

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 199/98

3.6.99
Date of Decision:

M.K.Balmiki

Applicant.

Shri P.A.Prabhakaran

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R.1& 3 and Shri R.R.Shetty
for Shri R.K.Shetty for R.2. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawej, 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?

D.S.Bawej
(D.S.BAWEJ)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 199/98

Dated this the 3rd day of June 1999.

CORAM : Hon'ble Shri D.S.Bawej, Member (A)

Mahendra Kalicharan Balmiki
r/o T-13/14 Talwar Camp,
Colaba, Mumbai.

By Advocate Shri P.A.Prabhakaran

... Applicant

v/s.

1. Union of India through
Flag Officer Commanding-
in-Chief, Headquarters,
Western Naval Command,
Mumbai.
2. Chief Engineer, Navy, Mumbai,
26 Assay Building,
Colaba, Mumbai.
3. Commodore,
Commodore Naval Barracks,
Shahid Bhagatsingh Road,
Mumbai.

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

... Respondents

O R D E R

(Per: Shri D.S.Bawej, Member (A))

The father of the applicant Shri Kalicharan Mukunda employed under Respondent No. 1, i.e. Flag Officer Commanding-in-Chief, Headquarters, Western Naval Command, Mumbai in the office of the Director General, Naval Project, Naval Dockyard, Lion Gate Accommodation Complex, Mumbai as Safaiwala expired on 10.3.1995. The widow, i.e. the mother of the applicant had made a request for compassionate appointment for the applicant. The applicant was

given a compassionate appointment as per order dated 1.2.1997 by Respondent No. 2, i.e. Chief Engineer (Navy), Mumbai. The father of the applicant at the time of death was occupying a quarter from the Naval Pool. The applicant after his compassionate ^{Claim, has he} appointment is entitled for allotment of quarter occupied by his father on adhoc basis. The applicant further submits that as per letter dated 10.11.1995, his mother was asked to pay a sum of Rs.2896/- by way of licence fee for a period of six months from March, 1995 to September, 1995 and the same was paid by his mother. Subsequently, by letter dated 4.2.1997 of Naval Transport Pool addressed to the Director General Naval Projects, it was advised that the applicant's family could continue in the quarter for a period of one year from the death of the father and this period expires on 3.3.1996. In continuation of this letter, another letter dated 22.2.1997 was issued by the Naval Transport Pool, requiring to vacate the quarter by 1.3.1997. The applicant was also directed to see the concerned officer, failing which eviction proceedings will be ordered. In response to this letter dated 22.2.1997, the Chief Engineer Navy Mumbai, i.e. Respondent No. 2 advised as per letter dated 1.3.1997 that the applicant on appointment on compassionate basis was entitled to retain the present accommodation till the allotment of alternative accommodation as per the extant rules is given. It was also stated in this letter that the applicant had applied for the accommodation and the same will be allotted shortly and therefore till such time the applicant may be allowed to retain the quarter allotted to his father as a special case. As per letter

dated 17.3.1997, Naval Transport Pool ^{again} advised the Respondent No. 2 that the recovery of rent may be made from the applicant taking the normal rent from September, 1995 to 3.3.1996 and damage rent from 4.3.1996 till the date of appointment. Since there ~~has~~ no accommodation available in the pool of Respondent No. 2, Respondent No. 2 as per his letter dated 13.8.1997 again advised the Naval Headquarters that till the Respondent No. 2 is able to allot quarter to the applicant, he should be allowed to continue in the present quarter upto 31.3.1998. However, the Naval Headquarters in reply to this letter advised that action be taken as per earlier letter dated 21.4.1997 which refers to recovery of the rent from the salary of the applicant. Thereafter, the Respondent No. 3, i.e. Commodore Naval Barracks, Mumbai issued eviction notice dated 19.2.1998. The mother of the applicant replied to the show cause notice on 24.2.1998. The Respondent No. 2 as per letter dated 2.3.1998 requested that eviction proceedings initiated may be dropped and the quarter occupied by the applicant on death of his father may be allotted to the applicant in terms of para 20 of SRO No. 308 of 1978. Due to not getting any response from the Respondents No. 1 & 3, the applicant has filed the present OA. on 5.3.1998. With the above background, the applicant has sought the following reliefs :-

