

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2718/2002

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New Delhi this the 3rd day of September, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Miss Christine James
D/O Shri Frank James
Retired Chief Nursing
Officer, Lady Hardinge
Medical College and Smt.
S.K. Hospital, New Delhi.
Resident of G-4, 39 J Block,
Dilshad Colony, Delhi-110095

..Applicant

(By Advocate Shri K.L.Bhandula)

VERSUS

1. Secretary to the Govt. of India,
Ministry of Health and Family
Welfare, Nirman Bhawan, N/Delhi
2. The Director General,
Health Services, Nirman Bhawan,
New Delhi-1
3. The Principal and Medical
Superintendent, Lady Hardinge
Medical College and Smt.
S.K. Hospital, New Delhi-1
4. Secretary, Cabinet Sectt.,
(Public Grievances), Govt. of India,
2nd Floor, Sardar Patel Bhawan,
New Delhi.
5. Secretary,
Ministry of Personnel, Public
Grievance and Pensions,
Department of Pension and
Pensioners Welfare, Lok Nayak
Bhawan, New Delhi.

... Respondents

(By Advocate Ms. R.O.Bhutia)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant
regarding the payment of withheld pensionary benefits to
her, and waiving of certain deductions proposed to be made

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by the respondents as per ^{the} demand notice dated 30.8.1997
(Annexure I). (B)

2. The brief relevant facts of the case are that the applicant, while working as Chief Nursing Officer with the respondent No.3 had retired on superannuation on 29.2.1996. After retirement she continued to keep the Nurses hostel accommodation till she vacated the same on 26.8.1997. In the aforesaid demand notice, the respondents have mentioned recovery of normal licence fee for the first four months, twice licence fee for the subsequent four months and thereafter, market rent/damage charges from 1.11.1996 till the date of her vacation of the accommodation, which amounts to Rs 29,700/-. One of the contentions of Shri K.L.Bhandula, learned counsel is that the respondents have failed to give the exact calculations. According to him, the applicant has vacated the accommodation on 26.8.1997 and not on 31.8.1997. The other contention raised by him is that though admittedly, the applicant had overstayed in the Govt. accommodation allotted to her while in service after her retirement, there were certain other (11) persons, who had also overstayed in the hostel accommodation, but no such recoveries have been made from them by the respondents. He, therefore, submits that the respondents have acted in a discriminatory manner against the applicant, as they have chosen to recover the amount of penal rent for overstaying in the Govt. accommodation, while a lenient view has been taken in not recovering any such amounts from

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others who had similarly over stayed in the Govt. accommodation. He has submitted a list of those persons at Annexure VI. He has also submitted that in spite of sending representations and personal efforts made by the applicant to get the withheld pensionary benefits released, they have failed to respond satisfactorily, even though she had retired from service on superannuation in Feb., 1996.

3. In the reply filed by the respondents they have submitted that a total amount of Rs.10,000/- has been withheld out of the applicant's DCRG, in order to recover the outstanding licence fee/damage dues for her overstay in the hostel accommodation. They have stated that the moment the applicant submits 'no dues certificate' from the concerned Department/Division of the institution, the amount withheld will be released to her. Shri K.L.Bhandula, learned counsel, on the other hand, submits that the applicant has also submitted 'no dues certificate' but inspite of that, the respondents have not settled her pensionary benefits.

4. I have considered the pleadings and the submissions of the learned counsel. With regard to the submissions made by the learned counsel for the applicant that the respondents have taken a discriminatory attitude against the applicant vis-a-vis the 11 other persons who were similarly overstayed in the hostel accommodation, the reply given by the respondents has been referred to by Ms.R.O. Bhutia, learned counsel. The respondents have stated, inter-alia, that the applicant has failed to

furnish details of retirement of those persons or the period of their overstay in the hostel accommodation.

(5)

Such submissions on behalf of the respondents are most unsatisfactory and vague. These details were to be verified by the respondents from their records as those persons have retired from their service and necessary details will be available with them. However, they have given certain details about the retirement of some of these persons and their overstay in the hostel accommodation. It is stated that Mrs.Dennis and Ms K.P.Grewal, whose names appear at Serial numbers 3 and 8, never worked in their Institution at any time. They have also submitted that they are trying to trace the records of the other persons from the concerned Divisions/ Branch of the Institution. In this regard, it is relevant to note that they have submitted that some of them had retired several years back, namely, in 1989, 1993, 1994 and so on. Needless to say, the respondents have to ensure that the law and relevant rules are applied to similarly situated persons uniformly and properly. If any of these persons have indeed over stayed in the hostel accommodation beyond the period permitted under law/rules, it was necessary for the respondents to take action as provided under law. In the present case, while there is no question of any lapse on the part of the respondents to take necessary action against her as provided under the law, at the same time, it is settled law that equality cannot be claimed ^{as a} matter of right for extension of any illegal action taken in respect of other persons.

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(16)

5. It is not disputed by the applicant that she has overstayed in the hostel accommodation allotted to her while in service, beyond the permissible period under the relevant rules. Therefore, the action taken by the respondents to withhold /recover the due amounts cannot be faulted. At the same time it is mentioned that "no dues certificate" has been submitted by the applicant to the respondents on 26.8.1997 but the respondents have not taken any further action to settle the retirement dues of the applicant till date although they have themselves stated that "the moment the applicant submits the no dues certificate from all the concerned Departments/Division of the Institution, the amount withheld will be released to her". At the same time they have also stated that certain sums as mentioned in Paragraphs 1.4 and 1.5 have already been paid to the applicant. However, from the averments made by the respondents themselves in Paragraphs 4.7 and 4.8, it appears that there are still some amounts withheld by the respondents which have yet to be settled in accordance with relevant law and the rules, even though nearly 6 years have elapsed after the applicant retired from service. Such laxity on the part of the respondents is not appreciated. Perhaps this is the reason why the applicant has been forced to file this Original application in the Tribunal. The judgement of the Hon'ble Supreme Court in **State of Kerala Vs. Padmanabhan Nair** (1985(1)SCC 429) will also be applicable to the facts in this case.

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6. In the above facts and circumstances of the case, the OA is disposed of with the following directions:-

(V7)

(i) Respondent No.3 is directed to verify the records with regard to any pensionary benefits still due to the applicant as early as possible and in any case within one month from the date of receipt of a copy of this order;

(ii) In case, any amounts are still withheld by the respondents which are due to be paid to the applicant in accordance with rules, the same shall be arranged to be paid within the aforesaid period with 8% simple interest per annum from the due date till the date of actual payment;

(iii) Respondent No.3 shall also take such further action as permissible under law and fix responsibility for any lapses of the concerned officials with regard to the other persons who have over stayed in the hostel accommodation as per law;

(iv) In the above circumstances, cost of Rs.3000/- (Rupees three thousand only) is imposed against the respondents and in favour of the applicant, which shall also be paid to the applicant within the aforesaid period.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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