

(7) (7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 29/95

Transfer Application No.

Date of Decision 26-10-95

Pradeep Kallappa Kamble

Petitioner/s

Shri V.D. Surve

Advocate for
the Petitioners

Versus

Union of India and others

Respondent/s

Shri V.S. Masurkar

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 ? X

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

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 29/95

Pradeep Kallappa Kamble

... Applicant.

V/s.

The Union of India through
Estate Manager,
Old CGO Bldg. Annexe
3rd floor, New Marine Lines
Bombay.

The Estate Officer
Old C.G.O. Bldg. Annexe
3rd floor, New Marine Lines,
Bombay.

The Admiral Superintendent
Naval Dockyard,
Bombay.

The Directorate of Estate
(Regions) Nirman Bhavan,
New Delhi.

... Respondents.

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

Appearance:

Shri V.D. Surve, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

JUDGEMENT

Dated: 20-10-95

¶ Per Shri M.R. Kolhatkar, Member (A)

This O.A. has been filed under Section 19
of the A.T. Act 1985. The facts are as below:

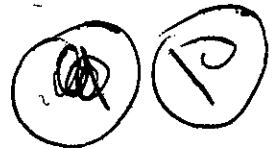
2. The applicant is a Tea Vender working
with respondent No.3 (The Admiral Superintendent,
Naval Dockyard, Bombay) with effect from 1.1.93.
The applicant's father was working with respondent No.3
as Clerk and was in occupation of General Pool
accommodation, quarter No. 205/2536, Type B, Kane Nagar,
C.G.S. quarters, Antop Hill, Bombay. The father of
the applicant expired on 8.5.93. The applicant's case
for ad-hoc allotment of the quarter occupied by his
father was forwarded by office of respondent No.3

on 20.11.93 at page 17 to respondent No.2. On 28.1.94 at page 23, the applicant was asked by respondent No.2 to complete certain formalities including payment of Rs. 4953/- outstanding against licence fee account. It is not disputed that the applicant has paid the amount by receipt No.235292 dated 4.2.94. However, proceedings under Public Premises (Eviction of Unauthorised Occupants) Act. 1971 were initiated against the applicant on 21.7.94 at page 24. On 22.12.94, page 25 the formal Eviction Order was passed, the main reason being " His case cannot be considered for regularisation of quarter, as the department of Naval Dockyard is declared in-eligible from the general pool". It appears that for passing this order Directorate of Estates relied on O.M. No. 11013/8/1/86-Pol.IV dated 15.3.94 at page 29 stating that since the Naval Dockyard had got departmental pool of accommodation and keeping in view of the percentage of satisfaction in the departmental pool of Naval Dockyard Vis-a-Vis the same in the general pool it has been decided to declare the officers of Naval Dockyard as ineligible for allotment from general pool at Bombay with immediate effect.

3. The contention of the applicant is that he is a regular employee of respondent No.3. His regularisation ^{as on his father's quarter} was recommended by the department. He fulfils the requisite conditions for regularisation laid down in O.M. No. 22013(7)/-I-Pol-II dated 13.7.81. The same are reproduced below:

" Adhoc allotment in the name of near relation

a) In case the eligible dependent (near relation) is a Government servant and is entitled for General Pool accommodation and has been residing with the deceased officer concerned for at least 6 months prior to the allottee's death, he is eligible for



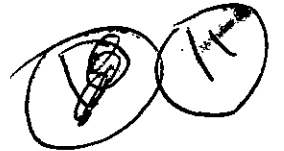
of accommodation one type below his/her entitlement.¹ Where however, the eligible officer is entitled to type B or any higher type of any type of accommodation, he/she may be allotted accommodation in type B on adhoc basis even if the deceased Government servant was occupying type A accommodation.

b) A request for adhoc allotment to an eligible dependent may also be considered in case the dependent gets an employment in an eligible office even after the death of the officer provided such an appointment is secured within a period of twelve months after the death of the officer and that the accommodation in occupation of the officer has not been vacated.¹ Eviction in such cases will not, however, be delayed on consideration that the dependent is likely to get an appointment.¹

c) The clearance of all dues outstanding in respect of the premises in occupation of the deceased officer be an essential condition for the consideration of an allotment to an eligible dependent.

