

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 616/93

~~Trans for xxxxxxxxxx:~~

DATE OF DECISION

18/8/1994

Uma Natarajan

Petitioner

M.A. Mahalle

Advocate for the Petitioners

Versus

Union of India & Others.

Respondent

R.K. Shetty

Advocate for the Respondent(s)

CONAM:

The Hon'ble Shri B.S. HEGDE, Member (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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 ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
3rd/4th Floor, Gulestan Bldg., Prescott Road,
Fort, Bombay - 400 001.

OA. 616/93.

Uma Natarajan

.. Applicant.

Vs.

Unkon of India & Others.

.. Respondents.

Coram : Hon'ble Shri B.S. Hegde, Member (J)
Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearances:

1. Shri M.A. Mahalle, Counsel
for the applicant.
2. Shri R.K. Shetty, Counsel
for the Respondents.
3. Shri A.I. Bhatkar, Counsel
for the intervenors.

JUDGMENT :

Date : 18/8/94

I Per : Shri B.S. Hegde, Member (J) I

The applicant joined the respondents' office as L.D.C. on 1.11.1978 and has been applying for the departmental quarters since then. As per the 1973 rules, the applicant was entitled to Type II quarters since her date of appointment as per SR.317-Y-2(I) i.e. the date of qualifying limit of pay as prescribed for each class of residence. The respondents vide letter dated 1.1.1993 published a Revised "Priority List" in respect of Type II quarters. In the case of the applicant, the priority date is admittedly 1.11.1978 whereas, the seniority of S.No.1 to 28 is fixed as per 1st proviso to departmental rules of 1973 and thus they are shown senior to the applicant. In the light of above, the applicant has

prayed that she be shown at S.No.1 in the priority list as on 1.1.1993 and the departmental rules dated 9.8.1973, the first proviso should be held as ultra-vires.

2. During the course of hearing, the Tribunal allowed the intervenor to file their reply and has observed that "if any allotment of Type II quarters are made in the meantime they shall be subject to the result of this petition and allottees shall be informed accordingly". The Counsel for the intervenor Shri Bhatkar raised the point that the validity of the statutory rules has been challenged and as such this matter be referred to Division Bench. Accordingly, the Vice Chairman vide his order dated 3.2.1994 placed the matter before the Division Bench which heard the matter on 1.7.1994 and reserved for orders.

3. The learned Counsel for the applicant Shri M.A. Mahalle draws our attention to S.R.317-Y-2(i) of the departmental allotment rules which reads as under:-

"Priority date' of an eligible officer, in relation to a thpe of residence to which he is eligible under the provisions of S.R.317-Y-4, means the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government or the State Government or on foreign service except for periods of leave;

Provided that in respect of a type II, Type III or Type IV residence, date from which the officer has been continuously in service under the Central Government or the State Government, including the period of foreign service, shall be his priority date for that type.

Provided further that where the priority date of two or more eligible officers is the same, seniority among them shall be determined by the amount of emoluments; drawn by each of them, that is to say, the officer in receipt of higher emoluments taking precedence over the officer in receipt of lower emoluments; and where the emoluments are equal, by the length of service of each of them under the Central Government".

4. In the light of the above, the learned Counsel for the applicant submits that the applicant is entitled to get type II quarters on the basis of pay scale.

5. The respondents in their reply have stated that the issue involved in the present application is one of policy. The respondents further stated that the proviso to clause (i) of Rule S.R.317-Y-2 has been framed according to which that residences type II, type III and type IV are being allotted on the basis of two criteria. The first criterion for the allotment of the type II, type III and type IV residences is based on the prescribed emoluments and the second criterion is based on the length of total service, whereas the criterion for allotment of type I, type V and type VI residence is based on prescribed emoluments only. Since the accommodation available to the employees are limited in numbers they are forced to adopt the aforesaid criteria keeping in view the supply and demand for and the availability of the official quarters. Therefore, they concluded that the criteria adopted by them are based on reasonable classification and these differences in criteria are justified having regard to the work requirements. Further they submitted, that the issue involved is one of policy and Court/Tribunal is precluded from interfering with such policy matters having regard to the ratio laid down by the Supreme Court in 1993 (II) LLJ 539.

