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Central Administrative Tribunal
Principal Bench

O.A.No.2378/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of December, 2002

Shri Tej Kishan
s/o Shri Gopinath Bhat
r/o Z-20, Sarojini Nagar
New Delhi - 110 023. ... Applicant

(By Advocate: Sh. George Paracken)

Vs.

1. Union of India
(through Secretary)
Ministry of Home Affairs
North Block
New Delhi - 110 001.
2. Secretary
Ministry of Urban Development
Nirman Bhawan
New Delhi - 110 011.
3. Director
Director of Estates
Nirman Bhawan
New Delhi - 110 011. ... Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, who retired from service on 30.6.2000 has put a challenge to the respondents' letter dated 13.8.2002 whereby his request for retention of Government accommodation beyond the permissible period on account of being superannuated officer from Kashmir Valley has been turned down. He has sought quashment of this order and directions to retain the accommodation till it is possible for him to return to Srinagar with his family or a suitable alternative accommodation is provided to him.

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2. By an order dated 12.9.2002 status-quo with regard to the possession of Government accommodation has been ordered.

3. Applicant is a permanent State subject of Jammu & Kashmir where he owns house. Lastly, he was posted at Kashmir House, New Delhi from where he retired on 30.6.2000. Applicant continued to possess accommodation till the permissible period and made a representation to retain the same for two years or till Government of J&K ^{make efforts.} for their rehabilitation and their houses are re-built and normalcy returns to the Kashmir valley.

4. Respondents by an order dated 24.7.2000 turned down his request, as his request was not covered under the Rules and as per the policy, quarter cannot be retained either on medical or education grounds beyond four months from the date of cancellation, i.e., 1.11.2000.

5. Applicant preferred another appeal to the Director of Estates for retaining the accommodation.

6. In SLP 7639/77 in Shri J.L.Koul Vs. State of Jammu & Kashmir & Ors, a question regarding the possession of the accommodation of the employees of Jammu & Kashmir allotted in Jammu has been considered, where status-quo was ordered to maintain by an order dated 11.4.1997, and further by an order dated 26.8.1997, it has been observed that the State Government would look into the prospects of putting these Kashmir migrants to their respective

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homes/houses and ensure protection of their persons and property. This order was made absolute and the matter was adjourned sine die to be activated on the statement of Counsel for the State of Jammu & Kashmir as and when the State is in a position to assure the return of the petitioners to their respective homes in the Kashmir valley.

7. By an order dated 13.6.2000 Kashmir migrants, who retired, have been allowed to retain the accommodation. Applicant whose house has been destroyed by militants, approached this Tribunal in OA 2335/2000 where directions have been issued on 7.12.2001 quashing the impugned order dated 24.7.2000 and further directions to review the case of applicant after obtaining the approval of Hon'ble Minister for Urban Development and Cabinet Committee of Allotment (in short as 'CCA').

8. By an impugned order dated 13.8.2002 request of the applicant was turned down after being reconsidered at the level of Minister on the ground that in the wake of guide-lines issued by the Apex Court in CA 585/94 in Shiv Sagar Tiwari vs. Union of India, it is not possible to allow retention of Government accommodation beyond the permissible period.

9. In so far as other three Kashmir migrants who have been allowed to retain the accommodation, and for whom post facto approval has been sought from CCA, it is stated that the same will not have any general

application and their cases were considered on merits in exceptional circumstances. Being aggrieved with the aforesaid order, present OA is filed.

10. Learned counsel for applicant, Sh. George Parackin placing reliance on the orders passed by the Apex Court in J.L.Koul's case supra contended that applicant has a fundamental right to live which is guaranteed to him under Article 21 of the Constitution of India and as he does not own any house in Delhi and going to back to Kashmir Valley without assurance of protection of his family and property and his house is not re-built by the State Government, the decision of the respondents smacks of arbitrariness and hostile discrimination, which is in violation of Articles 14 and 16 of the Constitution of India as similar treatment has not meted out to identically situated Kashmir migrants.

11. It is further stated that SR 317 would have no application as in exceptional cases the Minister of Urban Development has the power to relax the allotment rules. It is, in this context, stated that ~~whereas~~^{whereas} other categories who are not serving Government employees like Journalists, Freedom Fighters and Artists are allotted general accommodation, the same treatment would have been meted out to the applicant.

