

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2297/99

T.A.No.

1957

18

DATE OF DECISION 26.7.2000

Smt. Bimla Devi

....Petitioner

Ms. Raman Oberoi

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.V.S.R. Krishna

....Advocate for the
Respondents

CORAM

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

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? B

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2297/1999

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New Delhi this the 26th day of July, 2000

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

Smt.Bimla Devi, Mate,
Quarter No.13/188, DMS Colony,
Amrit Kunj, Hari Nagar,
New Delhi-110064

.. Applicant

(By Advocate Ms.Raman Oberoi)

Versus

1.Union of India,
through Secretary(AH&D),
Ministry of Agriculture,
Krishi Bhawan, New Delhi.

2.General Manager,
Delhi Milk Scheme,
West Patel Nagar, New Delhi-8

.. Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R (ORAL)

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

The applicant has filed this application against the Memo.dated 16.10.1999 in which it has been stated that amount of Rs.1,65,328/-(Rupees One Lac Sixty Five Thousand Three Hundred Twenty Eight Only) is to be recovered from her in instalments of Rs.500/-per month.

2. The aforesaid order had been passed against the applicant, as admittedly the applicant had continued residing in the house which was earlier allotted to her late husband who died on 24.10.1988, as penal/damage charges for unauthorised occupation of the quarter. The applicant who is ^{the} widow of late employee was given a

compassionate appointment as Mate w.e.f. 18.2.1999. The

applicant has filed as many as four earlier applications in the Tribunal which have been referred to in the OA.

3. The main contention of the learned counsel for the applicant is that the order issued by the respondents claiming damage/penal charges for unauthorised occupation of the quarter is not equitable in the facts and circumstances of the case, as the applicant who is a widow has three young children to support and she is, therefore, not in a position to pay this amount. Her other contention is that during the period of occupation of the Govt. quarter No.13/188, DMS Colony, Amrit Kunj, Hari Nagar, New Delhi, she had been paying normal licence fee to the respondents as demanded by them even upto 1997. She relies on the Memo. dated 21.3.1997, in which the respondents had directed her to deposit "balance arrears of Rs.2859/-towards licence fee/water charges for the period from 24.10.88 to 31.3.1997". Ms. Raman Oberoi, learned counsel has very fervently pleaded that in view of the facts that the applicant has paid this amount as demanded by the respondents which fact has not been denied by the respondents, on sympathetic grounds their Memo. dated 16.10.1999 should be quashed and set aside. She has also referred to the application made by the applicant to the respondents dated 20.12.1998 asking them ~~to~~ as to what rent she is to pay from 1.4.97 to 31.12.1998 to which she states that no reply has been given by the respondents. Her contention

is that unless and until the applicant enquired from the respondents as to what rent she is required to pay and, no payment was to be made by her and accordingly she has contended that there is no fault on the part of the applicant. She has also placed reliance on the interim order dated 8.10.1991 in OA 2312/1991. This order will, however, not assist the applicant, in view of the final order which has been passed by the Tribunal in OA 2312/91 on 1.4.1992. Learned counsel has also relied on the order of the Delhi High Court in Madan Mohan Goyle Vs. UOI & Ors (84) (2000) Delhi Law Times 556, the order of the Tribunal in Pushpa Aggarwal Vs. UOI & Ors ((1)(1993) CSJ(CAT) 3(PB) and the observations of the Hon'ble Supreme Court in V.M.Chandra Vs. UOI & Ors (SLJ 199(3) SC 266). According to her, as the respondents have accepted the normal rent tendered by the applicant as licence fee for the Govt. quarter she was occupying till 31.3.1997, they cannot charge penal/damage charges for the same period or for the subsequent period that she has been occupying the quarter till her appointment on compassionate grounds on 18.2.1999. Learned counsel has also emphasized on the fact that after the applicant was appointed on 18.2.1999, she has not drawn any House Rent Allowance. However, it appears that the respondents have also not deducted/due rent under the Rules so far. In the circumstances, learned counsel for the applicant has submitted that a sympathetic view may be taken, taking into account the

above facts and circumstances of the case to condone the payment of damage rent for the quarter by quashing the impugned order dated 16.10.1999. During the course of hearing, learned counsel has submitted that alternatively, no damage/penal charges should be charged against the applicant for the period upto 31.3.1997 as the normal licence fee has already been paid by her. However for the later period from 1.4.97 to 17.2.1999, she has submitted that damage/penal charges as prescribed under the Rules may be charged, in which case the applicant should be directed to pay due amounts in easy instalments.

