

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 670/97.

Date of Decision :

30/11/97

Vitthal P. Sawant & Another, Petitioners.

Shri D. V. Gangal, Advocate for the Petitioners.

VERSUS

Union Of India & Others, Respondents.

Shri V. D. Vadhavkar for  
Shri M. I. Sethna, Advocate for the Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha,  
Vice-Chairman.

Hon'ble Shri D.S. Baweja, Member (A).

(i) To be referred to the reporter or not ?

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

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

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MUMBAI BENCH

ORIGINAL APPLICATION NO.: 670/97.

Dated the 30<sup>th</sup> day of October, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. Shri Vitthal Pandurang Sawant,  
Retired Hawaldar,  
Marine & Preventive Wing,  
Marine Lines, Mumbai - 400 002.

Residing at -

Zopada, C/o. Sadhana Kashinath  
Sawant, Motilal Nehru Nagar,  
Shaikh Mistry Road, Koliwada,  
Antop Hill, Bombay - 400 037.

... Applicants.

2. Shri Nandakumar Vitthal Sawant,  
Sepoy,  
Marine & Preventive Wing,  
Marine Lines, Mumbai - 400 002.

Residential address -

same as applicant no. 1 above.

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union Of India through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

2. The Commissioner of Central  
Excise,  
115, M. K. Road,  
New Central Excise Bldg.,  
Churchgate,  
Mumbai - 400 020.

... Respondents.

3. The Assistant Commissioner  
of Customs (Preventive),  
Marine & Preventive Wing,  
100, Everest House,  
Mumbai - 400 002.

(By Advocate Shri V.D. Vadhavkar  
for Shri M.I. Sethna).

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O R D E R

[ Per.: Shri R. G. Vaidyanatha, Vice-Chairman ]

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant no. 1 is the father and the applicant no. 2 is the son. The first applicant was working as a Hawaldar in the department of Central Excise and retired on medical grounds on 26.02.1993. Then an application was given on behalf of the second applicant seeking appointment on compassionate grounds. The application was processed and ultimately the second applicant was appointed on compassionate grounds on 21.02.1995. The first applicant had been allotted a quarter in which he continued till the date of his retirement and also for some more time on getting extension of time. Then in the meanwhile, the second applicant gave an application for allotment of quarter to him after his appointment on compassionate grounds. That application came to be rejected by the department. Then the department started eviction proceedings against the applicants and the applicants came to be evicted forcibly on 25.04.1997. Now the respondents are claiming penal rent from the applicants to the extent of Rs. 1,11,724.00. The applicants are challenging the legality and validity of the ~~claim~~ for penal rent. There was delay on the part of the respondents in

granting compassionate appointment to the second applicant and due to this delay the second applicant's request for regularisation of the quarters was not granted. That another junior candidate, Chavan, was granted compassionate appointment by overlooking the claim of the second applicant. The said Chavan was also granted regularisation of the quarters on father to son basis. That the applicants were not heard before levying the penal rent of Rs. 1 Lakh & odd. That no action has been taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of penal rent. The second applicant is entitled for regularisation/allotment of quarters on father to son basis. That the eviction of the applicants from the quarters was illegal. On these grounds, the applicants have approached this Tribunal for quashing the order of eviction, the order demanding penal rent and for a declaration that the second applicant is entitled to be regularised/allotment of quarter on father-to-son basis, to declare that respondents should have created a supernumerary post to give compassionate appointment to the second applicant, that the second applicant's date of appointment should be pre-date or should be given retrospective benefit so as to get benefit from 21.02.1994 and other consequential reliefs.

3. The respondents in their reply have pleaded the circumstances due to which there was delay in granting compassionate appointment to the second applicant. They have also justified the compassionate appointment given to Mr. Chavan. They have stated that since the applicants

did not vacate the premises inspite of extension of time, they had to be forcibly evicted under the Public Premises (E.U.O.) Act, 1971. They have justified the penal rent since the possession of the quarter was unauthorised. It is stated that the applicants are not entitled to any of the reliefs.

4. The first contention of the Learned Counsel for the applicant is that the delay on the part of the respondents in giving compassionate appointment to the second applicant has deprived him the right to get the quarter regularised and therefore he has attacked the delay as illegal. He argued that even if there were no posts, the respondents should have created a supernumerary post to give compassionate appointment to the second applicant. It has come on record that respondents gave a reply to the applicants that the request of the second applicant for compassionate appointment cannot be immediately considered since there was no vacancy and his request could be considered as and when vacancy would arise. The Learned Counsel for the applicant strongly relied on a decision of the Supreme Court reported in AIR 1998 SC 2230 | Director of Education (Secondary) & Anr. V/s. Pushpendra Kumar & Others | in support of his contention that even if there is no vacancy, a supernumerary post should be created.