(a) to direct the respondents that either the present Quarter No. T-13/14 Talwar Camp, Colaba be allotted to the applicant or any other quarter be allotted on adhoc basis as prescribed under the extant rules. (b) to direct

the respondents not to charge any damage rent and for a period beyond one year i.e. 3.3.1996 till the date of appointment on compassionate ground should be charged at a reasonable and equitable basis at the rate of twice or thrice the normal licence fee. (c) to direct the respondents to limit the recovery of the rent below the prescribed maximum out of the applicant's pay which will be far below Rs.1000/- p.m. as ordered by the Respondent No. 1 & 3. (d) direct the respondents that in case the damage rent is to be recovered from the applicant, then he shall be paid full HRA. The main ground advanced by the applicant is that the applicant was residing with his father for more than six months before his death and therefore in terms of Ministry of Defence O.M. dated 7.3.1991, he is entitled for adhoc allotment of the quarter which was allotted in the name of his father.

2. The respondents No. 1 & 3 and Respondent No. 2 have separately filed the written statement contesting the claim of the applicant. The Respondents No. 1 & 3 at the outset have opposed the present OA ^{stating} that it is not maintainable as the applicant has challenged the order of eviction passed by the competent authority under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against which the appeal lies with the District Court. The respondents while making this submission have relied upon the judgement of Hon'ble Supreme Court in the case of K.P.Gupta. As regards the merits, the respondents submit that the father of the applicant was employed by the Indian Navy and therefore the quarter was allotted to him from the Navy pool. The applicant

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has been given compassionate appointment under the Chief Engineer, Navy, i.e. Military Engineering Services (MES) therefore he is an employee of Army. He is required to be given quarter from the Army pool as the Navy and the Army have quarters in separate pools. The respondents No.1 & 3 also contend that the action taken in initiating eviction proceedings against the applicant is legal and as per the rules as he is entitled for allotment of quarter as per his seniority in the Army pool. The respondents No.1 & 3 also justify the recovery of the damage rent as per the extant rules. The respondents also add that there are no surplus quarters under the Naval Pool and the staff from Navy are waiting for allotment of quarter from 1977 onwards. It is further contended that it is for the Chief Engineer, Navy to provide accommodation from his pool to the applicant. With this background, the Respondents No. 1 & 3 plead that the present application is misconceived and therefore deserves to be dismissed.

3. The Respondent No.2 has filed a separate written statement. Respondent No.2 submits that the issues of allotment of quarter and charging of licence fee are within the competence of Respondents No.1 & 3 and not Respondent No.2. The Respondent No.2 has only given the compassionate appointment and has recommended to respondent No.3 to either allow to retain the Quarter No.T.13/14, Talwar Camp or to allot any other quarter and also charge such reasonable rent for the period as deemed appropriate as per the extant rules.

4. The applicant has filed rejoinder reply for the written statement of Respondents No. 1 & 3. The applicant has contended that the Chief Engineer ^{ing} Navy though belong^{ing} to Military Engineering Services, is working under the control of Navy for carrying out the projects of Navy. In view of this, the applicant is entitled for the allotment of the quarter occupied by his father on getting compassionate appointment. As regards the maintainability of the present OA., the applicant has submitted that the eviction notice under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been issued only to his mother and not to the applicant and therefore the same is not applicable to the applicant. The other contentions of the respondents have been refuted reiterating his grounds taken in the original application. As regards the recovery of Rs.1000/- p.m., the applicant has contended that in terms of Section 60 of the Code of Civil Procedure, 1908, the deduction to the extent of Rs.400/- can only be made from the salary of the applicant. The applicant has not filed any rejoinder reply to the reply of Respondent No. 2. The applicant has filed a Misc. Application bringing on record certain documents which he has relied upon in support of the reliefs prayed by him. The respondents have filed a written statement in reply to ^{the} this Misc. Application.

5. Heard the arguments of Shri P.A.Prabhakaran, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for Respondents No. 1 & 3 and Shri R.R. Shetty on behalf of Shri R.K.Shetty, learned counsel for Respondent No. 2.



