

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-552/2016
MA-526/2016**

Reserved on : 22.02.2018.

Pronounced on : 17.04.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Imran Ahmed, MTS
Aged about 27 years,
S/o Late Sh. Sultan Ahmed,
R/o II/258, Income Tax Colony,
Pitampura, New Delhi-110088. Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Union of India through
Its Secretary,
Ministry of Finance,
North Block, New Delhi.
2. Through its Commissioner of Income Tax,
Office of the Commissioner of I.T.,
Central Revenue Building,
I.P. Estate, New Delhi.
3. Dy. Commissioner of I.T.,
(Hqrs.) (Infra)
Office of the Commissioner of I.T
Central Revenue Building,
I.P. Estate, New Delhi. Respondents

(through Sh. Gyanendra Singh, Advocate)

ORDER

The applicant has filed the current O.A. seeking the following relief:-

- “(i) To direct the respondents to regularize the flat bearing Qtr. No. 258, Type-II, Pitampura, Income Tax Colony, New Delhi-110088 in the name of the applicant.
- (ii) To declare the action of respondents in treating the applicant as unauthorized occupant as illegal and treat the continuation of applicant in Qtr. No. 258, Type-II, Pitampura, Income Tax Colony, New Delhi-110088 as bonafide.
- (iii) To allow the OA with exemplary cost.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. Briefly stated, the facts of the case are that Flat No. 258, Type-II, Income Tax Colony, Pitampura, New Delhi was allotted to late Sh. Sultan Ahmed, who expired on 29.09.2011. As per the Rules, retention of the flat was allowed to the family of the deceased on payment of normal license fee upto 28.09.2002 i.e. for one year. On 17.06.2011, a show cause notice u/s 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued for eviction of the flat.

3. The applicant states that his mother, after the death of her husband (the deceased employee) had submitted an application for considering his case for appointment on compassionate ground as per Scheme of Compassionate Appointment notified by the Government. Her claim was not finalized on the ground that the applicant's father had another wife. The applicant's mother filed an application for succession certificate and finalizing of the process

took about 05 years. After getting the said certificate, the applicant's mother again requested for finalizing her claim to appoint her son on compassionate grounds. Finally, in 2012, the applicant's mother was directed to submit an application for appointment of her son on compassionate ground. The applicant's request was considered and he was appointed as MTS on 15.07.2013. After appointment as MTS, the applicant submitted an application for considering his claim for regularization of Flat No. II/258, Income Tax Colony, Pitampura, New Delhi. He also made a reference to the representation dated 27.06.2011 submitted by his mother for allowing her to continue in the same flat.

4. The respondents, however, rejected the claim of the applicant vide their order dated 21.01.2016. The applicant submits that the respondents had allowed him to retain the flat No. II/258, Income Tax Colony, Pitampura, as mentioned, on the ground that his request for compassionate appointment was pending consideration. Payment of HRA was also stopped and license fee also commenced. In view of these facts, the applicant felt that the respondents would regularize the government flat allotted to his father, which has not been done.

5. In the counter, the respondents state that no request for retention of the flat was received from them from the family of the

deceased and that they are in unauthorized occupation of the flat since 28.09.2002 till date. It is only after issue of the show cause notice dated 17.06.2011 that Smt. Subakta Bano w/o late Sh. Sultan Ahmed submitted a representation dated 27.06.2011 requesting for retention of the flat. They further submit that the applicant was informed that the amount of HRA and license fee deducted from his salary w.e.f. 15.07.2013 i.e. when he joined the department as MTS will be reduced from the outstanding dues of Rs. 11,00,580/-.

6. It is stated the regularization can only be done if the ward of deceased employee is appointed on compassionate grounds within two years of death of allottee. In the instant case, the applicant has been appointed after a period of more than 12 years after the death of his father, hence his request for regularization of the flat is against the rules and cannot be acceded to.

7. I have gone through the facts of the case carefully. It is not disputed that the family of the deceased employee has been occupying the government flat No.258, Type-II, Income Tax Colony, Pitampura after the death of late Sh. Sultan Ahmed. The normal period for retention of government flat is one year extendable by another one year provided the deceased employee or his dependents do not own a house at the place of posting. It is clear that the family of the deceased cannot retain the government flat

beyond the permissible period of two years from the date of death of the government employee.

8. The applicant cannot take shelter under the garb that the respondents took considerable time to process his case for compassionate appointment. Apparently, there was a dispute regarding the nomination of the applicant's mother due to which she had to get a succession certificate from the appropriate Court. Hence, the delay cannot be attributed to the respondents. Nor can compassionate appointment he claimed as a matter of right. Unauthorized occupation of a government flat and appointment on compassionate grounds under the Scheme are two separate issues, which cannot be clubbed together to circumvent the rules.

9. I, therefore, hold that the action of the respondents asking the applicant to vacate the government accommodation is as per rules framed by Directorate of Estates for allotment of government flats. I agree with the respondents that if the family of deceased employee is allowed to retain the government accommodation till they secure compassionate appointment then the family of all such allottees can continue to remain in government accommodation without paying any rent with considerable loss to the government exchequer. Apart from being illegal, it will also be unfair to other similarly placed

persons eligible for government accommodation. In view of these facts, O.A. is dismissed as being devoid of merit. No costs.

(Praveen Mahajan)
Member (A)

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