12. By referring to the letter dated 2.7.2002 written to the DDA by the Ministry of Urban Development & Poverty Alleviation, it is stated that this has been decided as under:

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" But the situation prevailing in J&K is such that does not permit the safe return of these Retired/Retiring Central Government Employees who can settle after retirement at their native place. Keeping this background in view, a decision has been taken to allot about 100 MIG & LIG Flats in Dwarka to such Retired/Retiring J&K Migrant Central Government employees so that the General Pool Accommodation could be got vacated from them. DDA is, therefore, requested to formulate a Housing Scheme for Retired/Retiring J&K Migrant Central Government Employees and send a draft thereof to this Ministry within a fortnight for approval."

13. Sh. R.N.Singh, learned counsel appearing on behalf of respondents, vehemently opposed the contentions and stated ~~that~~ by referring to the decision of Apex Court in K.R.K.Talwar vs. Union of India, AIR 1977 Delhi 189, as well as the Hardwari Lal Verma v. The Estate Officer and Others, AIR 1977 Delhi 268, and also the decision in Shiv Sagar Tiwari v. Union of India, WP (Civil) No.585/1994 decided on 23.12.1996 as well as the guide-lines formulated there upon vide OM dated 17.11.1997, contended that the Government accommodation cannot be retained beyond the permissible period as prescribed under the Rules. The Status ~~Government~~ of the applicant is of only licensee and once the same is terminated, he has no right to retain the same, being an unauthorised occupant.

14. It is further stated that in view of the decision of Apex Court in Union of India v. Rasila Ram & Others, JT 2000 (10) SC 503, which was followed by the High Court of Delhi in Smt. Babli & Anr. vs. Govt. of NCT of Delhi & Ors, 95 (2002) DLT 144 (DB) on being declared as an unauthorised occupant of a Government accommodation this Court is precluded from assuming the jurisdiction and the matter would have to be proceeded before the appropriate forum.

15. Sh. Singh further stated that Government accommodation cannot be provided to those who plan to shift to J&K, and in reply to other three migrants, it is stated that in exceptional circumstances and on considering the merits of each case the three Kashmir migrants have been allowed to retain the accommodation but this cannot be of general application.

16. It is further stated that the case of the applicant was duly considered at the level of Minister of Urban Development and through a reasoned order the request has been turned down which does not suffer from any legal infirmity.

17. However, it is stated that Scheme has been formulated to do needful for these ~~types of~~ Kashmir migrants by allotment of 100 MIG/LIG Flats.

18. By referring to FR 317-B-11, it is contended that the maximum permissible period after retirement, ~~the~~^{he} retain the accommodation, has already over, applicant has no right to retain the accommodation. The rules are bound to be followed and moreover, any interim directions of the Apex Court cannot be treated as a precedent under Article 141 of the Constitution of India.

19. It is stated that the decision in Tiwari's case has not been considered in the interim orders passed in J.K.Koul's case supra, and moreover any wrong committed earlier de hors the rules, would not vest any indefeasible right.

20. It is stated by Sh. Singh that for the period 1.11.2000 to 31.12.2000 and from 1.1.2001 to 28.2.2001 applicant is liable to pay four times and six times the normal licence fee respectively. This litigation of accommodation by the applicant has marred the prospects of other Central Government employees who are in queue for allotment of Government accommodation. As the case of the applicant ~~was~~ not covered by the Rules, and it contains no provision to allow Kashmir migrants to retain general pool accommodation beyond permissible period, the claim of the applicant is not well founded. The guide-lines to allot accommodation to Journalists, Freedom Fighters, Artists, etc, is concerned, these are reviewed by the Cabinet Committee of Allotment from time to time and as the applicant is not covered in such categories, his request cannot be acceded.

21. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as objection of the applicant placing reliance on OA 1033/2002 decided on 10.2.2002 that even a contemplated action under the P.P. Act supra bars the jurisdiction of this Court is overruled. In Union of India Vs. Rasila Ram's case supra, Apex Court observed as follows:

"Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination, the expression, "any other matter," in Section 3 (q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed

by the competent authority under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971."