4. I have perused the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. He has submitted that the action of the respondents in issuing the impugned order dated 16.10.1999 is neither arbitrary nor against the Rules. The applicant could not continue residing in the accommodation which was earlier allotted to her husband, when she was not employed with the respondents till 18.2.1999, de hors the Rules. He has also submitted that from time to time as per Annexures A-4, A-5 and A-6, the respondents have been continuously writing ^{to} the applicant to deposit the damage/penal charges due to be paid by her in respect of ^{the} Govt. quarter she was occupying. Learned counsel has submitted that as nothing had come from the applicant, the respondents had informed the applicant to pay at least ^{the} normal licence fee by Memo. dated 21.3.1997. In

the circumstances of the case, learned counsel has submitted that the applicant cannot rely only on this document to show that there has been waiver of the rent due on the house, in accordance with the Rules which she is liable to pay. He has also submitted that in none of the earlier applications filed by the applicant, there was any interim order granted to allow her to continue to occupy the quarter, under which she can claim protection. He has, therefore, submitted that the judgement of Pushpa's Aggarwal's case (Supra) relied upon by the applicant would not be applicable to the facts of this case. With regard to the judgement of the Hon'ble Delhi High Court in Madan Mohan Goyle's case (Supra) relied upon by the applicant in the present case, he has submitted that the applicant has not even paid the normal licence fee after 31.3.1997, even though the respondents have been demanding from her from time to time to pay the damage rent. He has relied on the judgement of the Supreme Court in LIC of India Vs. Mrs. Asha Ramachandra Ambekar and Anr. (JT 1994(2)SC 183) stating that sympathy cannot over-ride the provisions of law. He has submitted that the applicant has been correctly asked to deposit the penal/damage rent in respect of the Govt. quarter she had occupied, in accordance with the Rules and has prayed that the petition may, therefore, be dismissed. Further submissions have also been made in the reply that a direction may be given to the applicant to pay damage rent upto 17.2.1999

in accordance with Rules as per the directions of the Tribunal in OA 2312/92 dated 1.4.1992.

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

6. The applicant, who is the widow of an employee of the respondents who died in harness has continued to stay in the Govt. quarter allotted to him for more than 11 years after his death. From the facts mentioned above, it is also seen that she has been paying normal licence fee for the quarter upto 31.3.1997. It is also noticed that even though according to the respondents themselves, there was no interim order restraining them from evicting the applicant from the quarter in accordance with the Rules, no such action has been taken by them. It is also relevant to note that even upto 1997 i.e. about 9 years after the death of the applicant's husband, when the respondents fully knew that the applicant was continuing in the quarter, they have allowed her to continue in the Govt. quarter and should they had demanded that she deposit arrears of normal licence fee by their letter dated 21.3.1997. In this Memo., no mention whatsoever has been made by the respondents about their claim for damage/penal rent but a copy has been endorsed to the Estate Officer, Delhi Milk Scheme for information. In other words, it appears that the Competent authority i.e. the Estate Officer has not taken any further action under the

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Public Premises (Eviction of Unauthorised Occupants) Act, 1971 till date. The only action which the respondents appear to have done is to burden the applicant with damage/penal charges of Rs.1,65,328/- for the alleged unauthorised occupation of the Govt. quarter No.13/188, DMS Colony, Amrit Kunj, Hari Nagar, New Delhi. It would have been a different matter if the claim for damage/penal rent has been taken simultaneously by them with eviction proceedings provided under law, which has, however, not been done. (25)

7. In the facts and circumstances of the case, since the respondents themselves appear to have accepted normal licence fee from the applicant upto 31.3.1997 without taking any action to evict her from the quarter and in the meantime they have also given her compassionate appointment w.e.f. 18.2.1999, it would be appropriate if they consider charging damage/penal rent from the applicant only from 1.4.1997 to 17.2.1999.

8. In the peculiar facts and circumstances of the case, the OA is allowed with the following directions:-

(i) The impugned order dated 16.10.99 is quashed and set aside;

(ii) The respondents shall consider charging damage/penal rent from the applicant only from 1.4.97 to 17.2.1999 in accordance with the relevant Rules and instructions, which shall be done in easy instalments;

(iii) Necessary action in regard ^{to} above shall be taken within three months from the date of receipt of a copy of this order;

(iv) Thereafter, the respondents may consider applicant's request for regularisation of the quarter but strictly in accordance with rules and regulations, if she is eligible;

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)