

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1099/98

Date of Decision: 24-9-99

Smt. Prithibha Prabhakar Pawar

Applicant.

Shri S.P. Kulkarni for Shri Yelwe

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondent(s)

Shri V.S. Masurkar for R-1 & 2.

Advocate for
Respondent(s)

Shri R.K. Shetty for R-3.

CORAM:

Hon'ble Shri. B.N. Bahadur, Member(A).

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

abp.

B.N. Bahadur
(B.N. BAHADUR)
MEMBER(A)

24/9/99

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1099/98.
DATED THE 24th DAY OF SEPT,99.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

SMT.Prithibha Prabhakar Pawar,
working at present as
Loder with Census Department,
Ministry of Home Affairs
having office at
Room No.22, T Ward Municipal
Building, 1st Floor.
Mulund and Head Office at
O/o.Jt.Director of Census
Operations, Mumbai - 400 020.

... Applicant.

By Advocate Shri S.P.Kulkarni for
Shri K.R.Yelwe.

v/s.

1. Estate Manager,
Government of India Estates,
Old CGO Building,
2nd Floor, M.K.Road,
Churchgate, Mumbai-400 020.
2. Director of Estate,
Ministry of Urban Development,
Government of India,
New Delhi - 110 001.
3. Union of India through
Joint Director of Census Operations,
Maharashtra Exchange Building,
Sir S.R.Marg,
Ballard Estate,
Mumbai - 400 001.

... Respondents.

By Advocate Shri V.S.Masurkar for R-1 and 2.
By Advocate Shri R.K.Shetty for R-3.

(ORDER)

This is an application made by Smt.Prithibha P Pawar seeking the relief that the order dated 20/8/98 turning down the request for out of turn allotment of residential quarter is quashed and consequently to hold that applicant is entitled to out of turn allotment, in the facts and circumstances of the case. She also seeks the quashing of eviction order dated

Ans 15/1298.

2. The facts of the case as relevant to a decision in this case are that the applicant is the widow of late Shri P.Y.Pawar, who, while working in the Census Department died prematurely on 28/8/96. The applicant applied for appointment on Compassionate grounds on 10/12/96. No decision was taken on her application and the applicant filed an OA-1011/97. Ultimately, she was appointed as Loader in the Census Department w.e.f. 27/3/98. This rendered the OA as infructuous.

3. The applicant continues to aver that she thus became entitled to out of turn allotment of residential, accommodation. She took steps by making applications from 3/4/98 onwards. At that time no objections were taken to the format of application. Earlier in November, 97 the allotment of the house allotted to her late husband was cancelled and recovery of sum of Rs.12,981/- was ordered. She had applied thereafter for extension of permission to stay on in the accommodation. All subsequent developments are described in detail in the application. She avers that she is now informed that her application dated 3/4/98 was not in the correct proforma. Nevertheless, she had applied afresh. It is in the background of these facts and circumstances that the applicant has come up seeking the relief as mentioned above.

Bmb

4. The respondents have filed detailed reply in this case stating that final eviction order under Section 5(1) of P.P. Act 1971 was passed on 15/12/98 and therefore this Tribunal has no jurisdiction to entertain this application. Further, in the reply statement, facts of the case are generally admitted, but the averments and contentions are denied. It is held that OM dated 22/5/96 quoted in the reply statement is relevant, in as much as adhoc allotment of accomodation can be made in cases where the legal heir is able to secure employment on compassionate grounds within one year of his death. It is further mentioned this one year period was extended first by one month and now stands at one year and four months. (This information was provided during argument by respondent's counsel.) Thus it is stated that in the facts and circumstances of this case, the applicant does not deserve out of turn allotment of accomodation, and that this OA deserves dismissal.

5. The learned counsels on both sides have been heard. The papers in the case have been perused and the arguments advanced by each side carefully considered.

6. The counsel for applicant rested his case on the facts enumerated in the application, and specially emphasised the point that relief in similar cases have been given by this Tribunal.

