

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2781/2016

M.A.No.2817/2016

with

O.A.No.2893/2016

O.A.No.2751/2016

M.A.No.2818/2016

O.A.No.2726/2016

M.A.No.2819/2016

O.A.No.2970/2016

M.A.No.2820/2016

O.A.No.2741/2016

M.A.No.2821/2016

O.A.No.2723/2016

M.A.No.2822/2016

O.A.No.2969/2016

M.A.No.2823/2016

O.A.No.2742/2016

M.A.No.2824/2016

O.A.No.2743/2016

M.A.No.2830/2016

O.A.No.2744/2016

M.A.No.2840/2016

Order Reserved on: 20.02.2017

Order pronounced on 27.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Shri P. K. Basu, Member (A)

O.A.No.2781/2016**M.A.No.2817/2016**

Shri Vipin Kumar Tyagi
S/o Sh. Brajesh Tyagi
R/o C-52, Palika Kunj
V.K.Dutta Colony, Karbala
New Delhi-110003.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri)

with

O.A.No.2893/2016

Sh. Pawan Kumar Sharma
S/o Late Ram Kishan
R/o A-16, NDMC Quarters
Palika Kunj
New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri)

O.A.No.2751/2016

M.A.No.2818/2016

Sh. Sachin
S/o Ram Singh
R/o 48, Valmiki Sadan
Mandir Marg
New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2726/2016

M.A.No.2819/2016

Shri Sagar
S/o Sh. Mangal
R/o NDMC Quarter No.205
Valmiki Sadan
New Delhi-110001.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2970/2016

M.A.No.2820/2016

Shri Rajiv

S/o Late Shri Mawasi

R/o 184(1), Balmiki Sadan

NDMC Quarters

New Delhi-110001

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC

Through its Secretary

Palika Kendra, Sansad Marg

New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2741/2016

M.A.No.2821/2016

Sh. Sunny

S/o Ramesh Chand

R/o F-45, Valmiki Sadan

Mandir Marg

New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC

Through its Secretary

Palika Kendra, Sansad Marg

New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2723/2016

M.A.No.2822/2016

Shri Dilip Kumar Jha
S/o Sh. Ram Chander Jha
R/o NDMC Quarter No.E-9(II)
Palika Kunj, Karbala
New Delhi – 110 003.

.... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2969/2016

M.A.No.2823/2016

Sh. Sahil
S/o Late Shri Kuldeep Kumar
R/o 121, Balmiki Sadan
Mandir Marg
New Delhi – 110 001.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri

O.A.No.2742/2016

M.A.No.2824/2016

Smt. Meena
D/o Smt. Shakuntla
R/o 77, Valmiki Sadan
Mandir Marg
New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri)

O.A.No.2743/2016

M.A.No.2830/2016

Sh. Suresh
S/o Roop Chand
R/o 43(1), Valmiki Sadan
Mandir Marg
New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri)

O.A.No.2744/2016

M.A.No.2840/2016

Sh. Ajay Kumar
S/o Ramanand
R/o 129, Valmiki Sadan
Mandir Marg, New Delhi.

... Applicant

(By Advocate: Shri A.K.Tripathi and Shri Sidharth Tripathi)

Versus

The NDMC
Through its Secretary
Palika Kendra, Sansad Marg
New Delhi – 110 001.

... Respondent

(By Advocate: Shri Yogesh Pachauri)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

Heard both sides in all the aforesaid OAs.

2. As common question of law and facts arise in this group of OAs, all these Original Applications are disposed of by this common order.

3. For the sake of convenience, OA No.2781/2016 is considered and treated as lead matter and, therefore, the facts in the said OA are considered.

4. All the applicants in the present batch of OAs are the legal heirs of the deceased employees of the respondent-New Delhi Municipal Council (in short, NDMC), and were appointed as Regular Muster Roll

Employees (in short, RMR Employees), on the death of their respective parents, on compassionate grounds.

5. The respective deceased employees were allotted different residential quarters, while they were working in respective capacities. The applicants being their family members and legal heirs were also residing along with the deceased employees in the respective quarters as on the date of the death of the employees. Though the applicants have no right to continue in the residential quarters, after a particular period of time as per rules and as they have not vacated the quarters after the permissible period, the respondents initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short, P.P.Act, 1971) for eviction of the applicants from their respective quarters residing by them.

