

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 333/94

~~Transfax Application No. 1000~~

DATE OF DECISION: 21.10.94

Shri V.P. Srivastava & Anr. Petitioner

S/Shri S. Natarajan & M.S. Ramamurthy Advocates for the Petitioners

Versus  
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Union of India & Ors. Respondent


Shri V.S. Masurkar Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri B.S. Hegde, Member (J)

The 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 ?

  
(B.S. Hegde)  
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

O.A. NO. 333/94

Shri V.P. Srivastava & Anr. ... Applicants

v/s

Union of India & Ors. ... Respondents

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

APPEARANCE

1) S/Shri S. Natarajan & M.S. Ramamurthy, Advocates  
for the Applicants

2) Shri V.S. Masurkar, Advocate for the Respondents

JUDGEMENT

DATED 21.10.94.

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicants are aggrieved by eviction order dated 22-2-1994 (Annexure-1) from the quarters A-4, 'Kapilvastu', Anushakti Nagar, Bombay 400 074 occupied by the Applicant No. 1 which one the Applicant No. 2 was eligible to be considered at the time of retirement of her husband and seeks regularisation.

2. The Applicants No. 1 and 2 are in occupation of the residential accommodation at type C-1 quarter A-4 at 'Kapilvastu', Anushaktinagar, Bombay. According to the Applicants, the Applicant No. 2 was allotted a 'B' type quarter and her claim for C-1 type quarter was negatived on the ground that even after counting

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the past service in the Central School she did not come within the eligibility zone of the relevant type of quarter i.e. C-1. Having not accepted the request of the Applicants, they have filed this O.A. seeking the following prayers :-

- (a) that the order eviction passed under No. A-4/Kapilvastu/E-III dated 22-2-1994 is set aside and quashed;
- (b) that the Respondents are directed to consider the eligibility of Applicant No. 2 as on 30-6-1993 and regularise the quarter occupied by Applicant No. 1 in her name or allot an appropriate alternate quarter to her;
- (c) such other and further orders as to to this Hon'ble Tribunal may deem fit and proper under the circumstances of the case be passed;
- (d) Cost of this application be provided for.

3. The Applicant's case is that under the Rules, relating to allotment of accommodation, she would be entitled to allotment of residential quarter in category C-1. The Respondents have passed eviction order vide dated 22-2-1994. Immediately she moved the Tribunal and obtained exparte ad-interim stay (11-3-1994) against the eviction order of the Applicants from the quarter in question. During the currency of the interim relief, the Tribunal has directed the Applicant to pay normal rent and the Tribunal after hearing both the parties passed an order continuing the interim relief granted earlier till final hearing of the case.

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4. Brief facts of the case are thus :-

The Applicant No. 1 was allotted type C-1 quarter as on 24-5-1977 while he was in the service of the Respondent No. 2. He retired from service as on 30-6-1992. According to the rules, he was entitled to retain quarters till 31-10-1992 on normal rent basis, thereafter, the authorised occupation was extended upto 30-6-1993 on health grounds. Applicant No. 2, the wife of the Applicant No. 1 is employed as a primary teacher (selection grade) in the Atomic Energy Central School No. 2 run by the Atomic Energy Education Society, a society run and financed by the Department of Atomic Energy. The allotment of quarters to staff of the said Society is governed by the normal rules governing the employees of BARC and are entitled to common pool with other employees.

5. It is stated that the Applicant No. 2 was drawing basic pay of Rs. 2200/- as on 1-8-1992 and made a request to the Respondent No. 3 i.e. the office of the Directorate of Estate Management on 26-6-1992 that the said quarter be regularised in her name. Instead of acceding to the request, the Respondent has allotted type 'B' quarter, category VIII Flat D-11/Jaidev Chowk on ad-hoc basis on 8-4-1993. The Applicant No. 2 pointed out this fact to the Respondents vide letter dated 26-4-1993 that she had been allotted type VIII quarter, on the other hand, in her own right, she became entitled to category VI (C-1) type flat, hence requested them to regularise the same flat in her name, keeping in view of her husband's ill health. The Respondents, on the other hand, instead of considering her request

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on merits, cancelled the ad-hoc allotment made earlier vide their letter dated 11-5-1993 (A-4) and also intimated the Applicant No. 1 vide letter dated 21-6-1993 that he is not permitted to retain accommodation beyond 30-6-1993 (A-5), failing which, action under P.P. (EUD) Act 1971 would be initiated. Having not vacated the quarter, a show cause notice was served under section 4 of the P.P. Act on 28-7-1993. Pursuant to that, a personal hearing was given on 19-8-1993 and after hearing the Applicant, the Respondent No. 3 was convinced and directed to produce proof of Applicant No. 2's previous service, if she is claiming the said quarter in her own right, production of the previous service record for the purpose of considering her request for higher accommodation, he sought for some time and the Estate Officer acceded to his request on 3-11-1993 (A-7). Hearing took place on 23-11-1993 (A-8). Though he contended that the quarter in question may be regularised in his wife's name counting her previous service, the E.O. was not satisfied with the contention, and directed him to produce proof vide his order dated 23-11-1993, extending the time upto 23-12-1993 (A-9). The Asstt. Commissioner of K.V.S. vide his letter dated 31-1-1994 intimated to the Atomic Energy Education Society indicating that they have no objection for counting the previous service of the Applicant No. 2 from 27-7-64 to 24-5-70 on her depositing the amount of Rs. 766.56 plus interest. The Atomic Energy Education Society vide their letter dated 22-2-1994 (A-11) accepted that her past service will be counted for the purpose of pension in Atomic Energy Education Society. In view of the formalities involved, the required order/proof of previous