In our view, the argument has no merit. A perusal of the judgement of the Supreme Court shows that the Supreme Court was interpreting Rules 101 to 107 framed under U.P. Intermediate Education Act (2 of 1921). The

rules are mentioned at page 2231 to 2232 of the reported judgement. The rule 106 itself provides as to how compassionate appointment should be done and it further stated that even if there is no vacancy, the appointment shall be made against a supernumerary post. Because there was a specific rule, the Supreme Court gave a direction that supernumerary post should be created and appointment should be made. But in the present case, there is no such rule for creation of supernumerary post. In that case, the Supreme Court was concerned with the rules framed by the U.P. Government but we are concerned with compassionate appointment scheme framed by the Government of India, which is in Chapter 29 of Swamy's Book on Establishment and Administration. In this scheme there is no provision for creation of supernumerary post. Therefore, we hold that the direction of the Supreme Court in the above case was on the basis of specific rule, namely - Rule 106 which provided for creation of supernumerary post. It cannot be applied to the scheme of compassionate appointment framed by the Central Government.

5. Then the next argument is that, there was discrimination between the case of the second applicant and the case of Mr. Chavan in granting compassionate appointment and then granting regularisation of the quarters.

As far as Mr. Chavan is concerned, his claim was based on the death of his father dying in harness whereas the second applicant's claim for

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compassionate appointment is on the ground of retirement of his father prematurely on medical grounds. In our view, the case of death and case of pre-mature retirement on medical grounds cannot be treated alike. In the case of death of a person, there is a death of the bread winner of the family and the family will be in great distress and hardship. But in the case of premature retirement on medical grounds, the bread winner is still alive and he will be getting full pension and, therefore, his case cannot be compared with a case of an official dying in harness.

Even in the scheme for compassionate appointment which is at chapter 29 of Swamy's Book on Establishment and Administration, the case of compassionate appointment in the case of an official dying in harness is mentioned in clause (a). Then in clause (b) it is stated that in exceptional cases, compassionate appointment may be granted to the heir of a Government servant who retires on medical grounds. Therefore, this ground of giving compassionate appointment to the heir of the Government Servant retiring on medical ground is like an exception to the general rule and it can be granted in exceptional cases.

Therefore, the applicant cannot claim parity with the case of Mr. Chavan who claimed compassionate appointment on the ground of death of his father. Therefore, we do not find any merit in the applicant's contention of discrimination or violation of Article 14 of the Constitution of India.

6. In the application there is also an allegation and a prayer for quashing the Order of Eviction; as could be seen from the Order of Eviction which is at page 24 of the paper book, Annexure A-4. It is an order issued by the Estate Officer under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Under the said Act, there is a provision for appeal to the Local District Judge. The Act is a complete code. If the applicant is aggrieved by the order of the Estate Officer, his remedy is to approach the District Judge concerned and challenge the order of the Estate Officer. Therefore, this Court cannot sit in appeal over the orders of the Estate Officer when separate appeal provision is made in the statute. Hence, we cannot consider the legality or otherwise, of the Eviction Order in this present application.

7. As far as the applicant's prayer for regularisation of the quarters or allotment of another quarter on out-of-turn basis is concerned, the matter is not free from doubt. The second applicant's request for regularisation of the quarters has been rejected only on the ground that as per rules, the quarters can be regularised only if the compassionate appointment is made within one year from the date of death or retirement on medical grounds of the concerned officer. In this case, since there was delay in the compassionate appointment of the second applicant and it exceeded beyond one year from the date of first applicant's retirement, the request for regularisation was rejected. The delay occurred because the competent authority entertained the doubt on the question of ~~relaxation~~ of

age of the second applicant. According to the competent authority, the second applicant was aged more than 30 years, but as per rules, the recruitment is only upto 25 years and therefore, he referred the question to higher authorities for regularisation of age. The higher authority replied that in case of compassionate appointment the only minimum age is the criteria and there is no maximum age limit. Since the delay occurred due to doubt entertained by the competent authority, and it later transpired that there was no question of age bar, whether the applicant should suffer for not getting the quarters due to delayed appointment order? This is a matter which the competent authority has to consider. While rejecting the request of the applicant for regularisation, the competent authority has not applied its mind to this question. Even the Learned Counsel for the applicant fairly submitted that it is better ~~that~~ the matter is referred back to the competent authority to apply his mind to the facts of the case and to take a decision about regularisation/allotment of another quarter to the applicant.

