

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1307 of 1995

New Delhi, dated the 3rd June, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri K.B.Khanna,
C/o Shri G.K.Aggarwal,
Advocate,
G-82, Ashok Vihar-I,
Delhi-110052.

... APPLICANT

By Advocate: Shri G.K. Aggarwal

VERSUS

1. Union of India through
the Secretary (Revenue),
Ministry of Finance,
North Block,
New Delhi.
2. Chief Commissioner of Income Tax (Kanpur),
Aayakar Bhawan, Civil Lines,
Kanpur-208001.
- 3.- Commissioner of Income Tax (Kanpur),
Aayakar Bhawan, Civil Lines,
Kanpur-208001.

.. RESPONDENTS

By Advocate: Shri V.P.Uppal

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant prays for a declaration that he is liable to pay only normal license fee for the period 14.10.91 to 12.4.93 in respect of occupation of Type IV Govt. accommodation by him in Kanpur.

2. Applicant was posted as Executive Engineer in Valuation Cell of I.T. Dept., Kanpur in 1990 and was allotted a Type IV residential quarter out of I.T. Dept. Pool under the relevant allotment rules which entitles officers and staff employed in offices under the Finance Ministry's control

to ^{accommodation} ~~allotment~~ from the departmental pool. This posting contained till 13.8.91, and the next day he handed over charge to Shri Deepak Gupta an Executive Engineer (C) (V). However, applicant continued to remain with CPWD at Kanpur, and contends that as such he was entrusted with the task of maintenance of residential and non-residential buildings and construction works there, including those of I.T. Dept. By letter dated 24.9.91 (Ann. A-6) he requested the respondents to allow him to continue in the said quarter, which prayer was rejected by them vide reply dated 4.10.91 (Ann. A7) as the premises were required for allotment to the new incumbent Shri Deepak Gupta. Applicant contends that as Shri Deepak Gupta did not press for vacation of the premises, he continued to occupy the same till his transfer to Delhi on 12.4.93, which respondents have declared to be unauthorised for which applicant has been called upon to pay damage charges of Rs.50,927/-.

3. Applicant had earlier filed O.A. No. 1621/94 with the same grievance, which with the consent of both parties was disposed of by order dated 3.2.95 with a direction to respondents to dispose of applicant's representation on this score, with liberty given to applicant that if any grievance still survived he would reagitate the matter. Respondents rejected his representation and hence this O.A.

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4. I have heard applicant's counsel Shri G.K. Aggarwal and respondents' counsel Shri Uppal.

5. Shri Aggarwal has argued that by virtue of being posted as E.E. Valuation Cell of Income Tax Dept. in Kanpur he was eligible for allotment of I.T. Departmental Pool accommodation, ^{which} he was accordingly allotted. After his term as E.E. Valuation Cell concluded on 14.8.91 he was entitled to alternative Govt. accommodation ~~before~~ being called upon to vacate the old one, but the same was not allotted. He continued to occupy the same quarter after his term as E.E. Valuation Cell came to a close, because his successor never pressed for vacation. His allotment never stood cancelled by the operation of any rule/law, nor was it ever cancelled by any order passed by a competent authority. No eviction proceedings were ever initiated against him, nor was any eviction order passed. It is contended that respondents allowed applicant to continue to occupy the said quarter on normal rent from 14.10.91 to 12.4.93. Shri Aggarwal has argued that in similar circumstances certain other officers were allowed to retain the accommodation on payment of only normal rent.

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5. Applicant was allotted the premises in question from the Departmental Pool in accordance with the Revenue Dept. Allotment Rules notified on 8.9.64 (Ann. A/9). As per these rules the permissible period for retention of the premises was two months outside the station of allotment of residence (item iv). It is true that applicant was not transferred out of Kanpur as such, but upon the completion of his term as Executive Engineer, Valuation Cell he was no longer entitled to accommodation from the Departmental Pool, and should have relinquished possession ^{after} the permissible period of two months. His request dated 24.9.91 for retention was rejected by letter dated 4.10.91 and he was called upon to vacate the quarters so that it could be allotted to the next incumbent. The fact that the next incumbent (Shri Deepak Gupta) did not press for the accommodation does not give the applicant any legally enforceable right to continue in the premises. Upon expiry of the permissible two months period the retention of the premises by applicant cannot be termed as authorised even if applicant's allotment was not specifically cancelled by any order, and even if no eviction proceedings were started. The fact that applicant, after completion of his term as E.E. Valuation Cell, continued to look after maintenance and construction of residential and non-residential buildings in Kanpur, including

those belonging to I.T. Dept. also does not give applicant an enforceable legal right to continue in the I.T. Departmental Pool accommodation beyond the authorised period, and respondents were under no legal obligation to provide him alternative accommodation to enable him to vacate the premises in quesiton.

6. In so far as the cases cited by applicant are concerned, respondents in their letter dated 10.5.95 (Ann. A/4) have sought to distinguish those cases on facts from the present one. They have pointed out that no residential quarter was allotted by I.T. Dept. to any officer of CPWD except those serving in Valuation Cell and that too for the period they remained posted in that Cell under the Revenue Dept. Some officers were allowed to occupy the quarters in the said colony in 1980/82 in order to enable them to efficiently supervise the construction of the said colony which was not complete and hence applicant's case is not comparable with theirs. I find it difficult to disagree with this. Furthermore, even if other officers were allowed to occupy/retain Revenue Dept. Pool accommodation even if they were not entitled under the rules, it gives applicant no enforceable legal right to claim similar treatment. Discrimination can be effectively pleaded when such plea is in consonance with rules, and not where it would violate those rules.

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7. Under the circumstance I am unable to issue the direction sought for by applicant. Shri Aggarwal prayed that if the prayer sought was not granted, respondents atleast be directed to pay applicant HRA for the relevant period. It will be open to applicant to represent to respondents in this regard for disposal by the latter in accordance with rules.

8. This O.A. is disposed of in terms of para 7 above. No costs.

Amfchge
(S.R. ADIGE)
Member (A)

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