

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1099/94

Transfer Application No.

Date of Decision : 28-12-95

Smt. K.A. Mary & Shri T. John

Petitioner

Shri M.S. Ramamurthy

Advocate for the
Petitioners

Versus

Union of India & 3 Ors.

Respondents

Shri V.S. Masurkar

Advocate for the
respondents

C O R A M :

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

The Hon'ble Shri

(1) To be referred to the Reporter or not ? Yes m

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

abp*

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

GULESTAN BUILDING NO.6, 3RD/4TH FLOOR

PRESCOT ROAD, FORT, BOMBAY - 400 001.

ORIGINAL APPLICATION NO: 1099 of 1994.

Proounced this, the 28th day of Dec. 1995.

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER (A).

1. Smt. K.A.Mary
2. Shri T.John ... Applicants.
(Advocate by Shri M.S.Ramamurthy)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Works &
Housing (Directorate of
Estates),
Government of India,
New Delhi - 110 001.
2. The Director,
Directorate of Estates,
Nirman Bhavan,
New Delhi - 110 001.
3. Estate Manager,
Government of India,
Old C.G.O. Bldg, Annexe,
3rd Floor, 101 Maharshi
Karve Road,
Bombay - 400 020.
4. Admiral Superintendent,
Naval Dockyard,
Bombay - 400 023. ... Respondents
(Advocate by Shri V.S.Masurkar)

: O R D E R :

I PER. : SHRI M.R.KOLHATKAR, MEMBER(A) I

1. In this OA under section 19 of the Administrative
Tribunals Act, the applicants of whom applicant No.1
is the mother and the applicant No.2 is the son
have claimed the relief of regularisation of quarter

No.207/2819 in sector-III, Kane Nagar, Antop Hill, Bombay on Mother to Son basis. Applicant No.1 retired from the service of respondent-4 on 31/10/93, applicant No.2 is also an employee of respondent-4 who has been regularised on 28.11.1990. Applicant No.1 had applied for regularisation of quarter in the name of her son vide application dated 16.8.1993 at Exhibit-C (page-23). Subsequently, applicant No.2 had also applied for allotment of quarter standing in the name of the Mother in his favour and his application was forwarded to respondent-3, Estate Manager, Government of India, Bombay by the employer respondent-4 on 15/10/93 vide Exhibit-E (page-25). According to the applicant, the request for regularisation of quarter in the name of son is fully covered by the relevant Government instructions namely Office Memorandum of the Ministry of Works & Housing dated 1.5.1981 at Exhibit-J (page-35). The conditions xxxxxxxx required to be fulfilled for allotment are that the said relation, in this case the son, should be a Government servant eligible for allotment of accommodation in General Pool and had been continuously residing with the retiring Government servant for atleast three years immediately preceeding the date of his/her retirement. It is not disputed that the conditions of the OM dated 1/5/1981 are fulfilled by the applicants. However, the respondents did not agree to the request of the applicant, it

appears that after the permissible period of four months after 31/10/93, the date of retirement of applicant No.1, permission to retain the quarters for four months on medical grounds was given by Estate Manager vide letter dated 8/3/94 at Exhibit-A1 (page-19) and after the expiry of the said period notice in terms of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was issued on 21/7/1994 at Exhibit-B (page-20). It is this order which has been impugned by applicant.

2. Respondent 1 to 3 have filed written statement. Respondent-4 have not filed any written statement. Respondent 1 to 3 has stated that the Government have taken a decision to declare the officers of Naval Dockyard ineligible for allotment from General Pool at Bombay with immediate effect. This decision has been taken because of percentage satisfaction being much higher in the departmental pool of Naval Dockyard vis-a-viz the General Pool. A copy of the decision which is XXXX OM No.11013/8/1/86-Pol.IV dated 15/3/1994 placed at Annexure R-1 to the written statement of respondent 1 to 3 reads as below:-

"The undersigned is directed to say that it is understood that the Office of Naval Dockyard has got a departmental pool of accommodation for making allotment to its own officers. The position of continued allotment to the officers of Naval Dockyard from general pool has been reviewed by the Govt keeping in view the

percentage of satisfaction in the departmental pool of Naval Dockyard viz-a-viz the same in the general pool and it has been decided to declare the officers of Naval Dockyard as ineligible for allotment from general pool at Bombay with immediate effect. This is for information of all concerned."

3. According to the respondents, since applicant No.1 is in unauthorised occupation of the quarter, Eviction notice under section-4 under the PP Act (E.U.O.) Act, 1971 was issued. It is contended that the applicant is not entitled to regularisation and is in arrears of licence fee amounting to Rs.22,975/- from 7/94 till date i.e. January,95.

