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Central Administrative Tribunal
Principal Bench

O.A. 2031/99

New Delhi this the 10th day of February, 2000.

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

Smt. Vir Bala Sethi,
widow of late Shri P.P. Sethi,
Qr. No. 4, Sector No. 7,
M.B. Road,
New Delhi. Applicant.

By Advocate Shri Inderjeet Sharma with Ms. Arti Chopra.

Versus

1. Director of Estates,
Directorate of Estates,
Nirman Bhawan,
New Delhi-110 011.
2. Deputy Director,
Government of India
(Ministry of Textiles),
Office of the Development
Commissioner (Handicrafts),
Regional Design and Technical
Development Center,
43, Okhla Industrial Estate,
New Delhi-110 020. Respondents.

By Advocate Shri R.N. Singh proxy for Shri R.V. Sinha.

O R D E R (ORAL).

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

The applicant who states that she is continuing to work with Respondent 2, that is Ministry of Textiles as Assistant Design Artist is aggrieved by the order dated 2.8.1999 passed by Respondent 1 cancelling Type-III Quarter No. 4, Sector-VII, M.B. Road, New Delhi which had been allotted to her, on the ground that she has been unauthorisedly absent from duties with Respondent 2, which has in turn failed to deposit the license fee for the period from 10.11.1998.

2. Shri Inderjeet Sharma, learned counsel for the applicant has submitted that the applicant has been unable to

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attend the office with Respondent 2 because of her ill health for which she has been submitting her leave applications supported by medical certificates. According to him, Respondent 2 is still continuing the applicant in service in spite of the fact that she has no doubt been absent from duty as Assistant Design Artist because of unavoidable medical reasons. He has submitted that after the applicant had received the impugned order dated 2.8.1999 cancelling the aforesaid quarter and ordering eviction, she had sent a cheque for Rs.1000/- on 16.8.1999 towards the arrears of license fee which Respondent 1 has returned. Thereafter, she had submitted a bank draft dated 1.9.1999, that is within a period of one month of the impugned order for an amount of Rs.2000/- which the learned counsel for the applicant has submitted has been kept by Respondent 1 and has not been returned. The Tribunal by order dated 22.9.1999 had directed the respondents to maintain status quo as on that date in regard to the quarter under consideration. Shri Inderjeet Sharma, learned counsel has further submitted that in the light of this order, the applicant is continuing in the residence which had been previously allotted to her. He has submitted that in spite of several applications made by the applicant to Respondent 2, they have not passed any order regarding her absence from duty. His submission is that Respondent 2 have not, so far declared this period as unauthorised absence or have passed any order against the applicant. Hence, he submits that the contention of the learned counsel for Respondent 1 that he has not impugned any order of Respondent 2 is baseless because there is no order passed by Respondent 2 adversely affecting the position of the applicant. Learned counsel has further submitted that the action of the applicant mentioned above

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would show that she has been ready to deposit the arrears of licence fee, if any to the authorities. He has submitted during the hearing that the applicant is agreeable to submit all the arrears of license fee plus other amounts as due under the relevant Rules and instructions and deposit the same through Respondent 2, within two weeks from today for onward submission to the Director of Estate - Respondent 1. In the circumstances, the learned counsel has submitted that taking into account the extreme ill health of the applicant and several medical problems she is suffering and the fact that she is still continuing in service in the office of Respondent 2, the impugned cancellation order passed by Respondent 1 dated 2.8.1999 may be quashed and set aside.

3. On record there is only a reply of Respondent 1 only as Respondent 2 has not filed any reply in spite of notice having been issued as far back as 29.3.1999. None has also appeared on behalf of Respondent 2.

4. Shri R.N. Singh, learned proxy counsel for Respondent 1 has submitted that the impugned order dated 2.8.1999 cancelling the allotment of the Quarter has been done strictly in accordance with the Rules and instructions, namely, the Director of Estate O.Ms. dated 27.4.1996 and 22.5.1996, copies placed on record. His contention is that so long as a quarter is allotted to a Government servant, who is still in service, the due licence fee for the quarter has to be deducted from his salary every month and deposited by the Department to Respondent 1. His contention is that this has not been done which is also confirmed by Annexure A-4 letter annexed by the applicant herself dated 12.7.1999. He has submitted that as far as Respondent 1 is concerned, since the

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condition for continuing the allotment of the quarter in question in her name is not there because admittedly Respondent 2 had not deposited the licence fee for the period from 10.11.1998 onwards, the cancellation order is valid and is in accordance with the aforesaid O.Ms. He has further submitted that with regard to the bank draft of Rs.2000/- said to have been deposited by the applicant on 1.9.1999, he has no information about the same.

5. It is seen from the facts mentioned above that according to the learned counsel for the applicant, Respondent 2 with whom she is working as Assistant Artist Design has not passed any orders so far for the period of her absence nor they seem to have intimated Respondent 1 of this position. It is further noted that the applicant is still continuing in service as a Government servant with Respondent 2. In the facts and circumstances of the case, while factual contentions of Respondent 1 may be correct, namely, that they have not received the due license fee for the quarter which has not been deposited with them by Respondent 2 because of the fact that she was not entitled to any salary and no leave was due to her, as stated in the letter dated 12.7.1999 nevertheless the fact that the applicant is still continuing as a Government servant with Respondent 2 cannot be ignored. The question, therefore, arises whether Respondent 1 can term her period of absence as unauthorised absence from duty which in the circumstances of the case appears to be within the jurisdiction of Respondent 2 to declare. There is submission at the bar by the learned counsel for the applicant that no such order has been passed by Respondent 2 so far. Noting this and the statements made by Shri Inderjeet Sharma, learned counsel that the applicant is prepared to pay all the arrears

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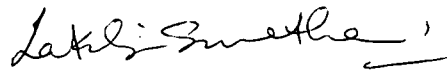
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of license fee and other dues on the quarter to Respondent 1, through Respondent 2 in accordance with the Rules and instructions, the impugned order dated 2.8.1999 is liable to be quashed and set aside.

6. In the result, O.A. succeeds and is allowed. The impugned order dated 2.8.1999 is quashed and set aside on the condition that the applicant shall deposit the due amounts of license fee and any other charges payable to Respondent 1 on the government quarter occupied by her, within 14 days from today with Respondent 2, who will transfer it to Respondent 1. The fact that the applicant has deposited the due amounts to Respondent 2 shall be communicated to Respondent 1 immediately thereafter.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

SRD