6. On the other hand, the learned Counsel for the applicant urged that the classification or criteria adopted by the respondents is discriminatory in nature and the same is required to be quashed. It is further submitted, that the first proviso to Rule 317-Y-2(i) is

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the exceptional criterion for determining the priority date for type II, III and IV residences and all the applicants in the priority list for such type of residences are subject to the merits and demerits uniformly. Hence the proviso is an exception carved out of the general rule and it cannot eat away the fold of the general rule and cannot form a separate class by itself.

7. The learned Counsel for the applicant in support of his contention relied upon the judgment of this Tribunal delivered by a Single Member Bench in Bhagat Ram Dogra & Others Vs. Collector of Central Excise I-1993(1) All India Services Law Journal page 94. In that decision, the Tribunal has struck down the 'circular' issued by the department dated 18.1.1991 on the ground that the same was found to be invalid as it was in violation of Article 16 of the Constitution and further the circular in question was to be termed as null and void as the respondents had amended/modified the statutory rules by issue of administrative instructions, which could not be done as the Government could not supersede statutory rules by administrative instructions. It is not the case of the respondents that the Allotment Rules 1964 did not apply to them. It is their contention that the rules had to be amended/modified only on account of implementation of the recommendation of the 4th Pay Commission. However, one of the direct consequences of the amendment/modification is that persons holding several years seniority in the relevant pay scale for type III quarter, for instance, may be pushed down

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vis-a-vis a junior with longer service merely because of later entry into the service. This is neither reasonable nor desirable. A natural corollary to the above is that persons, who were seniors and had not been able to get allotment, continued to remain deprived, while some of those persons, who had the benefit of lower type of quarter became eligible to higher type quarter only because they have entered the service at an earlier date. In that connection the Tribunal held that the Government cannot amend or supersede statutory rules by "administrative instructions". The Single Bench while disposing of the matter did not notice the earlier decision of the Division Bench rendered on 15.10.1991, whereas the Single Bench decision was rendered on 5.11.1992. If the earlier decision was brought to the notice of the Tribunal, the whole scenario would have changed. As a matter of fact, the decision delivered by the Single Bench is based on different concept whether an administrative instructions can supersede statutory rules. However, the ratio laid down by the Division Bench would be squarely applicable to the Single Bench. Therefore, a Single Bench decision cannot be treated as a binding precedent.

8. In the instant case, the criteria adopted by the respondents is one of policy decision which serves the larger interest of the employees and if at all any discrimination exists it is in favour of the lower paid employees. The decision cited by the applicant refers to circulars, whereas in the instant case it refers to statutory rules. The learned Counsel for the applicant further relied upon the judgment in State of Punjab & Others Vs. Gurudev sing (1991) 4SCC 1:1991 SCC(L&S) 1082. It was held that the party aggrieved by the invalidity of

the order has to approach the Court for ruling of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation etc. However, on perusal of the judgment we are of the view that the facts of the present case are different from the aforesaid judgment and the same is differentiable. Further in the instant case, the vices of the Rule has not been struck down as invalid and hence the same is not relevant for our purpose.

9. The respondents on the other hand submitted, that the differences in criteria for allotment of residences as aforesaid is a question of policy with which this Hon'ble Tribunal is precluded from interference having regard to the recent decision of the Hon'ble Supreme Court reported in 1993-II-LLJ pages 539, wherein the Supreme Court observed, that the courts of law cannot interfere with question of policy which is within the domain of the Central Government under the Rules framed under Article 309 of the Constitution of India. The aforesaid residence rules are framed under Article 309 of the Constitution of India and the Tribunal is ordained not to interfere with such policy matters. The respondents in this behalf relied upon the case of *Mallikarjun Rao Vs. State of Andhra Pradesh*, AIR 1990 Supreme Court page 1251. Therefore, the applicants who are seeking allotment of residences cannot ignore the statutory rules framed for the purpose in allotting the quarters.

10. Shri Bhatkar, learned Counsel for the intervenors in this regard relied upon the Division Bench judgment of the Tribunal delivered in OA.703/90,

Naval Armament Depot Engineering Supervisor's

Association Vs. Union of India vide dated 15.10.1991.