22. In Smt. Babli's case, the High Court of Delhi observed that once eviction action is initiated for unauthorised occupant of the premises under the relevant Act, Tribunal cannot assume the jurisdiction in the matter. If one has regard to the aforesaid provisions and apply the ratio in the factual matrix^u of the present case applicant requests for retention of Government accommodation beyond permissible period has been rejected on 24.7.2000 and further on review the same was rejected by an order dated 13.8.2002. He has not yet been declared as an unauthorised occupant and the proceedings are yet to be started with the Estate Officer under P.P.Act, 1971, as such this Tribunal has jurisdiction to go into the legality of the order passed.

23. As per SR 317-B-11 in case of retirement on superannuation, the maximum period is provided is four months and further four months on medical and educational grounds.

24. In S.S.Tiwari's case supra, regarding out of turn allotment the Government formulated the guide-lines which were incorporated under OM dated 17.11.1997.

25. Earlier in OA 2335/2000 this Court has taken cognizance of the fact that in J.L.Koul's case supra the Apex Court while dealing with the case of Kashmir migrants, allowed the petitioners therein to continue to reside indefinitely in the Government

accommodation situated in the State of Jammu and Kashmir and liberty was accorded to the State Government to activate the case only when they are in a position to assure return of the petitioners to their respective homes in Kashmir. Further taking cognizance of three cases of Kashmir migrants, on the approval of the CCA (post facto) were allowed to retain the accommodation. As directed by this Tribunal, case of the applicant was reviewed by an order dated 13.8.2002. From the perusal of the order dated 13.8.2002, it transpired that the Minister concerned is considered the issue and rejected in the light of the directions issued by the Apex Court in S.S.Tiwari's case supra and in the wake of Rules i.e., SR 317-B-11 which precluded retention of Government accommodation beyond the permissible period and also on the ground that there has been an acute shortage of Government accommodation the retention has been rejected.

26. However, while dealing with the case of other three Kashmir migrants, who were equal in all respects and identically situated as the applicant, were allowed post facto approval of CCA, it has been stated that it cannot be considered for general application as their request was considered in exceptional circumstance and on the merits of the case. Applicant alleges discrimination in para 4.10 of his OA, which has been responded to without disputing the factual position with reply that the same cannot be a ground to allow the applicant to retain the accommodation as Rule position has not been changed and the cases have been considered in

different facts and circumstances. This bald reply without explaining the difference and the reasons which prompted the respondents to take a contrary decision to what has been taken in the case of applicant their reply is far from satisfactory and smacks of arbitrariness and hostile discrimination which cannot be countenanced in view of the cardinal principle enshrined in Article 14 of the Constitution of India.

27. Hon'ble Apex Court in Shiv Sagar Tiwari v. Union of India & Others, 1997 (1) SCC 444 observed as follows:

"The administrative law has of late seen vast increase in discretionary powers. But then, the discretion conferred has to be exercised to advance the purpose to subserve which the power exists. Even the Minister, if he/she be the repository of discretionary power, cannot claim that either there is no discretion in the matter or unfettered discretion. This proposition was rejected emphatically by the House of Lords in the landmark decision of Padfield. This apart, as pointed out in United States vs. Wenderlich.

"Law has reached its finest moments when it has freed man from the limited discretion of some ruler, some official, some bureaucrat Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."

Finally, we hope that coming years would not see any scam of misuse of power in making allotments of government quarters. The trust which is reposed in this context on high public functionaries would be discharged, we are sure, only to advance the object of providing of suitable conditions of work to government employees so that the Government is run on even keel; and shelter, which is very pressing necessity of any human being, would not come to be denied if the same is otherwise due to the incumbent. A satisfied bureaucracy is as much necessary, as good political leadership, to deliver the goods. The Government of free India have many promises to keep after its tryst with destiny on the midnight of 14.8.1947. We have no doubt that all the public functionaries would so act that the meeting with destiny really sees the dawn of an era of hope for all."

28. Further in D.S.Nakara v. Union of India, AIR, 1983 SC 130 a Constitutional Bench decision, Article 14 of the Constitution of India has been crystalised and explained as follows:

"4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards, the subject matter of the legislation their position is substantially the same."

