

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 161/92

199

~~XXXXXX~~

DATE OF DECISION 17.7.1992

Shri V.D. Darde

Petitioner

Shri V.D. Surve

Advocate for the Petitioners

Versus

Union of India & Others

Respondent

Shri V.S. Masurkar

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C. REDDY, MEMBER (J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } no

T. C. Reddy
Member (J).

mbm*

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A. No.161/92

Shri Vithal Dhondu Darde
S/o Dhondu Darde
and another.

... Applicant

V/s

Union of India &
Ors.

... Respondent.

Coram: Hon'ble Mr. T.C.Reddy, Member(J)

Appearance :

Shri V.D.Surve
Advocate for the applicant

Shri V.S.Masurkar for the
respondent.

Oral Judgement

Dated: 17-7-92

(Per: Hon'ble Mr. T.C.Reddy, Member(J))

This application is filed under Section 19 of the Administrative Tribunal's Act to direct the first respondent to regularise the Quarter No.724/74 Type 'B' Sector II C.G.S. Colony, Kane Nagar, Bombay-400 037, in the name of second applicant and pass such other orders as may be fit and proper in the circumstance of the case. The facts that are necessary to adjudicate this O.A. in brief may be stated as follows.

The second applicant is the son of the first applicant. The first applicant was an employee in the office of the Accountant General, Bombay who is the 3rd respondent. The first applicant retired as Accountant from the office of the 3rd respondent w.e.f. afternoon of 31.10.90 on attaining the age of superannuation.

On or about 11.9.80 while first applicant was in service, first applicant was allotted the quarter bearing No. 724/74 Type 'B' Sector II Kane Nagar, Bombay by first respondent. From then onwards the first applicant was/is in the occupation of the said quarter.

T. C. Reddy

7

O.A.161/92.

The second applicant originally was appointed as Peon on 29.10.1980 in the office of said Accountant General. He was promoted as Typist Clerk with effect from 30.11.1989. As on 1.11.1990 in the post of Typist Clerk applicant was in the scale of Rs.970-20-1150~~4~~EB-25-1500. For eligibility and entitlement of Type 'B' Quarter in which the first applicant was in occupation, the basic pay should be Rs.950/- and above and below Rs.1500/-.

On retirement of the first applicant from service the allotment of the said quarter was cancelled with effect from 28.2.1992 afternoon. On 28.5.1990 the first applicant had made an application for regularisation of ^{the} said quarters in the prescribed form through proper channel in the name of his son the second applicant. Alongwith said application the applicant no.2 had also enclosed the affidavits one by his father of the first applicant herein and himself (second applicant) stating that they do not have any residential accommodation in Bombay and that the second applicant was entitled for the said quarter on the basis of father to son. According to the applicant as per allotment rules and the notification issued by the Ministry of Works and Housing on 1.5.1981 the applicant No.2 is entitled for regularisation of the said quarter in his name. As there~~wa~~s no response to the application that was put in by the first applicant for regularisation of the said quarters in the name of the second applicant, the applicants have filed the present O.A. for the reliefs as indicated above.

The second applicant submitted the application for regularisation of the quarter in the prescribed form on 28.5.1990 i.e. for the year 1990-91. For allotment year 1990-91 to determine the eligibility of the officer for a particular type of accommodation the pay as on 1.10.1989 was taken into consideration.

7

...3..

8

O.A.161/92.

The second respondent has filed counter opposing this O.A.

The respondent No.3 has filed a separate counter.

In the counter filed by the second respondent it is maintained that the second applicant was appointed as Peon in the 3rd respondents office on 29.10.1980 and that second applicant submitted application for regularisation of the said quarter in prescribed form on 28.5.1990 for the allotment year 1990-91. ^{For the allotment year 1990-1991} to determine the eligibility of the officer for a particular type of accommodation as on 1.10.1989 the pay was taken into consideration. It is also further maintained in the counter of the second respondent that the second applicant was drawing basic pay of Rs.870/- as on 1.10.1989 and as such the second applicant was entitled to Type I accommodation. It is the case of second respondent as the second applicant was entitled to Type I accommodation on the date of first applicant's retirement, that the applicant is not entitled to allotment of the said Type II quarter that was in occupation of his father herein.

It is the contention of the 3rd respondent as the matter is regarding allotment of general pool accommodation that the 3rd respondent has nothing to do with the allotment of the quarters.

Straight away we may make reference to the office memorandum dated 1.5.1981 issued by the Government of India, Ministry of Works and Housing on the subject "concession of Ad hoc allotment of General Pool Accommodation admissible to eligible dependents/Regulations of Government employees on their retirement". Para 7 of the said O.M. which is relevant reads as follows (The said O.M. is at page 17 of the paperbook and is filed by the Applicant)

T. C. M.

9

O.A.161/92.

"The eligible dependent will be allotted accommodation one type below his/her entitlement, provided that in no case, except otherwise specified, allotment will be made to a higher type of quarter than in occupation of the retiring Govt. servant provided further that where the eligible Govt. servant is entitled to Type-II or any higher type of accommodation, he/she will be allotted accommodation in type II on ad-hoc basis even if the retiring Govt. servant was occupying type I accommodation".

The fact that the second applicant had been residing with the first applicant till the first applicant retired is not in dispute in this O.A. Admittedly the first applicant retired on 31.10.1990. As on 1.11.1990 the basic pay of the second applicant was Rs.970/- is not in dispute. A Government employee who is drawing basic pay of Rs.970/- is entitled to Type 'B' accommodation is not in dispute. So that being the position as on 1.11.1990 the second applicant was eligible for Type B accommodation as per his entitlement. We have already extracted para 7 of the O.M. dated 11.10.81, issued by the Government of India. So from para 7 of the O.M. it is amply evident on father to son basis that the second applicant is entitled for Type 'B' accommodation, which in this case was in the occupation of the first applicant. Hence the O.A. is liable to be allowed by giving appropriate directions to the respondents.

Hence we direct the first respondent to regularise the said quarter No.724/74 Type 'B' CGS Colony, Kane Nagar, Bombay in the name of second applicant after allotting the same to the second applicant. This O.A. is allowed accordingly. Parties to bear their own costs.

T. Chandrasekhara Reddy
(T. Chandrasekhara Reddy)
Member (J).

ham/-.