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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 1848/99

New Delhi this the 20th day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Sh. Hemant Kumar
S/O Sh. Chunni Lal
R/O A-24, Jain Park near
Matiala Road, Uttam Nagar,
New Delhi-59
at present posted at Srinagar,
J&K.

.. Applicant

(By Advocate Sh. H. C. Sharma)

Versus

UOI through
Secretary to the Govt. of
India, Department of Tele-
communication (DOT), Sanchar Bhawan,
New Delhi.

.. Respondents

(By Advocate Ms. Geetanjali Goel)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has filed this application
challenging the action taken by the respondents in the
order dated 15.5.1997 to recover damage rent for the
quarter earlier allotted to him.

2. The brief relevant facts of the case are that
the applicant states that he has been working as Gateman,
which is a Group 'D' post with the respondents. He
was transferred to Jammu and Kashmir, Srinagar by letter
dated 7.7.1994 in compliance of the Department of Tele-
communication (DOT) letter dated 12.1.1994. At the time.

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when he was transferred to J&K, Srinagar, admittedly, the applicant did not make a request for retention of the P&T Type I quarter No.10, Dev Nagar, New Delhi or even later on, in terms of the respondents Circular dated 6.6.1994 (Annexure A.III). According to the learned counsel for the applicant, after the applicant was transferred to J&K, Srinagar, his family continued to reside in the aforesaid P&T quarter. The respondents in their reply have submitted that in accordance with the rules, they have issued notice to the applicant to vacate the quarter after giving him ^{the} permissible period of two months to retain the same on transfer. They have submitted that the allotment of the quarter to the applicant was initially cancelled by order dated 9.9.1994, after allowing the retention of the quarter for the two months permissible ~~period of retention as per~~ ^{under the} rules.

3. Ms. Geetanjali Goel, learned counsel for the respondents, has submitted that the applicant had made a representation to the Estate Officer on 10.1.1996 in reply to the notice issued by the Estate Officer on 3.1.1996. The representation made by the applicant was rejected by them. Further notice was also issued to him on 13.2.1996 asking him to vacate the quarter which admittedly the applicant vacated on 1.1.1997. The respondents have also

stated that at the request of the applicant, he was allowed time to retain the quarter till 31.12.1996 which she states that he has also complied with.

4. In the application, the applicant has submitted that after he was transferred to J&K, he had to work under the custody and control of the Army in J&K, Srinagar which averments have not been either controverted or disputed by the respondents. This is a very relevant factor to be considered in the facts and circumstances of the case. Learned counsel for the applicant has submitted that the applicant, who is a Group 'D' employee was working under an extremely difficult situation at Srinagar, J&K during the relevant period. Hence, he was not able to make a specific request to the Chief General Manager (CGM) for retention of the said quarter in New Delhi for occupation of his family, in terms of the respondents Circular dated 6.6.1994. The respondents, on the other hand, have submitted that ^{the} OA is barred by limitation. Learned counsel for the applicant has also submitted that even in the notice issued by the respondents dated 22.12.1995, copy of the same has been sent to his quarter at Dev Nagar, New Delhi and not to his address at Srinagar. He has, therefore, prayed that a sympathetic view may be taken in the case and the impugned order dated 15.5.97 (Annexure A-1) may be quashed.

18

and set aside. Alternatively he has prayed that atleast further recovery may be stayed, taking into account the particular facts and circumstances of the case, including the fact that being a Goup'D' employee, he had obediently gone to J&K, Srinagar and is still continuing there under the custody and control of the Army in J&K, Srinagar. He has also submitted that the impugned order dated 15.5.1997 has been issued to the Accounts Officer at Srinagar, J&K, under whom the applicant is working and the applicant is unable to visit Delhi frequently from Srinagar because of his posting there.

5. I have carefully perused the pleadings and the submissions made by the learned counsel for the parties.

6. The relevant portion of the Department of Telecommunications order dated 6.6.1994 reads as follows:-

"(i) An officer posted to North Eastern Region/ Andaman and Nicobar/Jammu & Kashmir/Punjab/ Himachal Pradesh may be allotted alternate accommodation of one type below the type of accommodation he is entitled to, if he requests for retention of the accommodation for the bonafide use of the members of his family.

(ii) It is obligatory for the officer desiring retention of quarter at the station of his last posting to accept the alternative accommodation offered to him failing which

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the above concession will be withdrawn and the quarter in his name at the last station of posting will be cancelled.

(iii) The request for retention/allotment of alternative accommodation should reach the concerned Chief General Manager, within one month of the relinquishment of charge at the last station of posting."

It is evident from the aforesaid Circular that the respondents have recognised the fact that the officers/staff posted to certain areas, including Jammu and Kashmir may be permitted alternate accommodation of one type below the type of accommodation he is entitled to, if he has requested the retention of the quarter for the bonafide use of the members of his family.

7. In the present case, it is not the case of the respondents that during the relevant period after the applicant was transferred to Srinagar, J&K in 1994, his family had not continued to occupy the P&T quarter in question at New Delhi. It is also a fact, which has been admitted by the learned counsel for the applicant, that the applicant had omitted to make a request to the CGM to retain the quarter within one month of his relinquishing charge at New Delhi. At present the applicant and his family have also vacated the P&T quarter w.e.f. 1.1.1997.

The only issue remaining in this case is with regard to the recovery of damage rent from the salary of the applicant, who is a Group 'D' employee. As submitted by the learned counsel for the applicant, since the applicant was occupying a Type-I quarter, the question of requesting for one type below quarter will not arise in the present case.

8. Taking into account the totality of the facts of the case, it appears that if only the applicant had made a request for retention of the quarter to the competent authority within the given time of his transfer to Srinagar, J&K, the benefit of the Circular dated 6.6.1994 issued by the respondents would have been extended to him, as he otherwise fulfils the terms and conditions mentioned therein. It is also relevant to emphasize that the respondents have themselves not denied in the reply that the applicant is indeed working in difficult situation at J&K in pursuance of their transfer order passed in 1994. In the circumstances of the case, the decision of the respondents to deprive him of the benefit of the concession which was legitimately available to him on his request, in terms of the Circular dated 6.6.1994 indeed appears to be harsh and unwarranted. The respondents have been sending the necessary notices for eviction of the Type-I P&T quarter at Dev Nagar at the same address, in spite of the fact that they were well aware that at the relevant time after 7.7.1994, he was posted in Jammu and Kashmir.

8/

9. In the particular facts and circumstances of the case, the respondents could have, therefore, considered and taken a decision to waive further recoveries of damage rent from the applicant, a Group 'D' employee, in view of the special circumstances mentioned above. In this view of the matter, no further recoveries shall be made from the salary of the applicant by the respondents by way of damage rent for his retention of the P&T, Type-I quarter No.10, Dev Nagar, New Delhi, from today.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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