In that decision the main grievance of the employees is that employees who crossed the pay limit recently or any time in their careers, are granted the benefit of seniority from the date of appointment for example if an employee who is appointed in the year 1960 who gets promotion as Foreman of Factory and gets basic pay beyond Rs.1500/- then although he is not promoted in 1990 he will be given seniority position for the type III quarters from 1960; another employee who is promoted to the post of Upper Division Clerk say in 1982 and has crossed Rs.1500/- in 1982 cannot be relegated in the position of seniority to an employee who gets promotion to the post of Foreman of Factory or who crosses the pay range of Rs.1500/- in 1990. In that connection, it is observed that the criterion of eligibility will continue to be the same criterion viz., the date on which an employee enters at the minimum of the pay range but the seniority for the purpose of allotment must be drawn on the criteria contained in the Rules. In other words, the seniority should be fixed on the basis of the 'length of service' within the relevant pay range. Where the length of service within the pay range is equal seniority should be fixed on the basis of higher pay. The Tribunal in that case, has noticed, that there was no fixed criteria has been changed from time to time. The Tribunal also noticed that there was no statutory rules framed in this regard. In this background the Tribunal gave its decision referred to above and quashed the seniority based on the changed criteria, which was challenged before the Tribunal in the aforementioned case. Therefore an individual can become eligible for type C accommodation

when he starts drawing his pay of Rs.900/- (pre-revised) but the seniority in the roster will be determined from the date of his continuous service in the Central Government because of paucity of accommodation for all the employees belonging to every category, accommodation cannot be allotted at one and the same time. The allotment of quarters can be made as and when available for allotment and for allotting the quarters some criteria has to be laid down and that is why the criteria in this case has been laid down as to how the priority has to be maintained or seniority has to be given in the matter of allotment of quarters.

11. In the light of the above, though the statutory rules framed under Article 309 of Constitution of India are not immune from challenge but the same can be challenged on the ground of being violative of Article 14 and 16 of the Constitution of India. We have heard the rival contentions of the parties and have gone through the various judgments cited by the parties. Government employees after entering into government service can become eligible for government quarters as and when vacancy is available and as per the ~~priority~~ and criteria laid down by the department. It is not the contention of the applicant that the Respondents have discriminated in the matter of allotment of quarters, his main contention is that the criteria adopted by the Respondents are discriminatory and the same are to be treated as ultra-vires. With great respect, we cannot accede to the contention of the applicant. As stated earlier, the issue involved is one of policy, and therefore, the difference in criteria for allotment of residences type I, V & VI on the one hand and residences of type II, III & IV on the other hand are based on reasonable classification and these differences in

criteria are justified having regard to the work requirements. The exception created by the first proviso to SR.317-Y-2(i) in the criteria for determining the priority date for type II, III & IV residences and all the applicants in the priority list for such type of residences are justifiable by reference to number of employees in those groups, their needs, their chances of improvement etc. Therefore, it can be held that the proviso which modifies the later criteria by giving credit to length of service rendered by the Applicant employee and thus related to the object sought to be achieved is not in conflict with the rules.

12. Moreover, the decision of the Division Bench of this Tribunal in OA.703/90 vide order dated 15.10.1991 and the ratio laid down in that decision is binding on this Tribunal. Having given our anxious consideration to the respective contentions, we find that the contention of the Respondents merits acceptance. Obviously, some criteria has to be laid down and a criteria laid down pursuant to rules and the order framed in accordance with the Rules cannot be said to be malafide or arbitrary in nature. There is nothing to indicate that 28 persons who are senior to the applicant have already been allotted quarters, whereas 25 quarters of type II are ready for allotment on the basis of revised priority list. The contention of the applicant that she should be given priority in allotment of quarters on the basis of the pay scale irrespective of the years of service rendered by the applicant has no merit and same is liable to be dismissed. We are, therefore, of the view, that in the facts and circumstances of the case, it cannot be said that there is any discrimination in favour of the employees who are allotted government

quarters on the basis of criteria for allotment. The classification made has a rational nexus with the object sought to be achieved i.e. equitable distribution of available government quarters.

13. In the result, we therefore, see no reason to interfere with the policy decision of the respondents which is neither arbitrary nor any illegality in the scheme of allotment. In view of the above, we see no merit in this O.A. and dismiss the same, but with no order as to costs.