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could not be submitted to Estate Officer. In the meanwhile, the Respondents issued the eviction order on the very same date i.e. 22-2-1994.

6. The Respondents filed their reply, negated the contentions of the Applicants. Till 21-6-1993, they did not initiate any eviction proceedings and allowed him to continue till 30-6-1993; however, the eviction order was issued only on 22-2-1994, till that time the eviction proceeding was continuing and after giving a personal hearing to the Applicant and in that process directed him to produce proof of previous service of the Applicant No. 2 i.e. his wife.

7. It is true, on the date of retirement of the Applicant No. 1, the Applicant No. 2 was drawing a basic pay of Rs. 2150/-, however, she started drawing Rs. 2200/- w.e.f. 1-8-1992. During the period, the Applicant No. 1 was staying in the quarter as permissible under the rules. It is equally true that the Applicant No. 2 sent application dated 30-7-1992 for adhoc allotment which was certified by the administration on 19-8-1992. Accordingly, the Respondents have allotted him Flat No. D-11 in Jaidev Chowk (R-2). The Applicant No. 2 has not applied for accommodation in the allotment year 1993 and therefore her name could not be kept in the seniority/priority list.

8. The main ground in support of the Applicants is that they satisfied all the conditions stipulated under the Govt. of India orders, namely -

- "1. The dependant/relation should be a Government servant eligible for allotment of Government residence.

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2. He should submit an application to the authority competent to allot the accommodation in the prescribed form along with an affidavit (as given in Annexure) from the retired Govt. servant.
3. He should have been residing continuously with the retiring Government servant for at least three years immediately preceding the date of retirement of the Government servant. During the same period of three years he should not have been drawing House Rent Allowance. The condition of non-drawal of HRA is applicable only in cases where the dependant is employed in the same station and residing with the official in the same Government accommodation.
4. If he has been appointed to Government service within a period of three years preceding the date of retirement of the Government servant or has been transferred to the place of posting of the retiring Government servant within a period of 3 years preceding the date of retirement of the Government servant, the date on which he was so appointed or transferred to the station of posting of the retiring Government servant, shall be the date applicable for the purpose enforcing of the condition stipulated in para.3 above. The concession of ad hoc allotment would not be available in the case of a dependant who secures employment after the date of retirement of parent but during the period of re-employment.

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5. The concession of ad hoc allotment to eligible dependant would not be available in case any other dependant is already in occupation of Government accommodation.
6. The retiring Government servant or any member of the family should not own a house in the place of the applicant.
7. The eligible dependant/relation will be allotted Government residence one type below his entitlement, provided that in no case allotment will be made to a higher type of quarter than in occupation of the retiring Government servant except in the case of an eligible dependant/relation who will be allotted accommodation in Type B on ad hoc basis even though he is entitled to Type B or any higher accommodation, despite the fact that the retiring Government servant was occupying Type A accommodation. Ad hoc allotment of lower type of accommodation is to be restricted to the same area or adjoining area where retired official is having the accommodation. However, licence fee/damages will have to be paid by the retired official if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony.


8. ... ..
9. ... ..

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10. The date of regularisation of ad hoc allotment should be the date from the date of cancellation in case the eligible dependant is already in Government service and is entitled for regularisation and not from the date of issue of the orders for ad hoc allotment. The ad hoc allotment of Type A made to an eligible dependant can be regularised at his request if such officer becomes entitled to Type B or higher type of accommodation at the time of regular allotment. "

The Applicant No. 2 had become entitled to allotment of C-1 type accommodation as on 1-8-1992. In fact, regularisation is sought from 30-6-1993; till that time the Applicant No. 1 was permitted to occupy in the said accommodation. Therefore, he cannot be considered as an unauthorised occupant. He further contended that since in 1993 the Respondents have allotted C-1 type quarters to others upto the priority date 15-1-1966 which is not denied by the Respondents. Applicant No. 2 had become entitled to C-1 type as her priority date being 27-7-1964. In order to ascertain the priority date of the Applicant No. 2, both the parties have been directed to file an affidavit bringing out clear statement of facts. In response to the directions, both the parties have filed an affidavit.

