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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1570/98

New Delhi, this 17th day of December, 1999

Hon'ble Shri S.P. Biswas, Member(A)

Charles Toppo
H-141, Nanakpura
New Delhi-110 021

.. Applicant

(By Dr. M.P. Raju, Advocates)

versus

Union of India, through

1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi

2. Dy. Director
Dte. of Estates
Nirman Bhavan, New Delhi

3. Secretary
M/External Affairs
South Block, New Delhi .. Respondents

(By Shri Rajinder Nischal, Advocate)

ORDER

The applicant, an LDC working under the Ministry of External Affairs/New Delhi, is aggrieved by Annexure-1 order dated 31.7.98. By this order passed by R-2, applicant, his wife, children, aged/ailing parents have been ordered to vacate the government premises at Qr.No.H-141, Nanakpura. The said order also contains the stand taken by the respondents while refusing to regularise the said quarter in the name of the applicant pursuant to his return to India from a posting abroad. Consequently, applicant has sought reliefs to call for the past records and set aside the impugned order dated 31.7.98. He has also prayed for reliefs in terms of restraining the respondents permanently from evicting him/his family from the said quarter and also absolve him from charging damage rent as indicated in the impugned order.

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2. This is the fourth round of litigation in the matter of retention, regularisation and eviction etc. for general pool accommodation held by the applicant. Appreciation of the legal issues involved in the present OA would require elaboration of the background facts. In brief these are as follows:

2(a). The aforesaid quarter was originally allotted to the father (Shri Anthone Toppo) of the applicant and was subsequently regularised in the name of the latter with effect from 1.6.85, on out of turn basis, on applicant's appointment as LDC on compassionate grounds after the superannuation of the father.

2(b). While the applicant was working in the office of the High Commissioner, London, he continued retaining the said quarter beyond the permissible periods. Based on rules applicable in such cases, respondents cancelled the allotment with effect from 30.6.89 by order dated 30.5.89.

2(c). A request was made by the father of the applicant either to continue the allotment or to have the same transferred in the name of his own daughter who had since obtained a posting in Army Purchase Organisation. This request was turned down by the respondents. Applicant then filed OA No.1178/90 which was allowed by order dated 18.5.93. One of the grounds taken was that since the group "A" officers of External Affairs are allowed to retain Hostel accommodation in India for their dependants and group D are allowed to retain their accommodation in general

pool, denial of similar facility to group "C" officials to which the applicant belonged was discriminatory. This plea was upheld by the Tribunal and the order of cancellation of allotment was quashed being ultravires of Articles 14 and 16 of the Constitution.

2(d). Applicant thereafter approached this Tribunal through OA No.1286/96 challenging the respondents' communication dated 24.8.95 by which applicant was served with a notice dated 14.3.96 asking him to show cause as to why he should not be evicted from the said premises on the basis of earlier cancellation of the order of allotment. This OA was disposed of on 7.6.96 with the direction to R-4 therein to consider the applicant's averments in the said OA and pass an appropriate order in accordance with the extant rules and instructions on the subject.

2(e). Applicant was thereafter transferred to Santiago/CHILE in December, 1994. On his posting out of India, respondents once again issued order dated 29.1.96 cancelling the allotment as per rules with effect from 9.4.95 after allowing four months retention from the date of his second transfer. Respondents initiated this action on the ground that the applicant has suppressed information of his transfer. This forced the applicant to reagitate the issue for the 3rd time by filing OA No.1677/96 decided on 29.5.97 by the Single Bench which had taken a different view as in OA 1178/90 decided on 18.5.93. For reasons recorded in para 9 of the order, the matter was placed before the Hon'ble Chairman for

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referring the case to larger bench to decide the question "whether the denial of the facility of retentionb of general pool accommodation to Group C officials of Ministry of External Affairs on their posting abroad amounts to discrimination and is ultravires the Article 14 and 16 of the Constitution".

