

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 666/94
Transfer Application No.

Date of Decision : 8-3-96

Suresh Vithal Bhavar & Anr.

Petitioner

Shri A.L.Kasturey.

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri B.Ranganathan for Shri J.P.Deodhar.

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 ? ✓

(2) Whether it needs to be circulated to X
other Benches of the Tribunal?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO. 666 / 1994.

Provenance, this the *8th* day of *March* ~~1994~~ 1996.
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Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Suresh Vithal Bhavar, and
2. Smt.Asrabai Vithal Bhavar. ... Applicants.
(By Advocate Shri A.L.Kasturey)

V/s.

Union of India & Ors. ... Respondents.
(By Advocate Shri B.Ranganathan
for Shri J.P.Deodhar.)

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

In this Original Application under section 19 of the Administrative Tribunals Act, the applicant No.1 is the son of the deceased employee who was in the employment of Respondent No.1. The applicant No.2 is the widow of the deceased employee. The deceased employee Late V.K.Bhavar was allotted Government Quarter No.C-21, Narmada, Anushaktinagar, Bombay-94 in August, 1988. At the time of acceptance of allotment he had shown the names of persons staying with him as below:

- "1. Smt.Asrabai Vithal Bhavar (wife) and
2. Kum.Subhadra Yeksinghe (Neview erstwhile) "

Thus the name of the applicant No.1, the son of the deceased employee, was not included among the list of persons staying with the deceased employee. The applicant No.1 also happens to be an employee of the

Respondent No.1. He was staying somewhere else, but w.e.f. June, 1992 he shifted to stay with his widowed mother in the Flat No. C-21, 'Narmada', Anushaktinagar. The proceedings for eviction of Applicant No.2, the widow of the deceased employee, were started on 22.6.1993 and after several dates the same were decided ex parte in terms of a previous notice vide pages 50 and 52. These are proceedings dt.26.5.1994 which end with final paragraph as below :

" Shri S.V.Bhavar has requested for extension of permission to continue in the Govt. flat.

The Estate Officer informed Shri S.V.Bhavar that it is not possible to grant any more extension and asked him to vacate the Govt. premises within seven days i.e. on or before 2.6.1994."

It is these proceedings which are being challenged by the applicants on the ground that the case of the applicant No.1 for ad hoc/out of turn allotment has not been considered. It appears that the applicant has claimed out of turn allotment on two separate grounds. The first ground is that of father to son basis and this is governed by Rule 6 (Ex. R-4). According to Respondents, the case of the applicant for out of turn allotment could not be considered ^{and} accordingly rejection letter dt.23.3.94 ^{was issued} / because he was not staying with his deceased father, the original allottee, for six months prior to his death. The applicant would then contend that his case for out of turn allotment should have been considered on medical and on functional and hardship grounds. The relevant rules in this regard are

at (Ex. R-5) and may be reproduced as below :

"Out-of-turn allotment on medical ground/
functional and hardship grounds.

Notwithstanding any thing contained in these rules, residential accommodation may be allotted on out-of-turn basis in the following cases at the percentage mentioned against each, in accordance with the procedure prescribed by DAE :-

- | | |
|---------------------------------|------------------------------------------|
| a) Medical grounds | 5% of the accommodation in Type A to E |
| b) Functional/hardship grounds. | 15% of the accommodation in Type A to E. |

Allotment of accommodation on out-of-turn basis on medical and functional/hardship grounds shall be made in the type next below the type to which they are entitled under the provisions of Rule IV."

It appears that the application of the applicant for allotment of departmental accommodation on functional grounds was considered by the concerned authorities and rejection was communicated by letter dt. 18.10.94. The applicant had therefore contended that such a decision should not have been communicated during the pendency of interim relief, but the matter was considered by the appropriate Division Bench on 8.6.1995 and it was held that there was no contempt. But the fact remains that the request of the applicant for out-of-turn allotment on functional grounds has been turned down. I hold that reply of the Deptt. is in order. / The applicant then contends that such out-of-turn allotment has been given to two employees viz. D.V.Shirke, A.S.O. and M.M.Yusuf (son of Abdul Majid) Tradesman, R.C. & D/Department and various other cases. According to the applicant these cases were considered by the Respondents in terms of Rule 25 viz. the Rule empowering the respondents

to relax any or other rules and he contends that the same should be invoked in this case. The Rule reads as below :

"RULE XXV - RELAXATION OF RULES :

The Government may for reasons to be recorded in writing relax any or all the provisions of the Rules in the case of any officer or residence or class of officers or type of residence."

