

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 03 /1997

Date of Decision: 17-04-97

Shri Brundaban Mangulu Sahu Petitioner/s

and Another.

Shri A. I. Bhatkar,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri V.S. Masurkar,

Advocate for the
Respondent/s

CORAM:

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

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

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

MR. Kolhatkar

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 3/97.

Dated this Provisional the 17th day of April, 1997.

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

1. Brundaban Mangulu Sahu.

2. Ramesh Chandra Sahu.

Both the applicants presently residing at Qtr. No. 208/19, Type-II (Spl.), C.G.S. Colony, Ghatkopar, Mumbai - 400 086.

... Applicants.

(By Advocate Shri A. I. Bhatkar).

VERSUS

1. Union Of India through the Secretary, Ministry of Urban Development, (Directorate of Estate), Government of India, Nirman Bhavan, New Delhi - 110 001.

2. The Estate Manager, Government of India, Old C.G.O. Bldg. Annexe, 3rd floor, 101, M.K. Road, Mumbai - 400 020.

... Respondents.

3. The Admiral Superintendent, Naval Dockyard, Lion Gate, Mumbai - 400 023.

(By Advocate Shri V. S. Masurkar).

: ORDER :

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

In this O.A., the applicant challenges the Eviction Order in respect of quarter - Type-II (Spl.) Flat No. 208/19, at Ghatkopar, placed at page 14 and also the letter dated 26.09.1996 rejecting the request for regularisation at page 16. The facts are as follows :-

The applicant no. 2's father retired from the Naval Department w.e.f. 31.05.1996. The applicant no. 2 was appointed in the same department on 05.12.1989 and ~~xxxxx~~ he was residing with his father. He intimated the fact to the authorities and from 01.03.1992 the applicant no. 2 is not drawing the House Rent Allowance from the Navy. According to the applicant no. 2, he fulfills the conditions relating to regularisation of quarters at page 18, namely; the Government of India order in the SR 317-B-26 on the subject - "Allotment of Government quarters to dependents/relations of Government employees on their retirement (including voluntary retirement)." The applicant no. 2 was a dependant and he is eligible for allotment^{in terms of the rules}. He had submitted an application for the accommodation and he was residing continuously with the retiring government servant for atleast three years immediately preceding the date of retirement of the Government servant and that he ~~was not~~ ~~xxxxxx~~ drawing House Rent Allowance. According to the applicant, his case however, appears not to have been considered apparently in view of the Government of India, Directorate of Estates, order dated 15.03.1994, which read as below :-

" The undersigned is directed to say that it is understood that the office of Naval Dockyard has got departmental pool of accommodation for making allotment to its own officers. The position of continued allotment to the officers of Naval Dockyard from a general pool has been reviewed by the Government keeping in view the percentage of satisfaction in the departmental pool of Naval Dockyard vis-avis the same in the general pool and it has been decided to declare the officers of Naval Dockyard as ineligible for allotment from

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general pool at Bombay with immediate effect. This is for information of all concerned."

According to the applicant, this order has subsequently been relaxed by the order dated 15.03.1996 which reads as below :

"I am directed to refer to your letter no. DYP/P&A/1110/2 dated 20.07.1995 a copy of which was given to Director of Estates in Feb. 96 and to say that the request of the Naval Dockyard as contained in their above letter has been considered. It has been decided that the decision conveyed vide this Dtc.'s O.M. dated 15.3.94. In other words, the officer of Naval Dockyard will continue to remain ineligible for allotment of General pool accomodation at Bombay. However, it has been decided that the officers of Naval Dockyard who are already allottees of General Pool Accomodation will be allowed change in the same type as admissible under the allotment rules. This is for information of all concerned."

According to the applicant, a similar case has been decided by the Tribunal vide O.A. no. 172/96 dated 30.07.1996 (Anthony Mathew & Another V/s. Union Of India) and O.A. No. 401/96 decided on 30.07.1996 (T.G. Mohanty & Another V/s. Union Of India) in which the Tribunal interpreted the instructions dated 15.03.1994 ~~read with~~ the instructions dated 15.03.1996 and allowed the relief of regularisation of quarter. The applicant, therefore,
M prays for a similar relief.

