

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 606/92

Transfer Application No.

Date of Decision 31-8-95

N. Haridasan

Petitioner/s

Shri. P. Sankaranarayanan

Advocate for
the Petitioners

Versus

V.P.Bhatia, Estate Officer
& Another

Respondent/s

Shri. P.M. Pradhan

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ✗

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

J*

(20)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 606/92

N. Haridasan

.. Applicant

Vs.

1. V.P.Bhatia
Estate Officer
S.I.B, Government of India,
Prabhadevi, Bombay - 25
2. Section Officer (E)
Government of India
Ministry of Home Affairs
New Delhi - 110 001. .. Respondents

CORAM : Hon'ble Shri.M.R.Kolhatkar, Member (A)

Appearances

1. Shri. P.Sankaranarayanan
Advocate
for the applicant.
2. Shri. P. M. Pradhan
Advocate
for the respondents.

JUDGMENT

DATED : 31-8-85

X Per. Shri.M.R.Kolhatkar, Member (A) X

The applicant is employed as Intelligence Officer in the Subsidiary Intelligence Bureau under the Ministry of Home Affairs. In May 1984 he was transferred to Tezpur in North-eastern Region. By virtue of his employment with the Subsidiary Intelligence Bureau (SIB), he was allotted residential quarters at Pant Nagar, M.H.B. Colony, Ghatkopar (East), Bombay - 400 075 being quarter No. 1/29. The question is in relation to eviction proceedings against the applicant for vacation of the quarter. The applicant had challenged the eviction order dated 17.6.84 vide Writ Petition No.1908/1986 which came to be dismissed by the order dated 5.8.86. The said order is

My reproduced below : (Per Pendse.J.)

"P.C : Rejected.

No.1
The Petitioner / inspite of transfer and inspite of assuring the authorities that he would vacate and after securing more than enough time, now desires to go back on his assurance and raise unsustainable contentions. The Writ Jurisdiction cannot be exercised in such circumstances."

2. Subsequently, a second order of eviction dated 17.6.86 came to be passed. The applicant challenged the same by Writ Petition No. 2262/1986 in which Justice S.C.Pratap remanded the case back to the Estate Officer for taking fresh proceedings taking into account issues and questions arising out of various documents filed by the applicant. Accordingly, a fresh eviction order was issued on 15.4.88 which however was remanded by the City Civil Court to the Estate Officer for fresh enquiry, who thereafter has passed a fresh eviction order dated 14.6.91 which ^{was} challenged in Miscellaneous Appeal No.254/1991 in the Bombay City Civil Court. This appeal was rejected by the Principal Judge of City Civil Court, Bombay by the order dated 10.09.1991 and it is this order which is challenged before this Tribunal.

3. So far as the question of vacating the quarter is concerned, no interim relief was granted by this Tribunal except directing the respondents not to allot the quarter in question to anybody else until final disposal of the application, although there would be no bar in allotting it to a regular serving officer on usual basis. It is not in dispute before us that the applicant is no longer in possession of the quarter as he vacated the same on 16.4.92. The main issue is regarding entitlement of the applicant to get the flat in question, allotted to him in accordance with departmental scheme in which it is alleged that the

Department practiced discrimination against the applicant. The applicant points out to the Memorandum dated 17.9.85 from the Asstt. Director, S.I.B. As this is a memorandum which is relevant, the same is reproduced below :

"As you may be aware, we are continuously causing efforts with the Bombay Housing and Area Development Board for granting permission to the existing lawful occupants of the quarters to allow them to purchase those quarters on ownership basis. The Bombay Housing & Area Development Board has now intimated that they are willing to consider allotting the Pan Nagar quarters occupied by our staff members on their individual names on ownership basis.

2. The cost of each tenement which the allottee are required to pay according to the intimation received from the Board is Rs.7,200. This amount is required to be paid one lumpsum. The Bombay Housing and Area Dev. Board has now sent individual certificates to us to enable the allottees to arrange for the amount and to apply for CP Fund advances etc. if they so desire. The individual certificate issued by the Board has already been handed over by the office of the individual allottees.

3. The present allottees whose names are listed below may, therefore, make immediate arrangements for payment of the full cost of Rs.7,200/- in the Bombay Housing Area Development Board. After making the payment a copy of the receipt thereof as well as any letter issued to the allottee by the Board on making such a payment should be given to the office, immediately. It is needless to emphasize that the payment should be made at the earliest and by all the allottees on the same day to facilitate procedural conveniences and further expeditious action."