9. Having heard the rival contentions of the learned counsel for the Applicants as well as the Respondents and on perusal of the pleadings; two issues have emerged



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for consideration; firstly, whether the previous service rendered in K.V.S. of the Applicant No. 2 is counted by the Respondents while allotting the eligible type of accommodation, in that event of the matter, what will be the priority date of the Applicant No. 2 in C-1 category allotment; secondly, whether any of her juniors are being allotted C-1 type accommodation as per the 1994 seniority list. In 1994 list, the Applicant No. 2 has been shown at S.No. 119 and her services has been counted w.e.f. 1-7-1970 and thus the Respondents have not counted the previous service. The explanation given by the Respondents is that the Applicant No. 2 has not applied in the year 1993 and she has applied only on 6-12-1993 which would be considered for the year 1994 and accordingly they have placed her name at serial no. 238 in the combined seniority list for C-1 type based on her seniority in the Atomic Energy Education Society i.e. 1-7-1970. They also stated that they are taking into account past service only from 1-1-1994 and also stated that the directions or instructions issued by the Directorate of Estate Management is not automatically applicable to the Respondents. The same will be considered by the Directorate of Estate Management, DAE and if it is accepted then only the employee can claim the benefit. In this respect, it is relevant to refer to the O.M. issued by the Directorate of Estate dated 8-1-1992 wherein the decision clearly envisages that counting of past service in case the terminal benefits like pension and gratuity have already been availed of by the person concerned, the matter has since been

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reviewed and it has now been decided that the past service of an employee shall be counted for the purpose of determining the date of priority even if the officer has drawn terminal benefits like pension and gratuity have already been availed of by the person concerned, the matter has since been reviewed and it has now been decided that the past service of an employee shall be counted for the purpose of determining the date of priority even if the officer has drawn terminal benefits like pension and periods of break in service shall be deducted from the total of the past service for determination of date of priority. It is clarified further that past service where there is no break in service can be counted for determining the date of priority under SR-317-B-2(i) etc.

10. In the light of the above, the contention of the Respondents, that the aforesaid circular is not automatically applicable to the DAE employees does not appear to be correct and therefore, the contention of the Respondents saying that the previous service is counted for the purpose of allotment of quarters is far from truth. As a matter of fact, they have not taken the erstwhile service of the Applicant No. 2 in K.V.S., on the other hand, they have taken into consideration only from the date of working in AEES. Since it is crystal clear that her name is shown at serial no. 119 for the year 1994 determining the priority date as 1-7-1970 instead of 27-7-1964 which will be the priority date in terms of O.M. dated 8-1-1992. The Applicant has also drawn our attention that those who joined subsequent to the Applicant i.e. one Shri Fadnavis whose priority was 12-10-1964 was allotted a quarter during

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the year 1993, C-1 type in June 1994. Similarly, one Shri N. Krishnakumar, whose priority date is 1965 has been allotted C-1 type quarter in June 1994, and the same benefit has not been extended to the Applicant, although her priority date being 1954.


11. In the circumstances, one thing is clear that the Respondents have not taken her previous service in K.V.S. for the purpose of considering the previous service of the Applicant No. 2; if that is included, she would be entitled w.e.f. 1-8-1992 and since the eviction proceedings was not completed till 22-2-1994 as the Directorate of Estate has directed the Applicant to submit proof of Applicant No. 2's previous service which took considerable time for which he should not be blamed. It is on the record that she had served for nearly six years in K.V.S. prior to her joining the Atomic Energy Education Society and she has been staying with her husband throughout and has not been drawing any HRA; therefore, all the conditions laid down by Government of India instructions are complied with and it is on record that her juniors have been allotted C-1 type quarter. She being a teacher of the educational institution attached to the department and having equated with the other employees of the Atomic Energy Department for the purpose of allotment of Government quarters, it is just and proper that the quarter in which she is in occupation is required to be regularised in her name as she has become entitled, considering the priority date and her service. The eligibility for the type of flat is to be determined

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with reference to pay as on 1-1-1994. It is evident from the fact stated above, that the Respondents No. 3 has not only passed the eviction order in a manner contrary to the procedure prescribed in accordance with the rules. Since the Applicant No. 2 has already sent her application for regularisation of the accommodation in question, the same is required to be regularised in her name. Accordingly, the eviction order passed by the Respondents dated 22-2-1994 is set aside and quashed.

12. The Respondents are further directed to consider the eligibility of the Applicant No. 2 as on 30-6-1993 to regularise the quarter treating the priority date being 27-7-1964 as the ad hoc allotment has already been cancelled. The contention of the Respondents that the Applicants owned a house/flat in Vashi, which is nearer to the school where she is working, thereby cannot seek Government quarters, such a plea has not been taken in their reply and also the rejection by the Respondents No. 3 is not on that ground; therefore, such a condition is not tenable and the same is rejected.

13. ~~In the result,~~ the O.A. is allowed and the Respondents are directed to regularise the quarter in question within a period of two months from the date of receipt of this order subject to Applicant's paying the normal rent as directed earlier till the date of regularisation of the quarter in question, but with no order to costs.

  
(B.S. Hegde)  
Member (J)