The applicant would contend that the Court may direct the respondents to consider relaxation especially in view of the fact that his two children are studying in Central School run by B.A.R.C. Management and ~~XXXX~~ in terms of directive principles and Article 39 of the Constitution which envisages that child and youth are to be protected against exploitation and against moral and material abandonment. It appears to ~~me~~ that invoking Article 39 in such circumstances is not in order especially when there is nothing on record to show that the children of the applicant No.1 (grand children of the deceased employee) were staying with the deceased employee at the time of his death. As ~~I~~ noticed above, it was the wife and the nephew of the deceased employee who were staying with him at the time of death. Regarding allotment of S/Shri Shirke and M.M.Yusuf the respondents have stated that it was not a case of out-of-turn allotment or allotment in relaxation of the Rules. Therefore, the ground of discrimination has not been made out. Finally, the applicant would contend that the proceedings which he has challenged are bad as violating the

statutory provisions of Section 4(1) and 4(4) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which read as under :

"(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made."

4(4) Where the estate officer knows or has reasons to believe that any persons are in occupation of the public premises, than without prejudice to the provisions of sub-section(3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed."

According to the applicant, the department was aware that from June, 1992 he was staying with his widowed mother and he had also made the department aware of this position and had asked the department not to sanction the H.R.A. and to recover H.R.A. earlier paid to him. On this point the respondents have contended that the applicant No.1 wrote on 8.3.1994 requesting for recovery of amount of H.R.A. paid to him during the period June, 1992 to March, 1994 and also for stoppage of payment of H.R.A. to him since he was staying in Government Quarters (C-21 Narmada), but he had deliberately addressed the letter to ^{and not} Accounts Section/Personnel Branch. After the Personnel Branch came to know of the irregular action, on their ^C advise the Accounts Division had stopped the recovery and refunded the H.R.A. for the month of March, April and May, 1994 in June, 1994. In my view

the quarters in question were not regularly allotted to the applicant No.1 and any action taken by the department on a mis-representation could be legally corrected by the department on coming to know of the mistake in the matter. The action of the applicant, therefore, in creating a false case of allotment does not help him. Regarding the notice under section 4(4) of the Public Premises Act the applicant No.1 was allowed to enter the premises by applicant No.2 who was in possession of the premises at the time of the death of the husband and the department had taken valid proceedings under the P.P. Act against applicant No.2 and merely because applicant No.1 was ^{by} allowed/applicant No.2 to enter the premises without the permission of the respondents, the respondents are not required to give a separate notice to every such unauthorised occupants who is allowed to enter premises by the original authorised occupant who by certain event (in this case the death of the original allottee) was converted ^{an} into/unauthorised occupant. I am therefore of the view that it was not necessary for the respondents to give separate notice to the applicant No.1 especially when he was at various sittings sittings representing applicant No.2 and had not raised this point earlier. In any case, the purpose of giving notice is to bring a particular intention of the department to the ^{notice of the} affected party and it cannot be said that in this case the affected party viz. applicant No.1 was not aware of the intention of the department.

2. The Respondents have brought to my notice the decision of this Tribunal in O.A. No.735/94 decided on viz. N.J.Chacko & Anr. V/s. Union of India & Ors. 13.1.1995/which was also a case in which out-of-turn allotment was refused. The Tribunal held that the action taken by the respondents was in accordance with the Rules and dismissed the O.A.
3. In the facts and circumstances of the case discussed above and also in the light of the case law cited, I am of the view that no case has been made out by the applicants for grant of relief. The O.A. is therefore dismissed with no orders as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.