2(f). Applicant thereafter filed RA No.164/97 for review of the aforesaid order dated 29.5.97. Applicant also filed MA 2649/97 in RA No.164/97 with the plea that RA may be heard before the hearing in the OA or on the reference, and that the whole OA may be heard on facts and law without treating it to the question referred to the larger Bench.

2(g). Respondent No.2 had earlier issued an order dated 26.7.96 to the applicant to vacate the premises of H-141, Nankpura on the ground that this is contrary to the order of the Tribunal dated 18.5.93 in OA 1178/90. Applicant decided to challenge the said order dated 26.7.96 by filing the 3rd OA No.1677/96.

2(h). The Division Bench of this Tribunal took up the matter as referred to it by the Single Bench (OA Number being the same, i.e. 1677/96). That Bench vide its order dated 7.1.98, entered into a finding, which is reproduced below:

"We also agree, for the reasons given in the order dated 29.5.97, that there is no basis for the argument that as a matter of welfare measure the house allotted to retiring government servant should be allowed to be retained by him or that it should be regularised in the name of his ward for his life time. Such a contention cannot be accepted de hors the rules and the applicant cannot claim that he should be allowed

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retention of the quarter even on his transfer without cancellation of the allotment as per the rules. Any other conclusion, in the circumstances of the case, would mean that a Government servant who is transferred from one place to another whether in India or abroad, will be entitled to retain the Government accommodation in his original place of posting as well as receive HRA and TTA as the case may be in the other place where he is posted, which is obviously not covered by the existing rules. In this view of the matter, the judgement of the Tribunal in OA 1178/90 cannot be considered to be good law and it is overruled (see Ms/Faridabad Ct. Scan Centre Vs. D.G. Health Services & Ors.)"

2(i). Vide its order in sub-para (b) of para 10, the Tribunal also held that:

"That the impugned cancellation order dated 26.7.96 shall be stayed till 16.2.1998 and thereafter the respondents may take such action as they deem fit in accordance with law"

3. The events and circumstances as aforementioned have a strong bearing on the fate of the present OA, i.e. 1570/98 filed by the applicant in the fourth round of litigation. The applicant has chosen to assail the impugned order dated 31.7.98 on a large variety of grounds. I, however, bring into sharp focus only those which have close link with the issues to be determined in the present OA. The applicant would argue that foreign posting, i.e. applicant's transfer to Santiago could not be the basis for cancellation of allotment given on preferential/compassionate grounds.

4. In the case of Group A employees of R-3, alternative transit accommodation is provided for the purpose of housing in India for the dependents in lieu of the quarter allotted from the general pool. Similarly, group D staff under R-3 are allowed to retain the same quarter of general pool even during the period of their foreign posting. Applicant

belonging to Group C may not be forced to face a hostile discrimination. It is also the contention of the applicant that the respondents ought to have regularised the said quarter in his name and decided the issue in his favour. Since the respondents failed to do so, applicant represented his case on 4.3.94. Applicant would also claim regularisation of the quarter at Nanakpura on the basis of the order of the Tribunal dated 7.1.98. R-2, without considering the case in the light of this Tribunal's order dated 7.1.98 passed the impugned order dated 31.7.98 directing the applicant and his family to vacate the premises. Again, applicant would contend that the proceedings are without any jurisdiction since they are based on cancellation order already quashed by this Tribunal. Moreover, no cancellation order has ever been communicated to the applicant and hence this is nullity in the eyes of law.

