

Central Administrative Tribunal

Principal Bench

OA 1695/95

New Delhi, the 2nd ^{May} ~~April~~, 1996.

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Hon'ble Shri R.K. Ahooja, M(A)

Shri Ravijesh Rattan Sharma
S/o Late Sh. R.R. Sharma
Qr. No.960, Sector VII
MB Road, New Delhi.

(Advocate: Shri George Paracken) .. Applicant

vs

1. Director,
Directorate of Estates,
Nirmal Bhawan,
New Delhi.
2. The Executive Engineer(Electrical)
Electrical Construction Divn. No.5
Pushpa Bhawan,
New Delhi. 110017. ... Respondents
(Advocate: Shri Madhav Panicker)

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The father of the applicant
Late Shri R.R. Sharma was allotted quarter
No.960, (Type C) Sector VII, MB Road, New Delhi
while working as ASW in the Central Public Works
Department (CPWD). Shri R.R. Sharma expired on
13.9.93. Thereafter, the allotment of the said
quarter was cancelled w.e.f. 13.9.94 after allowing

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the concessional period of twelve months as admissible under the rules. The applicant was later appointed as LDC in CPWD on compassionate grounds w.e.f. 27.9.94.

He applied for allotment of accommodation on adhoc basis and submitted the necessary affidavit of his mother as well as his own declaration that they do not own a house either in their name or in the name of any of their family members. Attested copy of ration card and 'no objection' from the mother was also duly submitted when asked for.

The applicant also deposited a sum of Rs.10,838/- on 15.2.95 demanded by the respondents as arrears of rent of accommodation allotted to his late father.

However, his application was rejected by the respondent No.1 vide the impugned letter dated 7.7.95 on the ground that the family of the applicant owned a private house No. 244/29 Gali No.5, School Block, Mandawali, Near Shakarpur Delhi-52. The applicant was therefore directed to surrender the house allotted to his father and an eviction order was also issued by the Estate Officer. Aggrieved by the order of refusal of allotment of Govt. quarter and order to vacate the aforesaid quarter allotted to his late father, the applicant has filed this application.

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2. The case of the applicant is that the respondents did not conduct a proper enquiry and also did not take into account the documentary proof furnished by him to show that the private property said to be owned by the family was actually in the name of his uncle on the basis of a Power of Attorney. The uncle, Shri Sripal Sharma, of the applicant not being a member of the family as defined in the rules did not in any way debar the applicant from obtaining govt. accommodation on adhoc basis as per extant rules. The applicant therefore has sought relief that the respondent No. 1 be directed to allot a suitable Type 'B' accommodation to him and the impugned eviction order dt. 17.8.95 be set aside.

3. The respondents deny the claim of the applicant and state that Late Shri R.R. Sharma, the original allottee had been transferred to Jaipur on 10.2.93 but he did not join there, though he had been relieved from his Delhi office. Consequently, the allotment in his name was cancelled w.e.f. 10.4.93 vide letter 8.4.94. The case ^{was} referred to the litigation section for eviction proceedings. On getting the cancellation letter, the widow of Shri RR Sharma informed the respondents that due to illness her husband could not join at Jaipur and in unforeseen circumstances expired on 10.4.93 at RML Hospital.

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The widow on that basis requested that date of cancellation be revised to 30.9.93 instead of 10.4.93.

As a matter of sympathy with the family of the deceased,

the Directorate of Estates wrote to the Deptt.

of deceased to withdraw his transfer order so that

relief could be provided to the family. This was

done and the cancellation of the accommodation was

revised to 30.9.94, that is, 12 months from the

date of the death of allottee. The respondents

also state that an application was received from

the applicant to allot accommodation on compassionate

ground after the death of his father. As a follow

up certain correspondence was addressed to him

but the same was returned by the postman with the

remarks that the addressee had left without address.

