

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 922 OF 2015**

**DISTRICT : MUMBAI**

Dr Bhupendra Umanath Bodhankar, )  
R/at Quarter no. Y-5/71, Government )  
Colony, Bandra [E], Mumbai 400 051. )...**Applicant**

**Versus**

1. The Addl. Chief Secretary, )  
General Administration Department)  
State Government, Mantralaya, )  
Mumbai 400 032. )  
2. The Under Secretary, )  
General Administration Department,)  
Mantralaya, Mumbai 400 032. )...**Respondents**

Shri Shankar Chillarge with S.G. Halli, learned advocate  
for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the  
Respondents.



**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 15.06.2016**

**ORDER**

1. Heard Shri Shankar Chillarge with S.G. Halli, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 14.5.2015, asking him to vacate Y-5/71 Government Colony, Bandra [E], Mumbai and also the order dated 19.10.2015, allotting him alternate accommodation.

3. Learned Counsel for the Applicant argued that the Applicant was allotted quarter no Y-5/71, Government Colony, Bandra [E], Mumbai on 30.7.2013. Before that quarters no. Y-1/2 was allotted to him. Both are 'Y' category quarters. The Applicant was working as Officer on Special Duty (O.S.D) to Minister, Public Works Department (Public Enterprises), when this allotment was made.

4. By order dated 4.10.2014, the Applicant was transferred as District Animal Husbandry Officer, Palghar. Learned Counsel for the Applicant contended

that Palghar district is covered under the definition of Tribal area. As per G.R dated 6.8.2002, those officers/employees posted to Tribal area/Naxal affected areas are eligible to retain the Government accommodation which was allotted to them before such transfer, for a period of three years. Learned Counsel for the Applicant argued that the Applicant is entitled to retain quarters no Y-5/71 (the said quarters) for a period of 3 years from the date of his transfer to Palghar, i.e. from 4.10.2014. The Respondents have, however, asked the Applicant to vacate the said quarters by order dated 14.5.2015. This action is contrary to the provisions of G.R dated 6.8.2002 and the order dated 14.5.2015 is liable to be quashed and set aside. Learned Counsel for the Applicant stated that the Applicant is suffering from diabetes and other illness since 2012. His three children are getting schooling at Bandra, Mumbai. Considering all these facts, he should not be asked to vacate the said quarters.

5. Learned Counsel for the Applicant argued that the claim of the Respondents that this Original Application is not maintainable, as the Applicant is an unauthorized occupant of the said quarters and the action under Public Premises (Eviction) Act is proposed, against him is not correct. The Applicant is not an unauthorized occupant as the said quarters was duly allotted to him and by virtue of G.R dated 6.8.2002, he is



entitled to retain the said quarters for three years as he is transferred to Palghar which is a tribal area. This is a service matter and this Tribunal has jurisdiction to entertain this Original Application.

6. Learned Counsel for the Applicant argued that the claim of the Respondents that the Applicant is not entitled to retain the said quarters is not correct. G.R dated 6.8.2002 does not provide that a smaller accommodation is to be allotted to a person on transfer to a tribal area. The G.R provides for retaining the same accommodation. Learned Counsel for the Applicant stated that in a large number of cases, Government employees are allotted bigger accommodation than their entitlement. In many cases, even retired employees are allowed to retain Government accommodation. However, the Applicant is asked to vacate the said accommodation, thus treating him in a discriminatory manner.

7. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was allotted one step above quarters as a special case, till he was working on the Minister's Establishment. As per his grade pay, he is entitled to 'A' type quarters, which has <sup>now</sup> been allotted to him. This has been done as per the provision of G.R dated 6.8.2002. As the Applicant has not vacated 'Y' type quarters, he is an unauthorized occupant of the said quarters. This case is regarding vacation of

Government quarters and this Tribunal has no jurisdiction to hear cases, which are covered by The Bombay Government Premises (Eviction) Act. The eviction matters are heard by the 'Competent Authority' under the said Act and appeal lies with the District Judge (in Mumbai, the Principal Judge of City Civil Court). Learned Presenting Officer, argued that this Original Application may be dismissed on this ground only.

8. Under Section 19 of the Administrative Tribunals Act, 1985, a person aggrieved by any order pertaining to any <sup>service</sup> matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. In the present case, the Applicant is aggrieved by the order dated 14.5.2015 asking him to vacate 'Y' type quarters, he was occupying before his transfer to Palghar. Under Section 15(b), of the Act, in disputes regarding all service matters, this Tribunal has jurisdiction. The 'service matters' is defined in section 3(g) of the Act. Sub-clause (v) says "any other matter whatsoever". This read with definition of service matters in the main clause, would mean all matters relating to conditions of service. G.R dated 6.8.2002 is obviously about conditions of service, if a Government servant is posted to Tribal/Naxal affected areas. This G.R consolidates all earlier order regarding the officers who could be posted to such areas and various benefits, to which they are entitled to. Para (2) of this G.R deals

with the facility of retaining accommodation which the Government employees was occupying before his transfer to Tribal areas. This G.R provides that the employee can retain the accommodation for a period of three years. The question in this Original Application is whether the Applicant is eligible to retain 'Y' type quarters which was allotted to him and was in his occupation, before he was transferred to Tribal area viz. Palghar, or he will have to shift to a smaller accommodation as per his entitlement. Interpretation of G.R dated 6.8.2002 will definitely be covered under 'service matters' and I hold that this Tribunal has jurisdiction to hear this Original Application.