4. Respondents also contended that since the applicants employer has ~~his~~ own pool of accommodation, he may be suitably directed for allotment of accommodation to the applicant. The Tribunal vide its order dated 13/2/95 had directed the applicant to make an application to respondent-4 for allotment of quarter on out of turn basis. The applicant has filed a rejoinder on 6/4/95 with ~~which~~ which is enclosed a copy of representation dated 20/3/95 ^{made} ~~by~~ by applicant to respondent-4. In this application in para-4, the applicants ^{have} ~~s~~ taken the stand that the Director of Estates ~~s~~ is not justified in refusing to allot the quarters presently in our occupation ~~xxxxxxxxxxxxxx~~ as our application

for transfer of the said accommodation to the name of Shri T. John "prior to the decision of Directorate of Estates declaring that the Officers of Naval Dockyard are ineligible for allotment from General Pool at Bombay w.e.f. 15/3/1994. Their application for out of turn allotment from the Naval Dockyard Pool accommodation has however not been accepted.

5. In this rejoinder the applicant has also stated that the Hon'ble Bench had directed the applicant to cite cases of transfer of accommodation in General Pool after 31.10.1993 (date of retirement of applicant No.1) and prior to 15.3.1994 when a decision was taken by the Directorate of Estates to declare officers of Naval Dockyard as ineligible for allotment from General Pool ~~at~~ Bombay with immediate effect. A statement containing particulars of relevant cases of transfer/allotment of General Pool accommodation for the said period has been enclosed by the applicant. In this statement out of eleven cases, one case namely St.No.6 is not dated and in remaining ten cases, there are eight cases in which allotment was made between the period 30/10/1993 to 15/3/1994 and there are two cases namely Sr.No.9 (Mr. D. K. Porkulkar Sukhani) and Sr.No.11 (Mr. D. B. Parte) which pertain to the period subsequent to 15/3/1994 namely 22/3/1994 and 4/4/1994.

6. The main contention of the applicant

is that all conditions for allotment of accommodation in General Pool as laid down in O.M. dated 1/5/1981 are fulfilled. Secondly, the employer namely respondent-4 has also supported the case. Thirdly a number of employees similarly placed have been regularised and fourthly the respondent-3 cannot refuse regularisation because applicant No.2 was already entitled for regularisation prior to issue of OM dated 15/3/94.

7. At the argument stage, the Counsel for respondents contended that the case is premature because the applicants have questioned notice under Section-4, they can submit to the enquiry and there will be a cause of action only when an order under section-5 of PP Act has been issued. Secondly Counsel has made much of the fact that the bulk of the correspondence is in the name of applicant No.1 i.e. the Mother whereas the main relief claimed is in respect of regularisation in favour of applicant No.2., i.e. the son. The Counsel for respondents has also urged that a policy decision having been taken, on 15/3/1994, it is not open to this Tribunal to go into the wisdom of the policy and to make directions contrary to the policy.

8. We have considered the matter carefully and we are not inclined to agree that the application is premature. The Counsel for respondent has also relied on the Full Bench judgement in

Liaquat Ali's case Versus Union of India, ATJ 1995(2)161. This case is not applicable to the facts of the OA. It has come on record that the applicant No.1 has been pursuing the case of transfer of accommodation standing in her name in the name of her son well prior to her retirement and her case has also been supported by the department. The Directorate of Estates however, did not take cognizance of these representations. So far as the bulk of correspondence being in the name of the mother is concerned, this again is of no importance in view of Exhibit-D at page-25 in which the application of the son addressed to Estate Manager was forwarded by respondent-4 to the Estate Manager. Regarding the contention of respondents that it is not open to the Court to go behind the policy enunciated by the respondents on 15/3/1994, we have neither any intention to do so nor are we required to go into the wisdom of the policy for decision of the case. In my view, the case can be decided on two main grounds; first and the most important ground is that the applicant has fulfilled the conditions of the O.M. dated 1/5/1981 on the subject of concession of adhoc allotment of general pool admissible to relatives of Government employees on their retirement. In terms of this O.M., the entitlement of applicant No.2 has crystallised on the date of retirement of applicant No.1 namely 31/10/93. The respondent-3 therefore was

bound to transfer the quarter in the name of applicant No.2, unless there were valid reasons not to do so. The fact that subsequently there was a change in the policy does not effect the crystalised entitlement of applicant No.2 to the quarter in question. Secondly, the applicant has cited cases in which transfer of quarters to Naval Dockyard Employees in Occupation of General Pool Accommodation was effected after 30/10/93 and prior to 15/3/94. We have even noted two cases in which orders were issued after the date of effect of new policy namely 15/3/94. There is no contradiction to the particulars furnished by the applicant by way of Rejoinder. This is hostile discrimination.