29. In E.P.Royappa vs. State of T.N., AIR 1974 SC 555, Justice Iyer has in his inimitable style dissected Article 14 as under:

"The article has a pervasive processual potency and versatile, quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of "executive excesses", if we may use current cliché, can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; Be you ever so high, the law is above you." ((1978) 2 SCR 621 at p. 728: AIR 1978 SC 597 at p.661). Affirming and explaining this view, the Constitution Bench in Ajay Hasia etc, v. Khalid Mujib Sahravardi, (1981) 2 SCR 79: (AIR) 1981 SC 487) held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India etc. v. Nargesh Meerza, (1982) 1 SCR 438: (AIR 1981 SC 1829) the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an

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intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

30. If one has regard to the decisions by the Constitutional Bench of Apex Court, any classification must satisfy the dual test of intelligible differentia having rational nexus with the object sought to be achieved and this distinction between equals should be reasonable.

31. Respondents have not disputed that Kashmir migrants who were identically and equally situated, on their request have been allowed to retain the accommodation till the normalcy comes back in State of J&K and till they are returned, ensured further the safety of their persons and property and reconstruction of their houses. For these three Kashmir migrants, who are placed in similar situation and with same conditions, a different criteria was adopted on the ground of merits in their cases, and the principle not to be given a general application. Applicant who is also Kashmir migrants having no place to live in Delhi a large family to support, is on a similar footing with those who were allowed to retain the accommodation. In order to satisfy the requirements of law, the respondents have to establish that there has been an intelligible differentia and which has a reasonable nexus with the object sought to be achieved. No grounds whatsoever have forthcome which can be treated as reasonable or relevant for to mete out the aforesaid requirements of law and to pass dual test which will render the decision in consonance with the Article 14 of the Constitution of India. In absence of any reasons and the fact that the applicant

is equal in all respects should not have been meted out a differential treatment. This to my considered view, is unsustainable being violative of Article 14 of the Constitution of India.

32. Moreover, the contention that the directions issued in Shiv Sagar Tiwari's case supra and the fact that the Government accommodations are few and the persons claiming the same are more and the rules do not permit retention beyond the specified period, is no justification for rejecting the case of the applicant as in J.L.Koul's case, even in an interim order passed, the Apex Court was well aware about the decision rendered in Shiv Sagar Tiwari's case as well as the Rules were also in existence at that time as well which prohibits retention of accommodation beyond the permissible period. Conscious of this, the Apex Court in the light of the fact and conditions as well as circumstances of Kashmir migrants, who have their own houses destroyed in Kashmir and those retired inclined to go back directed the Government to ensure their protection and as well as of their property so that they may be put back to their respective houses owned by them in Kashmir on 28.1.1998, i.e., much after the decision of S.S.Tiwari's case supra as well as the instructions through OM in 17.11.1997, the matter has been pended sine die and to be activated only after the State of Jammu & Kashmir ensures return of the petitioners to their respective Homes with safety of their persons and property. The aforesaid petition is still pending before the Apex Court.

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33. I also find that the Government by the letter dated 2.7.2002 in order to hold the retirees or retiral officials of Kashmir migrants working in Delhi, who could not get back to J&K due to prevailing situation, a decision has been taken to allot about 100 MIG/LIG Flats and for which DDA has been requested to formulate the Housing Scheme for which a draft has been sent to the Ministry for approval. The aforesaid decision also incorporates that these houses are being allotted to Kashmir migrants retiring or retired so that the general pool accommodation got vacated from them. This on a literal consideration connotes that the Kashmir migrants who are in retention of general pool accommodation on retirement, are to be evicted only after the DDA formulate an Housing Scheme to allot MIG/LIG flats to them.

34. In my considered view, the review undertaken by the respondents in compliance of the earlier directions of this Court has not taken note of letter dated 2.7.2002 as well as the directions in Koul's case supra. If a post-facto approval can be accorded by CCA and approval by the Minister for Urban Development denying the same to the applicant who is similarly situated and is equal in all respects, smacks of arbitrariness and hostile discrimination which, as per various pronouncements of the Apex Court, cannot be countenanced and would be an antithesis to rule of laws doctrine of equality.

35. In the result and for the foregoing reasons, OA is partly allowed. Impugned order dated 13.8.2002 is quashed and set aside. Respondents are

directed to allow the applicant to retain the
Government accommodation pending decision in
SLP(Civil) No.7369/97. No costs.

S. Raju
(Shanker Raju)
Member(J)

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