6. In the said proceedings, orders have been passed directing the applicants to vacate the quarters in terms of the provisions of the P.P.Act, 1971. Appeals filed against the said orders of eviction are dismissed in respect of some of the applicants and pending in respect of certain others.

7. In certain isolated cases, when the respondents permitted the legal heirs of deceased employees, keeping in view the peculiar facts, such as missing of the employee, the death of one of the son for want of money for treatment, etc., the applicants in the present batch of OAs have also made representations for extending the said benefit to

them, by alleging discrimination. As the respondents have not acceded to the said request, they have filed the present OAs.

8. Initially, this Tribunal by its common order dated 23.08.2016 in OA No.2726/2016 & batch, including the OA No.2781/2016, dismissed the same by holding that in respect of all the residential quarters wherein the applicants are residing and claiming regularization, eviction orders have been passed under the provisions of P.P.Act, 1971, therefore, the OAs are not maintainable in view of the decision of the Hon'ble Apex Court in **Union of India v. Rasila Ram and Others**, (2001) 10 SCC 623. However, on filing the Writ Petitions, such as WP(C) 7870/2016, etc., against the said orders, the Hon'ble High Court, after quashing the order of this Tribunal, remanded the OAs by directing the NDMC to file an affidavit answering the allegations made by the petitioners with regard to discrimination, and to consider the same by the Tribunal. Accordingly, the OAs are restored.

9. The respondents vide their counter affidavits filed in the OAs, and also by way of the detailed chart, filed in respect of all the applicants in all the OAs, submitted as under:

i) Since none of the applicants is a permanent employee of the respondent-NDMC, they are not entitled for allotment of any residential quarter, as per rules. Hence, the question of regularization does not arise.

ii(a) In the case of Smt. (i) Angoori Devi, the allotment of Qr. No.33(I), Double Story, Aliganj was regularized in special circumstances and in view of the peculiar facts as the husband of Smt. Angoori was found missing, one of her sons died for want of money for his treatment, daughter, a widow separated from her husband were living with her, however, she had vacated the said quarter on 02.11.2011, on whose case, the applicants are claiming parity.

ii(b) In the case of Smt. Sunita W/o Shri Ashok Kumar (i.e. S/o Smt. Bimla), working as a Safai Karamchari, the allotment of Qr.No.78(I), Double Storey, P.R.Lane, Khan Market, New Delhi was regularized w.e.f. 01.02.2014 after the retirement of Smt. Bimla, in view of the fact that her son is handicapped and paralyzed and his leg has been amputated up to 1/3rd of his thigh and most of her earnings are spent on his treatment.

ii(c) In view of the aforesaid pathetic conditions and special circumstances of Smt. Angoori Devi and Smt. Sunita, respondents passed orders in relaxation of rules.

iii) The applicants, against which eviction orders have been passed, are the unauthorized occupants (in certain cases confirmed as the appeals filed by the applicants were already dismissed) cannot claim parity with the said persons.

10. Admittedly, the applicants are not the permanent employees of the respondent-NDMC and hence, not entitled for allotment of the residential quarters as per rules. Further, the eviction orders against them have been passed by a competent court of law under the provisions of the P.P.Act, 1971 and in certain cases the appeals filed by the applicants have also been dismissed, and accordingly, all of them are the unauthorized occupants as per law.

11. Admittedly, the respondent-NDMC considered the cases of Smt. Angoori and Smt. Sunita in the aforesaid peculiar facts. It is trite that no one can claim on the basis of negative equality and hence, the applicants cannot seek parity with the said persons.

12. In the circumstances and for the aforesaid reasons, we do not find any merit in all the aforesaid OAs, and accordingly, the same are dismissed. The interim orders in all the OAs are vacated. No costs.

13. In view of the aforesaid orders passed in the OAs, pending MAs, if any, stand disposed of.

Certified copy of this order be kept in all the other OAs No.2893, 2751, 2726, 2970, 2741, 2723, 2969, 2742, 2743 and 2744 of 2016.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/