In this connection, order in OA-106/97 dated 5/6/97 of Mumbai

Bench was sought to be depended on, as also orders made in OA-1011/97 dated 31/3/98. A copy of a note of Ministry of Law in regard to decision in WP-3715/98 in OA-9/98 of High Court was provided and support was sought to be drawn therefrom.

7. Learned counsel for respondents strenuously made the point that while Compassion in the matter of appointments in such cases was perfectly acceptable, Compassion cannot be extended beyond a certain point. It was argued by him that at present, the rules allowed for out of turn allotment in cases where the employment was secured by legal heir etc within 16 months of the death of the Government servant. It is urged that, in this case, the applicant's husband expired on 28/8/96 whereas the applicant secured employment on 27/3/98. That is a gap of a period of about 20 months. Thus, it was argued that there was no case for granting relief sought by applicant. The granting of such relief was not in consonance with Government Policy and since policy was not being questioned, it would not be correct to provide the relief.

8. It was further argued that grant of Compassionate employment and residential accommodation was not consequential. Reference was made to the case of Phool Singh v/s. Union of India reported at 1997(1)ATJ-175, and it was argued that it has been discussed in the case of Madke in OA-106/97 but it was misrepresented in Madke's case and judgement in OA-106/97 cannot

be the basis of granting relief. The High Court judgement cited by Applicant's counsel was also referred to by counsel for respondents, who stated that this cannot be treated as a precedent.

9. The facts of the case are fairly clear. The basic point is that as per Government policy certain preference has been sought to be given to the legal heir of a Government servant ~~xxxxxxxxxxxx~~ in regard to out of turn allotment of Government residential accommodation. Now, this consideration of out of turn allotment was restricted to ^{a time frame i.e.} within one year of legal heir securing employment. ~~and~~ now as pointed out by counsel for this period stands stipulated respondents ~~and~~ at 16 months. I have gone through the two viz. judgements cited, namely orders in OA-106/97 and in 1011/97; both emanating from this bench. The point is whether they can be relied upon not perhaps as settled in law or dictum in the matter but for providing relief in the present case before the Tribunal. In para-5 of the judgement on OA-106/97, it is stated as below:-

"I have considered the matter. According to me it cannot be stated that Smt. Dulari Bacharam'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 2years and 5 months. In the case of Phool Singh & Anr the gap was 2 years and 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 authority for the proposition that absolutely no relaxation can be given. "

10. This is the crux of the matter. While it cannot be said that Government cannot lay down a limit of time as a part of policy, it is certainly to be observed that there is a well found basis on which Government has decided consciously to give relaxation in terms of time for eligibility to out of turn allotment for those legal heirs who are visited upon by hardship and trauma in view of untimely death of the breadwinner in the family. It is in this context, that relief has been granted in the decision in OA-106/97 and while this cannot be binding on all subsequent cases it can be certainly considered as relevant in granting relief in the present case if facts and circumstances so warrant.



It is seen that there has been...

11. It is seen that there have been no laches on the part of the applicant who has kept persuing the Government in time, continuously, for providing her with employment. She has come to be placed in difficult circumstances due to untimely death of her husband and she has minor children and hence is clearly suffering *Ans* social and financial distress. There is a delay in the securing of employment, the gap being 6-7 months beyond the presently stipulated period. It will make for very great hardship if she is asked at this stage to vacate the house, and stand in the queue again for Government accomodation. A view will therefore have to be taken in the background of the facts and circumstances of the case. In view of the discussions made above, it would certainly be in the interest of justice in the present case that the relief asked for is granted.

12. In consequence, the OA is therefore allowed in terms of the following orders :

The applicant is held entitled to out-of-turn allotment of the residential accomodation in question. The allotment to her is regularised. She may be charged the normal rent for the accomodation, as leviabale as per normal rules.

13. No order as to costs.

B.N. Bahadur

(B.N. BAHADUR)

MEMBER(A)

24-9-99.