9. Coming to G.R dated 6.8.2002, it is not disputed that the Applicant is transferred to Palghar and that Palghar is a Tribal area covered by <sup>the</sup> aforesaid G.R. It is also not disputed that the Applicant is eligible to retain Government accommodation at Mumbai up to 3 years, if he continues to be posted to a Tribal area. The question is whether he can retain 'Y' type accommodation which was allotted to him, when he was working as O.S.D to a Minister. The Respondents claim that the allotment letter dated 30.7.2013 allotting quarters no Y-5/71 to the Applicant, <sup>was</sup> subject to various terms and conditions. The order itself makes it clear that as a special case, till the Applicant was on the Minister's establishment, he was allotted accommodation one step higher than his

entitlement. He was, in fact, eligible for 'A' type quarters. 'Y' type quarters was allotted to him till he was on the establishment of the Minister. A bare reading of the order dated 30.7.2013, confirms that the Applicant was given a quarter, higher than his entitlement, as he was on the establishment of Minister. This was done with the approval of Hon'ble Chief Minister, as a special case and the allotment was till the Applicant was on the establishment of Minister. Admittedly, by order dated 4.10.2014, the Applicant has been transferred as District Animal Husbandry Officer, Palghar and he is no longer on the establishment of Minister. He is, therefore, not entitled to retain 'Y' type quarters. The Applicant is relying on the para 2(2) of the G.R dated 6.8.2002, which reads as follows:-

“(2) आदिवासी क्षेत्रात नियुक्ती होण्यापूर्वीच्या ठिकाणचे शासकीय निवासस्थान कुटुंबियांकरीता दोन वर्षांपर्यंत ताब्यात ठेवण्याची सध्याची सवलत तीन वर्षे किंवा कर्मचारी आदिवासी क्षेत्रात असेपर्यंत कालावधी या पैकी जी कमी असेल त्या कालावधीपर्यंत वाढविण्यात यावी.”

The Applicant claims that the Government employee can retain possession of the house for 3 years, and no change of house is contemplated. In my view, the condition of allotment of 'Y' type quarters to the Applicant which was admittedly one step above his entitlement has to be harmoniously read with para 2(2) of the G.R dated 6.8.2002. The intention of G.R dated 6.8.2002 is that

the family of a Government servant transferred to a Tribal area, can continue to reside in the place he was posted before such transfer. This G.R cannot be read to mean that if an accommodation bigger than entitlement was allotted to a Government servant, he could retain that accommodation for his family. The Respondents in all fairness have offered alternate accommodation to the use of his family in the same area, as per his entitlement. The Applicant's contention that he should be allowed to retain 'Y' type accommodation cannot be accepted. The fact that his children are taking education in Bandra area and he is suffering from some diseases, are taken care of by allotment of alternate accommodation.

10. The Applicant has claimed that a large number of employees are either given bigger accommodation as compared to their entitlement or some of the employees are allowed to retain accommodation after retirement/transfer. The Applicant has taken objection to grant of bigger accommodation to one Smt Sushma Parb-Pujare, Competent Officer, under the Bombay Government Premises (Eviction) Act by order dated 27.5.2014, as a special case. When the Applicant, himself was enjoying the same facility, when he was on the establishment of Minister, I do not understand how he can object to others enjoying the same facility. Ideally, there should not be any allotment as 'special case' except in circumstances like medical or humanitarian ground.

RA



However, from the instances quoted by the Applicant, it appears that allotment of bigger than entitled accommodation is given in many cases. Many officers are allowed to retain accommodation after they cease to be entitled to do so. This encourages other Government servants to seek similar underserved benefits. In the present case, the Applicant is entitled to a Type 'A' accommodation as per G.R dated 19.4.2011. This G.R does not provide for out of turn/bigger accommodation in special cases. There might be some other G.R in the filed <sup>field</sup> in such cases. The Applicant has claimed in para 6.22 of O.A that:

“6.22 The applicant respectfully submits that the action/impugned order directing to vacate Y-type quarter on the ground of his Grade Pay of Rs. 5700/- (Rs. 5400/- and above but less than Rs. 6600/-) is prima facie discriminatory and arbitrary for the following reasons:

There are number of “Y” type quarters situated in the same location/place allotted and occupied by Government officers who are in the Grade Pay of Rs. 5400/- which is less than grade pay of applicants are allotted ‘Y’ type Government quarters at Bandra [E].”

The Applicant's claim appear to be that his grade pay is Rs. 5700/- and may officers in the grade pay between Rs. 5400 to 6600 are allotted 'Y' type quarters. As per G.R dated 19.4.2011, those in the grade pay of Rs. 5400 to 6600 are entitled to 'A' type quarters in Bandra. 'Y' type quarters can be allotted to those having grade pay of Rs. 6600 upto 7600. The Applicant is claiming, in effect, that as others are given accommodation in violation of G.R dated 19.4.2011, he should also be treated similarly. This contention of the Applicant cannot be accepted. In the case of **State of Bihar & Others Vs Kameshwar Prasad Singh & Another: (2000) 9 SCC 94**, Hon'ble Supreme Court has held that:-

“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept, which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them.”

In the case of **CHANDIGARH ADMINISTRATION Vs. JAGJIT SINGH: (1995) 1 SCC 745**, Hon'ble Supreme Court has held that:-

“Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

In the present case, it is already concluded that the Applicant is not entitled to retain a ‘Y’ type flat. He has already been offered a ‘A’ type flat in the same locality. This Tribunal is unable to direct the Respondents to allow the Applicant to continue to occupy ‘Y’ type flat, even if, in some other cases, such illegal or unwarranted orders have been issued by the Respondents. It is made clear that I have not concluded that in any of the cases cited by the Applicant, orders are illegal or unwarranted.

RH

11. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 15.06.2016**

**Dictation taken by : A.K. Nair.**

H:\Anil Nair\Judgments\2016\1st June 2016\O.A No 922.15 vacate the resi. quarters  
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