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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 106/97.

Date of Decision: 05-06-97.

Smt. Shobha Shantaram Madke

.. Applicant

Shri V.D.Surve.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

... Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

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

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 106 OF 97.

Pronounced, this the 5th day of June 1997.

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

Smt. Shobha Shantaram Madke,
Quarter No.4469/122,
Sector - VII,
S.M.Plot,
Bombay - 400 037.

... Applicant.

(By Advocate Shri V.D.Surve)

V/s.

1. The Union of India through
Estate Manager,
Old C.G.O. Building Annexe,
3rd floor, New Marine Lines,
Bombay - 400 020.
2. The Estate Officer,
Old C.G.O. Building Annexe,
3rd Floor,
New Marine Lines,
Bombay - 400 020.
3. The Directorate of Estates
(Regions), Nariman Bhavan,
New Delhi - 110 001.
4. The Executive Engineer,
Bombay Central Division-II,
Central Public Works Department,
Bombay - 400 037.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

In this O.A. the applicant has challenged the eviction order dt. 20.12.1996 passed by the Estate Officer and the letter dt. 18.10.1996 by the Assistant Director of Estates rejecting the request for regularisation of the quarter in the name of the applicant so far as quarter No.122/4469 at S.M.Plot, Koliwada is concerned. The facts are that the applicant's husband who was an employee of the R-4 expired on 13.8.1993. The applicant his widow applied for compassionate appointment shortly after the death of the husband, but the appointment order was issued only on 26.10.1994 i.e. beyond one year after the death of her husband. The contention of Respondents

Nos.1, 2 and 3 therefore is that in terms of relevant instructions of the government which are at Page 17 (O.M. dt. 13th July, 1981) the applicant is not entitled to regularisation. The specific para viz. para 3(b) ~~which~~ reads as below :

"A request for the 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 that the accommodation in occupation of the officer has not been vacated. Eviction in such cases will not, however, be delayed on consideration that the dependent is likely to get an appointment."

2. The contention of the applicant is that it was because of the delay on the part of the department that she was not able to secure employment within one year of her husband's death. Moreover, the excess period is marginal viz. 2 months and 13 days. Thirdly, her parent department had fully supported her case and recommended the same vide letter from R-4 dt. 00.10.1996(at page 41).

3. The applicant relies on the precedent of a case decided by this Tribunal earlier viz. O.A. 978/96 on 28.11.1996 Smt.Dulari Bachanram V/s. Union of India & Ors. In that case the husband had died on 7.9.1991 and the applicant was employed on compassionate ground on 7.2.1994 i.e. more than two years after the death of her husband, but the Tribunal allowed the O.A. on the ground that the delay in securing the appointment, if any, was on the part of the respondents.

4. The respondents have opposed the O.A. According to the respondents compassionate appointment does not create a legally enforceable right except when government prescribes a policy in this regard and

that the policy in this regard which has already been noted is that the compassionate appointment must be secured within one year of the death of the bread winner and that this policy cannot be expanded by the Court. The Court may at the most direct relaxation in individual cases for reasons to be recorded. According to the counsel for the respondents Smt.Dulari Bachanram's case cannot be cited as a precedent because in that case this Tribunal had observed as below :

"The respondents are hereby directed to regularise the quarter in occupation of the applicant within a period of one month from the date of receipt of a copy of this order, by relaxing the rules, if required but no order as to costs. However, this cannot be treated as an authority on regularisation but considering the facts and circumstances of this case, I am compelled to pass the aforesaid order."

The applicant, therefore, cannot cite Smt.Dulari Bachanram's case as an authority. Secondly, Smt.Dulari Bachanram's was a case decided by a Single Bench, but recently there was a case decided by a Division Bench in Phool Singh and Anr. V/s. Union of India & Ors. (1997(1) ATC 175) in which the Tribunal was required to interpret the same rule which is at issue in this O.A. VIZ. SR. 317-B(25). The DB ^{of the} / Tribunal has observed as below :

"Regularisation of accommodation in respect of appointments secured on compassionate grounds within a period of 12 months from the date of the death of Government employee has been provided as a special concession in the rules and it cannot confer a right for regularisation even in cases where such appointment has been secured after a gap of one year. On the basis of the existing policy, this concession has been granted by the Government perhaps due to the consideration that the family of the deceased employee cannot be allowed retention of Government accommodation for a period of 12 months at most and within this period if the dependent of the deceased Government servant

secures an appointment on compassionate grounds, he or she could be extended the concession of providing an adhoc allotment/regularisation of the accommodation subject to the appointee being found otherwise eligible. If similar consideration is to be given in cases of appointment taken beyond the period of 12 months, then this will lead to unfair discrimination against other regular employees waiting for normal allotment in their turn."