9. In view of the above, the applicant succeeds. The notice/order dated 8/3/94 and the notice dated 21/7/94 issued by the respondent-3 are hereby quashed and set aside. Respondents are directed to regularise the quarter in question initially standing in the name of applicant No.1 in the name of applicant No.2 from appropriate date but not later than July, 94. The question of any payment of penal rent does not arise. However, applicants are directed to make payment of normal rent if they have not done so till the date of the order within one month of the communication of the order. It is hereby directed that on regularisation of quarter in the name of applicant No.2 he should comply with the terms and conditions attached

thereto including payment of licence fee punctually. There will be no orders as to costs.

10. We make it clear that if under the rules applicant No.2 is not entitled to the type of accommodation which was allotted to his mother, it is open to the respondent No.3 to allot to him the lower type of accommodation in General Pool to which he is entitled in substitution of the accommodation occupied by his Mother. Under no circumstances, should the applicant No.2 be de-housed.

11. Before parting with this case we wish to refer to one aspect of the case which was raised in the course of hearing. On 16/11/95, my Learned Brother Member(A) (Shri P.P.Srivastava) passed the following order:-

"Mr. M.S.Ramamurthi, Counsel for applicant submits that there is a Supreme Court Order dated 17.7.95 according to which the Tribunals cannot take up the case like the one which is under consideration.

Mr. V.S.Masurkar, Counsel for respondents seeks time to go through this issue as well as on the disposal of the O.A."

Thereafter the matter was heard by me on 6/12/95 when the following order was passed:-

"Heard Shri M.S.Ramamurthy for the applicant and Shri V.S.Masurkar for the respondents.

2. With reference to the Order-sheet dated 16.11.95 we have been taken through the orders of the Apex Court dated 17.7.95 in WP(C) 585/94. In that case apparently Ministry of Housing were the respondents, Shri Masurkar

has clarified that Para 1 of the judgement states that "we stay further proceedings before all the Courts/Tribunals where such cases are pending" This applies to Territory of Delhi. In para-2 of the judgement there is a direction that "no out-of-turn allotment shall be made by the Housing Ministry till further orders"; that direction applies to the Housing Ministry and in this particular case, since the applicants are in possession of the quarter by virtue of original order made in 1977 and subsequently by virtue of Court's order, therefore, the case can be taken up by the Tribunal.

3. We have heard the matter on merits. Judgement reserved."

12 We notice that the latest development in this matter is as reported in 1995 (6) Scale page 619 (Shiv Sagar Tiwari V/s. Union of India). From this it is clear that the orders dated 17.7.95 earlier referred to related to out-of-turn allotment by the Government to the Non Government servants who are otherwise not entitled to allotment of Government house. It was stated that in the discretion of the Government, out-of-turn allotment can also be given to the ~~non~~ Government servants belonging on Functional Grounds, Medical Grounds and Security Grounds. In para-10 of the Shiv Sagar Tiwari case reported in scale, the Hon'ble Supreme Court has in turn referred to Government of India instructions dated 1/5/1981 on which we have relied. The same para reads as below:-

"10. Pursuant to this Court's Order dated September 21, 1995, the Director of Estates has placed before us list of those cases where the ward/dependent has been sharing accommodation with the earlier allottee prior to his retirement/death. There are two

instructions of the Government on the subject. The instructions in the Office Memorandum dated July 5, 1976 provides a period of sharing of six months before retirement/death of the original allottee. The instructions were modified by the subsequent Office Memorandum dated May 1, 1981 whereunder the period of sharing was increased from six months to three years. The instructions dated May 1, 1981 were made operative to the persons who retired on or after 7.11.1979. We are of the view that the Government instructions issued on May 1, 1981 could not be made operative retrospective. We, therefore, hold that the instructions dated May 1, 1981 would be operative from the said date. It is not disputed that the wards of the persons listed whereunder are covered by the Government instructions dated July 5, 1976."

"11. We direct the Estate Office to regularise the allotment so far as above cases are concerned in the names of their respective wards as per their entitlements under the rules/instructions."

From the above, it is clear that Government instructions dated 1/5/1981 are not at all affected by proceedings in WP(C) 585/94 and latest Supreme Court Orders if at all anything would appear to support our interpretation.

abp.

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