5. Respondents have opposed the claims. It is submitted that the impugned order dated 31.7.98 was issued by R-2 after careful consideration of all the aspects of the case contained in the order of the Tribunal in para 10(b) and (c). Respondents would contend that this Tribunal has conclusively rejected the arguments of the applicant that as a matter of welfare measure etc. quarter allotted to the dependent government servant should be allowed to be retained by him and that it should also be regularised in his name for his life time. Applicant cannot therefore claim that he should be allowed to retain the quarter even on transfer without cancelling the allotment under the rules. R-2 cancelled allotment of

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the said quarter with effect from 29.12.97 i.e. date of joining of the applicant in India in accordance with this Tribunal's order dated 7.1.98 as the applicant was found ineligible for fresh allotment of type B quarter on the basis of his date of priority which had not been covered till then. It is also the submission of the respondents that as per details of order in para 10(b) dated 7.1.98, cancellation order dated 29.1.96 and eviction order dated 26.7.96 were stayed upto 16.2.98. Respondents would submit that order dated 31.7.98 has been issued keeping in view the order of the Tribunal dated 7.1.98. Counsel for the respondents further contended that the impugned letter dated 31.7.98 only indicates the decision of the respondents that the applicant is being treated as unauthorised occupant and that he is required to pay licence fee on the prevailing rate of damage rent. Respondents have denied that the letter dated 31.7.98 is without jurisdiction. They would further submit that there has been no order which had been cancelled and quashed by the Tribunal vide its order dated 7.1.98 and that the cancellation order dated 29.1.96 and eviction order dated 26.7.96 were not quashed by the Tribunal but they were stayed upto 16.2.98. The order dated 7.1.98 provides that respondents were at liberty to take appropriate actions as they deem fit after 16.2.98. It is also the contention of the respondents that rules regarding regularisation of allotment on compassionate appointment do not permit re-regularisation under any circumstances once the allottee is transferred to an ineligible office. Applicant has thus become unauthorised occupant of the said quarter from the date of his transfer outside

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India in December, 1994. Cancellation order dated 29.1.96 and the eviction order dated 26.7.96 could be given effect after the stay as ordered by this Tribunal was over.

6. In the context of the aforesaid details and rival contentions, the issue that falls for determination is whether the proposed actions of the respondents as per details at Annexure A-1 dated 31.7.98 could be sustained in the eyes of law!

7. I shall now mention the position of law/regulations on the issue of retention of Government accommodation pursuant to transfer to a foreign country or to an ineligible office in India. Detailed instructions/regulations that govern retention of government accommodation pursuant to transfer/retirement etc. are available in OM dated 28.10.90 and 29.1.96 issued by Government of India/ Directorate of Estates vide letter No.23011/4/89-Policy-III(Pt). As per existing provisions, the allotment is cancelled after allowing retention for a permissible period and damage rent of licence fee is chargeable for the period of overstay. It is the personal responsibility of the allottee for intimating the fact of his/her transfer outside Delhi or to ineligible office. In case the officer/official concerned fails to report the fact of his transfer to outstation or to an ineligible office, leading to unauthorised occupation, the concerned administrative ministry/department would be suitably informed by the Dte. of Estates for taking suitable action against the allottee under the existing rules. Vide its communication dated 28.12.90, Government of India also impressed on the

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ministries/departments once again to intimate the Directorate about the transfer of a government servant from one office to another or to outstation and about retirement or death of the government servant immediately on occurrence of such event to enable the allotment authority to take further necessary action in respect of government accommodation, if any, allotted to the government servant. The rule also stipulates that transfer to ineligible office or outside the jurisdiction of the allotment authority would automatically result in cancellation of the allotment. A government servant cannot hold two government residences as well as receive HRA. If the allottee who has chosen to avail the facility of general pool accommodation and has also taken part of his family alongwith him on transfer, then he cannot keep the accommodation on the plea that the other part of the family i.e. his parents/some dependents have been left behind alongwith brother/sister or relatives. Allotment of government accommodation by the Dte. of Estates is given only when the date of priority for a particular category of accommodation gets covered. The rules regarding regularisation of allotment on compassionate appointment do not permit re-regularisation under any circumstances when the allottee is transferred to an ineligible office or posted abroad. Allotment given once, even on compassionate ground, is not an allotment for ever for any category of official. An allottee of general pool accommodation having transfer liability has to seek and obtain fresh allotment/ permission for retention of government quarters consequent upon earlier order of transfer outside India/and/or ineligible office.