5. I have considered the matter. According to me it cannot be stated that Smt.Dulari Bachanram's case does not serve as a precedent merely because the Court might have made observations that the case has been decided in the facts and circumstances of the case. Every case is decided on the facts and circumstances of that particular case. In Smt.Dulari Bachanram's case the gap between the death of the bread winner and the compassionate appointment was 2 years and 5 months. In the case of Phool Singh & Anr. the gap was 2 years 2 months. In my view, neither is Smt.Dulari Bachanram an authority for the proposition that unlimited relaxation is permissible nor is Phool Singh's case ~~an~~ an authority for the proposition that absolutely no relaxation can be given.

6. The counsel for the respondents invites my ^{is} attention to the O.M. dt. 22.5.1996 which/annexed to the written statement. This recites that generally no relaxation in this regard may be allowed. However, to mitigate the hardship of the family of the deceased allottee, in exceptional cases, delay upto one month in securing employment beyond 12 months from the date of death of the parent, be condoned with the express approval of Minister-in-charge and ad-hoc allotment in such cases may be allowed, subject to fulfilment of other prescribed conditions. It is contended by the counsel for the respondents that therefore, any relaxation beyond ^{one year} ~~one~~ month is absolutely impermissible and that the Departmental O.Ms. are issued in the context of interim orders of

the Supreme Court putting a ban on out of turn allotments.

7. ^{self} In my view, merely because the government have imposed the limit of one month to relaxation, that does not preclude the Tribunal from going into the facts of an individual case and giving appropriate directions. After all whether the period of one year which is stipulated for securing an appointment by the dependent or the relaxation by the period of one month in relation to that one year period are just rules of thumb. In the present case, I notice that the period within which the applicant secured employment exceeded the period of one year only by two months and 13 days. It is much less than the period as in the case of Smt. Dulari Bachanram and even in the case of Phool Singh. It is also seen from the record that the applicant is a widow, is in a vulnerable position because she has four children all below 12 years of age and she is stated to belong to ST community i.e. weaker section. On a perusal of Smt. Dulari Bachanram's case I also notice that the Judgment of the Division Bench in Rama Shankar Chaubey V/.s Union of India (1987 3 ATC 389) was cited before it. In Rama Shankar Chaubey's case the Rules which fell for interpretation were the Railway Rules under which the period within which the dependent was to secure employment was six months. In that case owing to various reasons including litigation the dependent could secure employment only after four to five years from the date of the event viz. medically incapacitation on 7.5.1979. The Tribunal

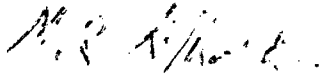
observed in para 5 as below :

"These no doubt visualise a time-limit of six months from the date of cessation of service of the railway employee. But this time-limit is intended to apply to normal cases. It cannot be invoked in a case like the present one, particularly because the delay here has largely occurred due to the stand taken by the respondents, which stand was not upheld by the High Court. In this context, Shri S. Mukherjee, the learned advocate for the applicant, has rightly referred to T.R. Sharma V/s. Prithvi Singh, as well as certain other case-laws wherein it has been held that a Government servant cannot be penalised for delay by the employer and that Government is not entitled to take advantage of its own omission/commission. In view of these considerations, the retention of the quarter by the applicant cannot be termed 'unauthorised' and the time-limit of six months should also not be applicable to this case."

8. It would thus be seen that although the counsel for the respondents has invoked the authority of the Division Bench Judgment in Phool Singh's case, I am required also to note the authority of the Division Bench Judgment which is prior to Phool Singh's case and which had dealt with the circumstances under which relaxation is required to be made. What is more, in Rama Shankar Chaubey's case reliance was also placed on T.R. Sharma V/s. Prithvi Singh (AIR 1976 SC 367), the ratio of which is quoted in paragraph above and which applies to the present case.

9. Therefore, I am of the view that considering the vulnerable position of the applicant viz. she being a widow belonging to ST community with four young dependent children and the period within which she was able to secure employment falls short of the period laid down even in the self-imposed relaxation only by 1 month and 13 days and considering ^{that} her parent department ^{it} itself supported her case pointing out that

although she applied for ad-hoc appointment immediately after the death of her husband she could not be provided employment in the absence of vacancy. This is a fit case for relaxation of the period of one year laid down in SR and a direction to the department to regularise the quarter in favour of the applicant should issue. I direct accordingly and dispose of the O.A. with no order as to costs.



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

B.