

Central Administrative Tribunal
Principal Bench

(18)

O.A. 304/98

New Delhi this the 21st day of September, 1999

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

1. Shri Chander Shekhar,
S/o Shri Khima Nand,
Dental Technician,
Lok Nayak Jai Prakash Hospital,
Govt. of NCT of Delhi.
2. Shri Khima Nand,
S/o late Shri Harakdev,
retired as Sr. Technical Assistant,
Dental Deptt.
Dr. Ram Manohar Lohia Hospital, Min. of Health,
New Delhi and both resident of
898, Sector-XII, R.K. Puram,
New Delhi. Applicants.

By Advocate Shri B. Krishan.

Versus

1. Union of India through the
Director of Estates,
Directorate of Estates,
4th Floor "C" Wing,
Nirman Bhavan, New Delhi.
2. The Estate Officer,
Directorate of Estates,
4th Floor "C" Wing, Nirman Bhavan,
New Delhi.
3. The Secretary,
Land & Building Department,
Govt. of NCT of Delhi,
Estate Branch, "A" Block,
Vikas Bhavan, Indraprastha Estates,
New Delhi-110 002. Respondents.

By Advocate Shri Rajeev Bansal.

O R D E R

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

The applicants are aggrieved by the respondents' rejection letter dated 16.12.1997 and the impugned eviction letter dated 12.1.1998 which they have prayed may be quashed and set aside.

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2. The Tribunal by interim order dated 9.2.1998 had directed that status quo of the applicant may be maintained with regard to the accommodation which order has been continued from time to time.

3. The brief facts of the case are that Applicant No. 1 is the son of Applicant No. 2, who are stated to be residing in House No. 898, Sector XII, R.K. Puram, N. Delhi. The allotment of this quarter had been made while Applicant No. 2 was in service and working as Senior Technical Assistant in Dental Department of Dr. Ram Manohar Lohia (RML) Hospital, New Delhi. He retired from Govt. service on 30.11.1996. Applicant No. 1, his son, has been working as Dental Technician in Lok Nayak Jai Prakash (LNJP) Hospital under Delhi Administration - Respondent No. 3 and has been sharing the Govt. residence allotted to his father from 1978. He states that he has not been drawing any HRA from the date of his appointment on 30.6.1990. Shri B. Krishan, learned counsel for the applicants, submits that Applicant No. 1 satisfies all the eligibility conditions and the Government accommodation allotted to his father from the General Pool should be regularised in his name, particularly when the Govt. of NCT had agreed for inter pool exchange of quarter by offering one of their quarters, i.e. Flat No. 368, Timarpur, Delhi. Applicant No. 1 had submitted an application to Respondent 2 - Directorate of Estates for regularisation of allotment of the aforesaid quarter in his name as per application dated 21.12.1996. This request has been rejected, stating that the proposal of Delhi Administration for inter pool exchange of quarter cannot be agreed to due to the fact that the applicant who is working in LNJP Hospital is neither in possession of the General Pool accommodation nor eligible for the same. Shri B. Krishan,

B:

(JP)

Learned counsel, has submitted that the practice of exchange of pool for dwelling units belonging to various pools of Government residences is an accepted practice and there is no reason why Respondent No. 2 should reject the offer in the case of Applicant No. 1. He has submitted that in three other cases such exchanges have been agreed to. He has, therefore, prayed that a suitable direction may be given to the respondents to regularise the Government accommodation at R.K. Puram allotted to his father, in the name of Applicant No. 1 from the date of cancellation of the allotment, that is w.e.f. 31.3.1997 and the impugned letter and order of eviction be quashed and set aside. The learned counsel has relied on certain other judgements of the Tribunal (copies placed on record)

1. I have seen the reply filed by Respondents 1 & 2. Respondent No. 3 has not filed any reply. The respondents in their reply have submitted that their action is in accordance with the Rules. They have submitted that the offer of Delhi Government to exchange a Type 'B' quarter with the quarter No. 898, Sector XII, R.K. Puram, New Delhi has not been accepted. Shri Rajeev Bansal, learned counsel, has submitted that the applicant and his family are in unauthorised occupation of the Government quarter w.e.f. 1.4.1997. In the representation of Applicant No. 1 dated 29.12.1997 he had mentioned three cases to which they have explained in detail in their reply the reasons as to why such inter pool exchanges of quarters were allowed. Learned counsel has submitted that these cases have been decided on the merits of each case and the facts in the present case are not covered by those cases. Besides, he has stated that in the case of Shri S.K. Singhal, he had filed O.A. 247/94 before the Tribunal which was disposed of with a direction to the Delhi Government to allot a suitable