4. The contention of the applicant is that it was the policy of the S.I.B to ~~secure~~ from the Bombay Housing & Area Development Board permission in favour of ~~the~~ the existing occupants of the quarters and to allow them to purchase the premises occupied by them on ownership basis, and that the applicant had been granted permission to become a member of the co-operative housing society called 'Om-Shivayam Co-op. Housing Society by making certain payments but for some reasons the proposal did not materialise. In the meanwhile however, the applicant came to be transferred out of

Bombay and only 5 days after the transfer of the applicant, the respondents had issued a memorandum referred to above in which allottee No. 16 was one Shri. M.L. Ratna Raju, who was given the benefit of the scheme though he was under the orders of transfer but the case of the applicant for membership was not considered in spite of his having made efforts to complete the formalities in this regard as mentioned earlier and hence the discrimination. On this specific point, the respondents have stated that the case of Shri. Ratna Raju is not comparable to that of the applicant. Shri. Ratna Raju was also under orders of transfer on promotion out of Bombay but on his request on compassionate ground, he was retained in Bombay as one of his children was mentally retarded and for continuing medical treatment in Bombay, his order of transfer was cancelled and hence Shri. Ratna Raju continued to be in the service of Subsidiary Intelligence Bureau, Bombay and was legally and lawfully continuing in the quarters as bonafide allottee. Therefore, the question of any discrimination does not arise.

5. Respondents also contend that the various contentions of the applicant were fully examined by the Principal Judge, City Civil Court and rejected. The principal judge has also noted that the appellant has acquired some residential quarters in Bombay in the name of his wife. The Principal Judge held that the order of eviction needs no interference and confirmed the same. The learned counsel for the respondents has also invited our attention to the earlier orders of Justice Pendse quoted by us in which the observation has been made that writ jurisdiction cannot be exercised to give relief in the circumstances quoted by the applicant. On the other hand, we have a subsequent

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order of Justice Pratap of the High Court of Bombay which is a more detailed order in which directions were given to consider certain documents filed by the applicant before passing the final order. In our view, we can consider the case only on to the extent that the applicant can successfully show that there has been discrimination against him vis-a-vis ^a similarly placed employee of the S.I.B. The learned counsel for the respondents raised a question that grant of any relief to the applicant will be hit by limitation and also the question of jurisdiction arises in two respects: first of all, the applicant is at present working at Madras and he has to prosecute the remedies before the Madras Bench and secondly, to the extent the applicant claims the benefit under a scheme which is a matter of ~~negotiation~~ between the department and an outside agency namely Maharashtra Housing & Area Development Board, that cannot be considered to be a service matter.

6. In reply, the applicant has quoted before us Lekshmi Ponnappan Vs. The Controller, V.S.S.C., I.S.R.O and Others vide (1987) 2 ATC 838. In that case, the issue which arose was whether the Rules to regulate the house building grant of advances to members of All India Services and Central Government Servants was a service matter and the Tribunal held that the issue involved was a service matter in terms of section 3(q)(v) of the Administrative Tribunals Act. He also relies on B.N. Subramanyaraje Urs & Ors. v. State of Karnataka & Ors. (1988) 7 ATC 814, where it was held that the scope of service matter extends even to matters incidental and ancillary to the conditions of service, like transfer, deputation etc.

7. In our view, when the issue involved is that of allotment of flat by virtue of the service position of the officer and when the No Objection Certificate is required before becoming a member of the co-operative housing society and when the Housing Board is prepared to transfer the building, only in favour of ^a co-operative housing society of employees of the Department on the basis of the said N.O.C, all issues relating to applicant for vis-a-vis similarly placed ~~colleges~~ entitlement of allotment/are issues incidental to a service matter and therefore we are not barred from considering the same. So far as the applicant being at present posted at Madras is concerned, the application was a Transferred Application which arose out of the proceedings in connection with the quarter occupied by the applicant as an employee of the Department at Bombay, that objection also does not survive. In our view, therefore, we are not precluded from considering the question of whether there has been any discrimination in the allotment of quarter or not, on the ground of jurisdiction.

8. On the ^{basic} point, so far as the issue of vacation of quarter is concerned, the same does not survive but we find that the Department has not unfortunately placed sufficient material before us to enable us to arrive at a conclusion, as to whether the applicant ought to have been allowed membership of a co-operative housing society of Subsidiary Intelligence Bureau officers, similar to one to which Shri. Ratna Raju belongs. We are also of the view that the mere fact that the applicant was transferred out of Bombay just five days prior to the date of

issue of order in favour of Shri Ratna Raju will not prevent the Department from considering the case of the applicant because in any view of the matter, the applicant is entitled to retain the quarters for a grace period of two months after the transfer and secondly, the entitlement of the applicant to remain in occupation of the quarters in Bombay on the ground of his transfer to the North Eastern Region in the light of Ministry of Works/Housing instructions dated 15-2-1984 at page 33 of the O.A. is also required to be examined. We, therefore, feel that while we are not able to grant any direct relief to the applicant, it would be in the fitness of the things if we dispose of the O.A. by giving certain directions to the respondents.

We, therefore, do so by passing the following order:

O R D E R

Applicant is at liberty to file a self-contained representation to the respondents regarding his eligibility and entitlement in 1984 to allotment of a flat on ownership basis in M.H.B Colony, initially procured by the respondents from Maharashtra Housing and Area Development Board. The respondents are directed to dispose of the representation within three months from the date of receipt of the judgment by means of a speaking order. There is no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member (A)