6. Before going to merits, the question of maintainability of the present OA. raised by the Respondents No. 1 & 3 will be taken up first. Respondents No. 1 & 3 have pleaded that the present OA. is not maintainable before the Tribunal as the applicant has challenged the order of eviction passed by the competent authority under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against which the appeal lies before the District Court. The applicant in the rejoinder reply however has/contested the contention of the respondents stating that the notice under Public Premises (Eviction of Unauthorised Occupants) Act has been issued only to the mother of the applicant and not to him. Further, the regularisation of the quarter in the name of the applicant on death of his father is admissible as per the extant rules once the applicant has been given the compassionate appointment. Therefore, in the opinion of the applicant, the issue under challenge in the present OA. is a service matter and the Tribunal has jurisdiction for the same. Considering the facts and circumstances of the case, I am not inclined to accept the contention of the respondents. The issue under challenge in the present OA. is concerning the entitlement of the applicant for regularisation of the quarter on being compassionately appointed after the death of his father. This entitlement is to be looked at with reference to the extant rules. In case the applicant is found to be entitled for regularisation of the quarter, then the question of eviction from the house at present occupied by the applicant would not arise. In case he is not entitled for allotment of quarter, then the question of eviction proceedings against the applicant would arise. From the

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averments made in the written statement filed by Respondents No. 1 & 3 and Respondent No. 2, it is no-where mentioned that the applicant is not entitled for the regularisation of the quarter. In fact, as will be deliberated subsequently, Respondent No. 2 repeatedly in his communications has indicated that the allotment of the quarter will be made to the applicant from his pool which would signify that the applicant was entitled for the regularisation of the quarter. The whole issue appears to centre about the dispute between the two Departments in regard to allotment of the quarter to the applicant. In my opinion, the matter under challenge is a service matter to be gone into merits with reference to the extant rules and therefore the objection raised by the respondents with regard to the maintainability is not sustainable.

7. As brought out earlier, the applicant has been appointed on compassionate basis as per order dated 1.2.1997 on account of death of his father on 10.3.1995. The father of the applicant had been allotted a quarter at the time of death. The applicant claims that he is entitled for the regularisation of the quarter occupied by his father in his name on account of appointment on compassionate ground. The whole issue therefore hinges on whether the applicant is entitled for allotment of quarter in his name which was occupied by his father. The applicant has brought out that in terms of Section 20 of SRO 308, the applicant is entitled for regularisation of quarter occupied by his father at the time of death in his name. The Respondents No. 1 & 3 while reacting to this plea of the

entitled for allotment of the quarter as per extant rules which was occupied by his father, then the question of the adjustment of the quarter between the two different pools if necessary is a matter to be settled between the concerned Departments. The dispute between the two Departments cannot be used to penalise an employee who is entitled for the quarter. In the present case, it is noted that the Respondents No. 1 & 3 are washing of **their** hands stating that the applicant cannot be allotted a quarter from the Navy Pool and the Respondent No.2 is to allot a quarter from their pool. Respondent No.2 states that it is for the Respondents No. 1 & 3 to settle the issue of allowing the applicant to stay in the quarter- occupied by his father and charging of the licence fee etc. From the written statements of Respondents No. 1 & 3 and Respondent No.2, it is quite apparent that ^{due to} internal dispute between the two Departments, the applicant is being put to harassment by recovery of penal rent and subjected to eviction proceedings.

8. The learned counsel for the ^{respondents} applicant has cited the judgement in the case of Harish Chander vs. Chandigarh Administration, 1998(1) SLR 353 of Punjab and Haryana High Court, While arguing that the applicant cannot claim the allotment of quarter as a matter of right. I have carefully gone through this judgement and find that the same is not relevant to the present OA. In the said judgement, the issue involved is allotment of quarter to the son on retirement of his father. The matter has been examined with reference to the extant rules as per which such an allotment was not permissible. In the present case, the issue involved is with respect of regularisation of the quarter occupied by the family in the name of a son who has been given compassionate appointment on the death of his father.

such an allotment is covered by extant rules and therefore the merits of the case has to be looked at with reference to the provisions of the rules.

9. Keeping in view the above observations, it is considered appropriate that the OA be allowed with the following directions:-

- (a) The Respondent No.2 will allot the first available quarter of the appropriate type to the applicant. Till such time the quarter is allotted by the Respondent No.2 from his pool, the Respondent No.1 and 3 will allow the applicant to continue to occupy the quarter under reference.
- (b) The applicant will be entitled for recovery of normal rent as per the extant rules for the entire period.
- (c) Interim order dated 23.4.98 stands modified accordingly.
- (d) No order as to costs.

D.S. Bawej
(D.S. Bawej)
Member (A)

mrj.