2. The respondents have opposed the O.A. According to the respondents, the Government instructions making the employees of Naval Dockyard ineligible for general Pool Accommodation, were issued on 15.03.1994 and the Applicant No. 1 was in service at that time and he retired well after the issue of the orders and since the event on the basis of which the applicant claims regularisation, namely; retirement of the father is subsequent to the issue of the Government orders dated 15.03.1994, the applicant No. 2 cannot claim the relief of regularisation. So far as the subsequent modification by the orders dated 15.03.1996 is concerned, they are limited to officers of Naval Dockyard, who are already allottees of General Pool Accommodation, being allowed change in the same type, as admissible under the rules. According to the Counsel for respondents this modification was made on a specific request from the concerned department and it is confined to change/in the case of present accommodation being out of repair or change in the case of any promotion, in which case, the Government employee may be entitled for a different accommodation. According to the respondents, the Government has taken a policy decision/that Tribunal cannot direct the Government to relax this policy decision in respect of individual employees. He further contends that so far as the Tribunal's decision in Anthony Mathew's case is concerned, the Directorate of Estates, proposes to file a S.L.P. in the Apex Court. The Counsel for the respondents, therefore, urged that the Tribunal may not follow the precedent of this judgement.

3. I/considered the matter./ The judgement in Anthony Mathew's case, the applicant's father retired on 30.09.1994. This event was also subsequent to the issue of the Government orders dated 15.03.1994. The contention of the respondents therefore, that the case of Anthony Mathew's is distinguishable, cannot be accepted. I have also seen the judgement in T.G. Mohanty's case. That case stands on a different footing because the government servant retired on 28.02.1994 i.e. prior to the issue of the Government order dated 15.03.1994.

4. The contention of the respondents is that the Tribunal's reliance on subsequent instructions dated 15.03.1996 for granting relief was not warranted. It may be that the principle of law laid down in Anthony Mathew's case is not immediately discernable. However, the reliance placed by the Tribunal on subsequent instructions dated 15.03.1996 is not far-fetched. The modification was made by the department in respect of officers who are already allottees of General Pool Accommodation. In that case, change in the same type was held to be admissible. The principle of law evidently is that the allottees, prior to the issue of order dated 15.03.1994, have certain rights and the modification dated 15.03.1996 protects those rights to the limited extent of change of accommodation. In the case of regularisation of quarter or adhoc allotment of quarter to a dependant, the same principle of protection is required to be applied and here the point to note is that, there are rights of the dependants as well as the rights of the original allottees. A close reading of the Government instructions under SR-317-B-26 shows that continuous residing for ^{three} years prior to the retirement is a pre-condition for adhoc allotment. In

the present case, the applicant no. 1 retired on 31.05.1996 and the right of the defendant began to crystallize from the date he ceased to draw the House Rent Allowance. In the instant case, from 01.03.1992. The Tribunal is required to protect the incipient rights which are crystallized on ~~the~~ occurrence of ~~a~~ ^{further} event ~~xx~~ as much as the vested rights. In the present case, the incipient right began to crystallize on 01.03.1992, that is well before the issue of the Government orders dated 15.03.1994, making the Naval Officers ineligible for allotment of General Pool Accommodation. Another point to be noted is that the right of the ~~dependent~~ flows from Government of India orders under SR-317-B-26, which ~~stand~~ on a higher footing than the administrative decision taken by the Directorate of Estates to make the Naval officers ineligible. The rights protected by the F.Rs., S.Rs., ^{therefore also} stand on a higher footing than the power of the department to make certain employees ineligible for ~~xxxxxx~~ allotment from a particular date.

5. Viewed in this light, the decision of the Tribunal in Anthony Mathew's case cannot be faulted. I am therefore of the view that the applicant must succeed and accordingly I grant the relief of quashing the impugned order dated 20.12.1996 and 26.09.1996 and direct the Respondent Nos. 1 & 2 to regularise the Government accommodation in the name of Applicant no. 2 w.e.f. 01.06.1996 in accordance with the relevant rules, namely; Government of India orders under S.R. 317-B-26.

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6. The O.A. is disposed of with the above directions. There will be no order as to costs.

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

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