On that basis the Inspection party visited the

Govt. quarter and found it locked on the first

occasion and on the second occasion, on 14.6.95, found

the daughter-in-law of the allottee named Smt. Seema

Sharma who stated that the widow of the allottee

was not living in the Govt. quarter but instead

in her private house at Fazilpur Delhi. It was

on the basis of the finding of the Inspection party

that the request for adhoc allotment was rejected.

The respondents claim that since the family own

their own private accommodation, the applicant could

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not be considered for adhoc allotment under the rules.

4. I have heard the 1d. counsels for both sides and have gone through the pleadings and the departmental file pertaining to the case of allotment. Shri George Paracken appearing for the applicant argued that in the face of documentary proof that the private house was owned by the uncle of the applicant, the respondents had no basis whatsoever to come to the conclusion that it was owned by the family of allottee. He pointed out that the elder daughter-in-law of the deceased Govt. allottee had only stated that her mother-in-law had gone to stay in the private house in Mandawali and there was no bar on a widow to go and spend sometime at her brother-in-law's house and this did not establish in any way that she owned the private house. He also argued that the plea taken by the respondents that the allotment had originally been cancelled in 1993 on the transfer of allottee to Jaipur and later on this cancellation was deferred to 1994 was an extraneous issue and did not concern the request for allotment of accommodation to the applicant. He also submitted that the respondents had asked for another enquiry by the Asstt. Engineer who had found that the statement of the applicant regarding the ownership of the private house by his uncle was correct, but this report had been concealed by the respondents and was not mentioned in their reply.

5. The respondents in their reply have not been able to show that the documentary proof submitted by the applicant is not correct. The conclusion of the respondents regarding the ownership by the applicant's family of private house is based on somewhat flimsy evidence. The ld. counsel for the respondents submitted that the communications addressed to the applicant and his mother at the address of the Govt. accommodation had been returned, that the late allottee had not sought govt. accommodation till the fag end of his service, that the Inspection party did not find any household goods that would indicate that anyone was living regularly in the house, that the sister-in-law of the applicant gave a statement that her mother-in-law lived in private house. He argued that all this showed that the affidavit filed by the applicant regarding non-ownership of private house was false. I am unable to agree with this argument. It would be seen that all this happened well after the allottee had died and it would not be surprising that the family members went to live with the uncle in latter's house. The non-availability of the addressee at the official Govt. accommodation does not signify that he

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is living elsewhere permanently and he owns some other property. The ld. counsel also submitted that the permanent address given in the death certificate of the allottee was also different but this has been explained again by the applicant by stating that the uncle had given his address in the hospital as he was looking after his ailing brother. In any case, the respondents have not in any way been able to adduce any tangible reason for rejection of the documentary evidence produced by the applicant which shows that the house in question is owned by the uncle.

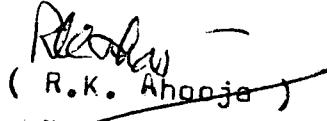
6. This being so, the question which arises is as to whether the govt. accommodation can be retained by the applicant. It is an admitted fact on both sides that Govt. accommodation held by the father of the applicant was of a higher category which is not within the entitlement of the applicant. Hence, the accommodation in question cannot be held or regularised in favour of the applicant. For this reason there is no ground for setting aside the eviction order nor a direction can be given that normal rent only should be charged from the applicant. However, the respondents have not denied that the request of the applicant for adhoc allotment of a category 'B' ^{was} rejected solely

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on the ground that the applicant's family owned private accommodation. This ground as mentioned in the above paragraphs does not exist. Therefore, the applicant is entitled to be considered for adhoc allotment as per rules on the basis that he or his family does not own private accommodation as alleged by the respondents.

7. I, therefore, dispose of this application with the direction that the respondents will consider the request of the applicant for adhoc allotment as per rules on the basis that he or his family do not have a private house and to decide the same within a period of one month from the receipt of the copy of this order. There shall be no order as to costs.


(R.K. Ahonje)
Member (A)