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

M 14. I respectfully agree with the result arrived at by my brother judicial Member. However, I would like to add my own reasons.

15. The ~~vires~~ ¹⁹⁷³ of SR.317-Y-2(I) pertaining to the rules of Ministry of Labour and Rehabilitation regarding allotment of Government residences under the administrative control of the Directorate General of Factory Advice Service and Labour Institutes, have been challenged on the ground of being discriminatory. One of the main grounds initially urged by the learned counsel was that these rules materially depart from the model rules followed by Directorate of Estates, vide SR.317-B. However, on verification of Swamy's Compilation of FRSR vide page 352 on the question of priority date it is seen that *M* priority date is defined as below :

2 "(i)"Priority date" of an officer in relation to a type of residence to which he is eligible under the provisions of S.R. 317-B-5, means the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government or State Government or on foreign service, except for periods of leave in respect of Type V(A) to Type VIII accommodation, single and double room hostel accommodation, and the date from which he has been continuously in service under the Central Government or State Government including the period of foreign service in respect of Type I to Type IV accommodation, and accommodation in Working Girls' Hostel:

Provided that where the priority date of two or more officers is the same, seniority among them shall be determined by the emoluments, the officer in receipt of higher emoluments taking precedence over the officer in receipt of lower emoluments; where the emoluments are equal, by the length of service; and where both the emoluments and length of service are equal, on the basis of the scale of pay of the officer, the officer working in a post having higher scale of pay taking precedence over the officer in receipt of lower scale of pay."

From this it will be seen that for Type-I to Type IV, which correspond to Type-II, Type III and Type IV of the residences in question, the rule in the Directorate of Estate is the same. It cannot, therefore, be said that the rule is discriminatory between the residences controlled by Directorate of Estate and

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the residences controlled by the Ministry of Labour, in particular the respondent No.2 in question. Learned counsel for the applicant also relied heavily on the decision of the single member bench of this Tribunal in Bhagat Ram Dogra & Ors. v. Collector of Central Excise, which was delivered on 5-11-92. That judgment related to the rules of allotment relating to Central Excise Department and it proceeded on the basis that the department had sought to amend the statutory rules by issue of administrative instructions. In this particular case that issue does not arise. Secondly, with great respect, we have to note that the Division Bench judgment of the Bombay Bench in O.A. 703/90 delivered on 15-10-91, Naval Armament Depot Engineering Supervisors' Association vs. Union of India to which my learned brother has made a reference was not brought to the attention of the learned single member. In the above case, the division bench also referred to another case decided by the C.A.T. New Bombay Bench on 21-3-90. It was noted in O.A. 703/90 that the fact that the allotment of accommodation is governed by SRO 308 issued on 17-10-1978 was not brought to the notice of the Tribunal and that is why the Tribunal had observed that there are no statutory rules in this behalf. The Tribunal in O.A.703/90 observed that while statutory rules are not immune from challenge, mere production of inequality by the operation of such rules is not enough to attract the constitutional inhibition,

provided the classification is reasonable, and founded on intelligible differentia which bear a reasonable relation to the object sought to be achieved. The Tribunal specifically observed :

"Obviously some criteria has to be laid down and the permanent establishment order framed under this authority cannot be said to be unreasonable or arbitrary as it has given due effect to the seniority and length of service. Preference is given to a person who is in continuous service for several years and the moment he enters service on a particular date he gets right in the matter of allotment of quarters on those who enter the service thereafter and the criteria cannot be said to be unreasonable or arbitrary. But the same can be challenged to be unreasonable if not arbitrary, as the length of service would go by in the allotment of quarters as one who is waiting for his turn to come for longer years is deprived of accommodation in preference to a new comer. In our opinion the criteria so laid down is not unreasonable or arbitrary and accordingly the SRO 308 and the Permanent Establishment Order cannot be held to be illegal or violative or against public policy or arbitrary and unreasonable."

16. In my view the rules framed by ^a Ministry of Labour making distinction between residences two categories of allotment of/ in the lower category both the length of service as well as pay being relevant and in the higher category

only the pay being relevant ~~and~~ similarly cannot be challenged on the ground of violation of Articles 14 and 16. Hence we pass the following order.

O R D E R

O.A. is dismissed.

No order as to costs.

MR Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)

M