a quarter ^{out of turn} basis under the aforesaid rules. The judgment of the Supreme Court in U.O.I. ^{Parameswaran Bharatan &} vs. ^{vs.} ~~vs.~~ Mrs. Ambika R. Nair and another dt. 8-7-91 upholding the judgment and order of this Tribunal dt. 13-2-90 in TA 467/86 is also binding in this case. In ~~this~~ case the Tribunal has held that there is no rational for the imposition of a blanket prohibition against a married daughter of a retiring govt. servant making her ineligible for out of turn allotment of quarters. I am in respectful agreement of this judgment. The aforesaid O.M. of the Ministry of Urban Development also confirms this position. Therefore, the cancellation

19.

of the allotment of quarter to applicant No.2 on the ground that she is a married daughter is discriminatory and illegal and is quashed and set aside. On the same reasoning, the impugned order rejecting her request for making allotment of quarter to which she is otherwise entitled to, under the rules is also quashed. The respondents are directed to make an allotment of quarter of the type applicant No.2 is entitled, on out of turn abhoc basis under the relevant rules, within one month of the receipt of a copy of this order. Applicant Nos. 1 and 2 shall vacate the present quarter D-3, Patliputra, Anushaktinagar, Bombay within ten days of such allotment to applicant No.2.

13. In the light of the above, the impugned eviction order dt. 29-9-92 and subsequent order dt. 16-10-92 passed against applicant No.1 are also quashed and set aside. Applicant No.1 may be allowed to continue to occupy the flat till the time, as directed above. It is, however, made clear that if either of the applicants fail to vacate the quarter after the respondents have made the allotment to applicant No.2, the respondents are at liberty to proceed against applicant No.1 according to law.

14. Applicant No.1 had agreed to pay double the flat rate of the licence fee for the flat D-3, Patliputra on the respondents agreeing to his extension of stay there from time to time upto 30-9-1990. Subsequently proceedings had been taken against him under the Public Premises (Eviction of Unauthorised Occupants) Act which have already been referred to^{above}. During the time these proceedings

were before the Estate Officer, the Bombay City Civil Court and this Tribunal, the applicant has continued to reside in the premises. The learned counsel for the applicant has agreed to continue to pay double the flat rate of the licence fee for the quarter from the time he was permitted to overstay as a special case by the respondents. The applicant No.1 shall be liable to pay this rent till the time he vacates the quarter as directed above. The applicant No.1 is further directed to deposit the arrears of rent, if any, together with all allied charges pertaining to this quarter, including water and electricity ^{concerned} charges, with the authorities within two weeks of the receipt of copy of this order failing which the respondents are at liberty to proceed against him in accordance with the relevant law/rules. In case he has already paid these amounts, the respondents may adjust the same and refund the excess amount, if any.

15. In the result the application succeeds and is disposed of with the above directions. There shall be no order as to costs.

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)