d) The above concession of adhoc allotment is not allowed in cases where the deceased officer or his/her dependent is whose case adhoc allotment of Government residence is proposed to be made, owns house/plot of the place of posting.¹

e) The allotment of the very quarter in occupation of the deceased officer may be regularised in the name of dependent son/daughter/provided he/she fulfils the conditions for adhoc allotment.¹ //



4. According to the counsel for the applicant the show cause notice was not signed, but the most important factor is that the eviction order was passed on the basis of O.M. dated 15.3.94 which cannot have retrospective effect. The father of the applicant expired on 8.5.93 and applicant's right for Ad-hoc allotment crystallized on that day. His case cannot be rejected on the ground of policy announced in O.M. dated 15.3.94 which comes into effect immediately i.e. say from 15.3.94 and not earlier. By way of amendment the applicant has challenged the vires of the O.M. as well as its retrospective effect.

5. The learned counsel for the respondents who represents respondent No.1, 2 and 4 objects that the Eviction order is not against the applicant but against Shri K.D.Kamble. We do not consider this objection to be sustainable because the proceedings make it clear that the respondents are aware that Shri K.D. Kamble has expired and the proceedings are against his family. The learned counsel for the respondents then contends that regularisation is not a matter of right. The latest policy is that the employees of Naval Dockyard are not eligible for general pool accommodation. Therefore ~~the~~ applicant has no right. In any case it is open to the applicant to apply for regularisation or out of turn allotment to his own department. The learned counsel for the respondents relied on the latest decision of the Full Bench in Laiquat Ali and Anr. V/s. Union of India and others. O.A. 2684/93 decided on 29.5.95 which is reported in 1995(2) ATJ 161.

12

6. The learned counsel for the respondents has also contended that the applicant in the meanwhile being in unauthorised² occupation of the quarter, he is required to pay Rs. 22,541/- on account of market rent as on 31.1.95. The market rent payable would be much more as of today.

7. We have considered the matter carefully and the question is whether the O.M. dated 15.3.94 can be read so as to negate the crystallized right of the applicant for ad-hoc allotment of the quarter standing in the name of the father. In our view the O.M. does not have retrospective effect and the eligibility of the applicant for being considered for ad-hoc allotment of quarter, earlier in the name of the father, cannot be undone by virtue of the subsequent policy dated 15.3.94. We also considered the judgement in Laiquat Ali and Anr. which no doubt holds that the allotment of Railway quarter cannot be claimed as a matter of right, and the ward of retired or retiring Railway employee who was living in Railway quarter alongwith the retiring or retired Railway servant with the permission of the Railway administration foregoing H.R.A. has no right to claim regularisation of quarter in his name. The Full Bench also held that the Tribunal may not direct the Government to regularise the quarter straightaway. But that does not preclude the Tribunal from directing Govt to consider the case of the applicant alongwith other cases for out of turn allotment. It is not the case of the respondents that they have considered the case of the applicant alongwith such claims for out of turn allotment and found his claim to be not justified. We, therefore allow the application by issuing appropriate directions to the respondents in terms of the

13

following order:

ORDER

The O.A. is allowed. The Eviction order dated 22.12.94 of the Directorate of Estate is hereby quashed and set aside. The respondents are directed to consider the recommendations of the parent department of the applicant dated 20.11.93 on the footing that O.M. dated 15.3.94 making the employees of the Naval Dockyard ineligible for General Pool have prospective effect and therefore to consider the case of the applicant alongwith any other proposal for regularisation on out of turn basis in respect of which the respondents may have maintained the Register. After considering the case of the applicant vis-a-vis other cases and in the light of the conditions laid down in the O.M. dated 13.7.81, the respondents are directed to pass an appropriate order on regularisation or otherwise. The stay of the applicant during the pendency of the present proceedings till the completion of further proceedings should be treated as authorised and the applicant should not be charged penal rent or market rent for this period. The applicant is however directed to pay arrears of normal rent if any within a month of passing of the order. Applicant is also directed to pay regular rent alongwith other charges such as Electricity, Water charges etc. by the 10th of each month punctually during the pendency of the proceedings. If the

12 14

respondents are not able to regularise the case of the applicant vis-a-vis other cases for out of turn allotment, they may pass a speaking order and should not evict the applicant till after 15 days of the passing of the speaking order. The applicant is at liberty to challenge the order passed by the respondents if he is aggrieved by the same. There would be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

NS