As we have already seen, the delay in the order of compassionate appointment occurred due to entertainment of doubt by the competent authority for which there was no foundation, since there was no maximum age limit prescribed for compassionate appointment. In addition to this, the second applicant's father had serious health problem and he was retired on medical grounds. It has also come on record that the second applicant's sister was mentally retarded and she died subsequently. The applicants belong to Scheduled Caste.

Infact, in one of the applications, the second applicant had prayed for out-of-turn allotment of quarters, which is permissible for SC/ST candidates. Therefore, we feel that the competent authority should apply his mind to the above facts, including the fact that delay in the compassionate appointment was not due to any conduct of the applicant but it was due to entertaining of doubt by the Appointing Authority for which there was no foundation, as clarified by the higher authority, and then take a decision whether the original quarter in the possession of the first applicant should be regularised in favour of the second applicant or in the alternative, whether the second applicant should be allotted any other quarter on out-of-turn basis. We also direct the competent authority to apply his mind to all the facts of the case and to take a decision by a speaking order. We also give liberty to the second applicant to make a detailed representation for regularisation or allotment of quarters on out-of-turn basis, which the competent authority shall take into account.

8. Now the only question that remains to be considered is about the demand for penal rent. The Learned Counsel for the applicants contended that the original allottee of the quarter was the first applicant and therefore, no demand of penal rent could be made from the son, namely - the second applicant. This argument has no merit as rightly contended by the Learned Counsel for the respondents by placing reliance on a decision of the Apex Court in the case of Amitabh Kumar V/s. Director of Estates [1997 SCC (L&S) 698]. That was an identical

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case filed by the father and son and questioning the right of the Government to demand the penal rent from the son. The Supreme Court held that when the son is in the occupation of the premises and when regularisation is not granted, he is liable to pay the penal rent and it can be recovered from him. Therefore, the argument that penal rent cannot be recovered from the second applicant cannot be accepted.

9. If the Competent Authority, after applying his mind, decides to grant regularisation of the original quarter or alternatively, decides to allot another quarter on out-of-turn basis, then the question of demand or recovery of penal rent from the applicant will not arise at all. That order of demand for penal rent will have to be withdrawn or revoked in such a case.

If, after applying his mind to the facts of the case, the Competent Authority rejects the claim of the second applicant for regularisation or allotment of another quarter, then the question is, what should happen to the demand of penal rent now made to the extent of Rs. 1,11,724.00 as per order dated 03.07.1997 (Annexure A-1 at page 21-A of the paper book). On this point we only say that the applicants may make a representation for waiving (or reducing the penal rent in case their request for regularisation // allotment of quarter on out-of-turn basis is not granted by the competent authority. It is open to the applicant to give all reasons in support of their request to waive or to reduce the penal rent. The competent authority shall take into consideration that the applicants belong



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to Scheduled Caste community. That the second applicant is a Group 'D' employee. The first applicant is not having good health and got retirement on medical grounds. The second applicant's sister was mentally retarded and has subsequently died. In these circumstances, the competent authority may consider whether as per rules he can waive or atleast reduce the penal rent and if so, to what extent and then pass a speaking order.

10. In the result, the application is allowed partly and disposed of with the following directions :

Liberty is given to the applicants to make a representation to the respondents for regularisation of the original quarter or allotment of another quarter on out-of-turn basis from father to son within a period of one month from the date of receipt of this order. Liberty is also given to the applicants to alternatively make a representation for waiving or reducing the penal rent. On such representation received from the applicants, the competent authority shall apply his mind and take decision by a speaking order in the light of the observations made in the course of this order, within a period of three months from the date of receipt of such representation. We further direct that respondents should not make any recovery of penal rent on the basis of their letter dated 03.07.1997 from the applicants till the date

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of passing the speaking order, as  
mentioned above.

In the circumstances of the case, there  
will be no order as to costs.

*D. S. Baweja*  
(D. S. BAWEJA)

MEMBER (A)

*R. G. Vaidyanatha*  
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

30-10-98

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