

Central Administrative Tribunal, Principal Bench

O.A.1582/99

New Delhi, this the 4th day of December, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

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S.D. Sahay S/o Shri Jagdamb Sahay
R/o 502, Sector IX, R.K. Puram,
New Delhi

..Applicant

(By Advocate: Shri G.S. Chaman)

Versus

1. Union of India
Through the Secretary,
Ministry of Home Affairs, Govt. of India,
North Block,
New Delhi.
2. Director, Intelligence Bureau
Ministry of Home Affairs, Govt. of India,
North Block, New Delhi.
3. Shri J.S. Negi, Addl Dy. Director,
IB (MHA), Govt. of India,
North Block, New Delhi.Respondents

(By Advocate: Shri Anil Singhal, proxy for
Mrs. P.K. Gupta, Counsel)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

By this OA the applicant has challenged an order passed by the Assistant Director, IB Headquarters, whereby the applicant has been directed that consequent upon the allotment of General Pool Accommodation the applicant was required to vacate the I.B. Pool Quarter No. C-18, Patel Dham, S.P. Marg, New Delhi as the allotment to that house was cancelled and on failure to hand over the same, he was liable to pay penal rent at the rate of Rs.55/- per sq. m. per month for his overstay beyond the period of 17.1.1996.

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2. The applicant claims that he had never received the letter of allotment of General Pool Accommodation since on 18.1.1996 he had applied for proceeding on Earned Leave from 18.1.1996 to 2.2.1996 and the same had been recommended and as per the instructions, he had also instructed his family members that if any sealed cover envelope is delivered at the residence, the family members are not supposed to open the same and they are required to return it to the office of the applicant.

3. The applicant further claims that when on return from leave he learnt about the offer of general pool accommodation received in his absence when he was away on leave and since he could not avail the offer, he applied for reconsideration of the offer of general pool accommodation and on reconsideration, he had been allotted the general pool quarter also.

4. He further alleges that when he was away on leave he had never any opportunity to receive the letter of offer of allotment of general pool accommodation nor he had any opportunity to refuse it or accept the same. However, the department itself had opened the letter and had passed the impugned order.

5. He further claims that no opportunity of hearing had been given and even otherwise ADC-II was not competent to issue the said order because he had no power to cancel the accommodation nor he had any

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power to evict the applicant under the P P Act so the impugned order issued by the Assistant Director being without jurisdiction is liable to be quashed.

6. The respondents are contesting the O.A. The respondents admit that the applicant had applied for Earned Leave w.e.f. 18.1.1996 to 2.2.1996, but they claim that the leave was sanctioned on 23.1.1996 so it should be presumed that the applicant was at Delhi and he had not left for Kanpur on the After-noon of 17.1.1996, as alleged by him.

7. The respondents have also given the narration of facts as it happened when a person had gone to the residence of the applicant to deliver the letter received from the Directorate of Estates and the respondents in their affidavit have categorically asserted that Mrs. and Mr. S.D. Sahay were very much present there but both of them went inside and sent their son to receive the letter and thus the applicant being in Delhi itself had intentionally sent back the letter of allotment.

8. It is, however, admitted that the application of the applicant for reconsideration of general pool accommodation was forwarded by the department itself but it is stated that it is incorrect that the applicant had not refused the offer of general pool accommodation because before forwarding his application to the Directorate of

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Estates, the applicant had already been served with the letter of cancellation of I.B. Pool Quarter and thus the applicant is liable to pay the penal rent.

9. We have heard the learned counsel for the parties and have gone through the record.

10. The learned counsel for the applicant has invited our attention to the leave application of the applicant which show that how it had been forwarded but the leave itself had been sanctioned on 23.1.1996 before that it had been duly recommended by the concerned officers.

11. The counsel for the applicant has also placed on record the railway ticket showing that the applicant had gone to Kanpur and was not in Delhi.

12. The counsel for the applicant has forcefully argued that no show cause notice or opportunity to defend had been provided to the applicant before issuing the impugned order. Thus the principle of natural justice has been violated. Merely because of his absence the applicant could not accept the offer of allotment of general pool accommodation, but there was no intention to refuse the same as the applicant himself had later on applied for reconsideration of the offer of allotment which had been duly forwarded by the department itself, so the impugned order of cancellation of allotment and imposition of penal rent should be quashed.

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13. From a perusal of the stand taken by the respondents we find that the respondents are not coherent in their stand because on the one hand the respondents admit that they have sanctioned the leave application of the applicant but there is nothing on record to show that the applicant was available in Delhi when the offer of allotment of general pool accommodation was sent to his residence. The affidavit does not name the person as to who had gone to deliver the letter from the office of the Directorate of Estates to the residence of the applicant, which contained the offer for allotment of accommodation from general pool. Besides that the respondents themselves had forwarded the request of the applicant to the Directorate of Estates for reconsideration for being offered another accommodation, which shows that this letter of cancellation of IB Pool Quarter itself is based on extraneous considerations. The respondents also admit that as per the offer of allotment an option is given to the allottee whether to accept the offer or not. Merely because that an offer was sent by the Directorate of Estates that did not give any justified reason to the respondents to cancel the I.B. Pool accommodation and claim penal rent for overstay in the accommodation. Hence it appears that there was no justified reason for issuing the impugned order.

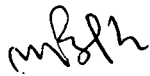
14. Be that as it may even otherwise the principles of natural justice seems to be violated because no show cause notice or opportunity had been provided to the applicant to defend himself. Hence we

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are of the considered opinion that the stand taken by the respondents has no merits and the impugned order is liable to be quashed.

15. In view of the above, impugned order is quashed the OA is allowed. No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

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