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8. Applicant's claim is to be adjudicated in the context of the position of law/regulations as aforementioned.

9. It is not in doubt that when the applicant returned to India on 29.12.97, his date of priority was not covered for general pool accommodation. Consequently, the quarter the applicant continued to hold unauthorisedly even after his posting to Santiago in 1994 could not be regularised in his name. It is also not in doubt that the applicant became unauthorised occupant of the said quarter from the date of his posting outside Delhi in 1994, though he could have retained the quarter for 8 months on payment of prescribed licence fee after obtaining prior permission. Records reveal that no such permission was obtained by the applicant before he proceeded on transfer outside Delhi. Not only this, the applicant even did not care to inform the Directorate of Estates about his transfer. Order of cancellation of allotment dated 29.1.96 and the order of eviction dated 28.7.96 were not quashed by the Tribunal but the same were ordered to be stayed as per details herein above.

10. That apart, as per para 10(c) of the Tribunal's aforesaid order dated 7.1.98, applicant's claim for regularisation in his name was to be considered only in accordance with the rules.

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11. In the light of the above position, respondents' actions in cancelling the allotment of the said quarter with effect from 29.12.97 i.e. the date of joining of applicant in India, were in accordance with the orders dated 7.1.98 as the applicant was found ineligible for fresh allotment of type B quarter in his turn since the date of priority did not get covered in his case till then.

12. I find that the applicant being Group C official has raised the issue of being discriminated vis-a-vis Group A and Group D officers for not providing any alternative accommodation in OA 1677/96. Applicant's plea in this respect was rejected by this Tribunal in the order dated 7.1.98 for the detailed reasons mentioned therein. Applicant's present plea on this account is hit by resjudicata.

13. The applicant also cannot take the plea that once a general pool quarter is allotted and regularised in his name the same will continue to be in his possession for ever or till his final superannuation, de hors the rules. Ignorance of rules is no excuse. In fact respondents vide their communication dated 30.5.89 had intimated the applicant the rule position that on his transfer to the High Commission of India at London and on being relieved of his duties at Delhi on 13.2.89, the allotment would be cancelled in his name, after allowing permissible period of retention. Applicant was informed that inability to hand over the vacant possession of the house after he became ineligible would attract penal action in terms of Public Premises (Eviction of unauthorised occupant)

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Act, 1971. He was also informed that for the period of overstay, he was liable to pay damage rate of licence fee in respect of the entire period of overstay in terms of SR 317-B-22. A perusal of the records reveal that not only in the case of his transfer to London, but even in the case of his subsequent transfer to Santiago, the applicant decided to keep silent and did not take steps required under the rules. It eludes comprehension as to how the applicant could suppress the basic information of his transfer to Santiago even after he was made aware of the rule position in May, 1989. He did not even seek permissible retentions under FR 45A or FR 45B pursuant to his transfer to Santiago or special dispensation of the Ministry to cover the entire period. At the same time, he cannot take the plea of not knowing the rules in the light of A-III communication dated 30.5.89 addressed to him.

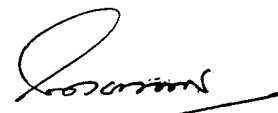
14. In the background of the position of law and detailed facts as aforesaid, I do not find any merit in the OA and the same deserves to be dismissed. I do so with the following directions:

- (1) Applicant shall be debarred from regularisation of the present quarter or any fresh allotment of the general pool accommodation for the left over period of current year of allotment or three years whichever is less as per the provisions of general pool accommodation. This is on account of applicant's scant respect for the

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allotment rules as well as defiant attitude by suppressing the information of his transfers resulting in complications not only to the allotment authority but for those entrusted with the responsibility of recovery of legal dues.

- (2) Respondents shall be at liberty not only to pursue the eviction proceedings as contemplated but also initiate actions for recovery of licence fee as per extant rules in such matters.


(S.P. Biswas)
Member(A)

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