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accommodation within a period of four months and also directed the answering respondents not to evict the applicant from the quarter till he was allotted an alternative accommodation by the Delhi Government. In the meantime, the then Minister of Urban Development had passed orders for regularisation of the same quarter on compassionate grounds on inter pool exchange basis with the Delhi Government which was accordingly done. In the case of Shri S.K. Singhal, it has been stated that he had been forcibly sterilised at the age of 16-17 at the time of Emergency, as a result of which he was mentally upset and emotionally unbalanced and physically handicapped. In the second case of Shri Umakant Pandey, the quarter was regularised in the name of his son Shri S.S. Pandey on 24.12.1992, who had been sent on an assignment in a remote part of Mizoram and later killed by a group of insurgents on 1.5.1995. His elder brother's wife was working as PGT teacher in Delhi Government and was not eligible for allotment from General Pool. In that case the answering respondents have stated that when Delhi Govt. placed Quarter No. 616, Timarpur, in lieu of this quarter for allotment to her, they agreed to it on the peculiar facts of the case, namely, that Shri S.S. Pandey had laid down his life while doing Government duty. In the third case, the allottee Shri R.N. Raizada had expired on 2.3.1996 and the allotment of the quarter was cancelled w.e.f. 2.3.1997. His wife who was working as PGT Teacher in Delhi Government School was not eligible for allotment from General Pool. In her case also, learned counsel has submitted that because of the death of her husband inter-pool exchange of quarter was allowed. He has submitted that inter pool exchange of quarters had been done either on the basis of the CAT decision or in the other two cases of death, taking into account the peculiar facts and circumstances and it is not done in a routine manner. He has submitted that applicant No. 13

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1 is not eligible for allotment of Govt. Quarter from General Pool as he is working in LNJP Hospital. They have also stated that it is a matter of policy and, therefore, the decision taken by the answering respondents is within the provisions of the rules and instructions and no exception can be made in the case of the applicant.

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

6. It is clear from the facts mentioned above that Applicant No. 1 who is working in LNJP Hospital under Delhi Administration was sharing the Government residence which was allotted to his father from the General Pool, as the latter was in Central Government service at that time. The submission of the learned counsel for the applicants that Applicant No. 1 is eligible for allotment of a Government residence from the General Pool under the administrative control of Director of Estates is not supported by any rule. Learned counsel has, however, submitted that there are a number of other cases where inter pool exchange of quarters has been allowed other than the three cases mentioned by the applicant in his representation dated 29.12.1997, which has been dealt with in detail in the reply of Respondents 1 and 2. In the impugned rejection letter dated 16.12.1997, the respondents have stated that the proposal of Delhi Administration for inter pool exchange is not agreed due to the fact that Applicant No. 1 is neither in possession of General Pool residence nor eligible for the same. These facts are not controverted by the applicants except to the extent that Applicant No. 1 is continuing in possession of the General Pool residence which had been earlier allotted to his father who has retired from service w.e.f. 30.11.1996. On

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careful perusal of the facts in the three cases relied upon by the applicants, it is seen that the circumstances in which the applicant is seeking regularisation of the General Pool accommodation in these cases are quite different and there is no comparison at all between his case and those of the other three cases. The case of the applicant appears to be a normal case of a son staying with his parents in the house allotted to his father, while the latter was in service and nothing more, and there is no special circumstance as mentioned in the cases of Shri Singhal, Mrs. Seema Pandey or Smt. Sushma Raizada where the Central Government had agreed to inter pool exchange of residences offered to them by Delhi Administration in Timarpur. The discretion exercised by the respondents in the present case not to accept the proposal of Delhi Administration for inter-pool exchange of a flat in a far off place like Timarpur in exchange for one of their General Pool residences in R.K. Puram, New Delhi, cannot be termed as either arbitrary or unreasonable, justifying any interference in the matter. The reason given in the impugned rejection letter that the applicant is also not eligible for General Pool accommodation is also not contrary to the rules.

7. I have also carefully considered the judgements relied upon by the applicants. In K.N. Pant Vs. Union of India & Ors. (OA 1895/93) which was disposed of on 10.2.1994, it has been stated that the rejection of the claim of the petitioner is not supported by any reasons and accordingly the respondents were directed to consider his claim for regularisation. The facts in that case do not appear to be similar to the facts in the present case and that case will, therefore, not assist the applicants. The second case is Suresh Kumar & Ors. Vs. Union of India & Ors. (OA 2610/97). In that case a direction had been given to Respondents 1 and 2

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To consider the question of inter pool exchange of house allotted to Applicant No. 2 and decide the request of applicant for regularisation in his favour but in the present case that consideration has already been done and rejected by the impugned letter for the reasons discussed above. That case will not also assist the applicants. In Sanjeev Joshi Vs. Union of India & Ors. (OA 1257/96), it has been observed that similar cases have arisen where inter-pool exchange of quarters was involved between the respondents, Safdarjung Hospital and Directorate of Estates. In the facts of the present case, these cases will, therefore, not assist the applicants.

8. In the facts and circumstances of the case, I do not find any good reason to set aside the rejection letter dated 16.12.1997. Under the relevant rules, Applicant No. 2 could retain the accommodation allotted to him for a period of four months. The respondents have cancelled the allotment w.e.f. 1.4.1997. In the impugned eviction order dated 12.1.1998 the respondents have stated that in exercise of the powers under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Applicant No. 2 and his family are accordingly required to vacate the premises. This order has been stayed by the Tribunal and the respondents were directed to maintain status quo in respect of the accommodation. In view of what has been stated above, the interim order stands vacated and the respondents may proceed with further action in accordance with law. Rent and other charges due from the applicants for the quarter in their occupation for the intervening period will be determined by the competent authority, taking into account the interim order dated 9.2.1998 which was in operation till today and in accordance with the provisions of the relevant law and rules.

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9. It is noted that Delhi Administration - Respondent
3, have stated that Flat No. 368, Timarpur, is lying vacant.
Therefore, if applicant No. 1 is otherwise eligible for
allotment of this or any of their other quarters, it is open
to them to take any further action for allotment of the
residence, as they deem fit, in accordance with the Rules.

10. In the result, as there is no merit in this O.A.
it fails and is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member(J)

'SRD'