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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi this the 14th Day of January 1997
O.A. No. 1832/95

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Shri S.K. Anand
House No. 1 (FF),
Block B2B Janakpuri,
New Delhi-110 058.

Applicant

(By Advocate: Shri U.S. Bisht)

Versus

1. Union of India through the
Secretary, Ministry of Defence,
New Delhi-110 011.
2. Station Headquarters,
Delhi Cantonment,
Delhi-110 010.
3. The Estate Officer,
Delhi Station
Station Headquarters,
Delhi Cantonment - 110 010.
4. Area Accounts Officer (WC),
Delhi Cantonment,
Delhi-110 010.
6. Garison Engineer (East),
Delhi Cantonment,
Delhi-110 010.

(By Advocate: Shri M.M. Sudan)

Respondents

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant who was serving as Assistant Garison Engineer under the second Respondent was allotted the T-2 (($\frac{1}{2}$) Kirby Place, Delhi Cantt, Type III on 15.12.1990 on temporary basis for a period of three months. The applicant had been making representations for making a permanent allotment of the quarter to him but by Orders issued from time to time, the permission to retain the accommodation was extended. The last extension was for a period of six months commencing from 15.3.1993. Meanwhile ^{though} the applicant's name in the waiting list for key personnel accommodation was fairly high, he was not allotted a quarter from that pool. He continued to stay

in the quarter T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt. In the meanwhile the applicant was transferred to Akhnoor under Engineer-in-Charge Order's dated July 13, 1993. However, he was allowed to hold on to Delhi against another post until the decision by superiors on his representation to deferment of his posting was being considered. At that time the applicant was offered a Type IV quarter but as he was preparing to go on transfer and for other circumstances he could not move into the said quarter. After reporting at Akhnoor the applicant sought permission to retain the accommodation in Delhi as Akhnoor was a field station. No order on the representation was received by the applicant. However, the respondent on November 7, 1994 passed an order cancelling the allotment in the name of the applicant Quarter T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt with effect from 15.6.1993. On 21.11.1994 the third respondent issued notices to the applicant under Sub-Section (1) and Clause (b)(ii) of Sub-section (2) of Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (Annexure A-2) and under Sub-section 3 of the Section 7 of PP (EUO) act, 1971 for damages rate of rent of Rs. 40/- w.e.f. June 15, 1993 till vacation (Annexure A-3). The applicant submitted a written statement of defence. However, the third respondent by Order dated August 26, 1995 held that the applicant was in unauthorised occupation of the premises from 1.9.1993 to 6.8.1995 and that thereafter the applicant was liable to pay damage rate of rent at the rate of Rs. 40/- per sq. mtr. per month. It is aggrieved by this that the applicant has filed this application seeking the following reliefs:

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1. that the applicant prays the Hon'ble Tribunal to be pleased to quash the impugned orders at Annexure A-1, A-2, A-3, A-4 and A-5;
 2. that the Hon'ble Tribunal may declare the allotment of T-2 accommodation to the applicant as on 15 Dec 90 as permanent allotment;
 3. that alternatively the Hon'ble Tribunal may hold the initial allotment of T-2 accommodation to the applicant as deemed on permanent basis;
 4. that the Hon'ble Tribunal may also direct the respondent No. 2 to accord sanction for retention of the accommodation held by him in Delhi Cantt on normal rent;
 - (a) w.e.f. 1 Oct '93 till the date of his reposting to Delhi Cantt from Akhnoor Field Station;
 - (b) and w.e.f. the applicant's reposting to GE (East) Delhi Cantt until 31st May '95 the date on which he retired from service.
 5. Any other order, or direction(s) deemed appropriate in the facts and circumstances of the case including costs of this application.
2. The respondents in their reply have contended that the allotment of the quarter T-2 ($\frac{1}{2}$) Kirby Place in the name of the applicant was only for a limited period that it was extended from time to time, that the applicant's term for allotment for a accommodation from the General Pool had not reached, that he was not entitled to retain the temporary accommodation allotted to him in Delhi

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while he was posted in Akhnoor, that the applicant was allotted an accommodation Type IV Kotwali Road, Delhi Cantt on August 21, 1993 that he refused to take over that accommodation and vacate the quarter and that therefore the Order at Annexure A-1 cancelling the allotment in his favour of quarter T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt with effect from 15.6.1993 and the order passed by the Estate Officer on 26.8.1995 are perfectly in order.

3. We have heard the learned counsel on either side and I have also perused the pleadings and the relevant materials placed on record. That the applicant retired from service on 31.5.1995 and vacated the accommodation on 7.8.1995 have to be taken note of. Though the applicant had prayed for various reliefs in paragraph 8 of his application, the orders which are impugned are dated 7.12.1994 of the second respondent cancelling the allotment in the name of the applicant Quarter No. T-2 ($\frac{1}{2}$) with effect from 15.6.1993 and the order dated 25th August 1995 of the third respondent holding that the applicant was an unauthorised occupant of the quarter No. T-2 ($\frac{1}{2}$) Kirby Place from 1.9.1993 to 6.8.1995 and quantifying the damage rent chargeable from the applicant at 3380/- per month. Though the last extension of allotment in favour of the applicant of the quarter, in question, was made by Order dated 17.4.1993 (Annexure A-3) for a period of six months with effect from 15.3.1993 addressed to Garrison Engineer (West), Delhi Cantt with a direction to ensure that the said accommodation was vacated by the applicant as and when asked by the Headquarters without asking for alternate accommodation.

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It is seen that on 27.6.1994 the second respondent had issued the order (Annexure R-12) which reads as follows:

Tele: 3036859

Annexure R-12

202/6/A/50/6/K1/Q5

27 Jun 1994

Garrison Engineer
AKHNOOR (J&K) 181201.

ALLOTMENT OF GOVT. MARRIED ACCN

1. Ref your letter No.SK/Pers/87/94 dated 10 May 94.
2. Qtr. No. 50/6 (Type-III) Kabul Line Delhi Cantt is hereby allotted to Shri SK Anand, AGE (T) of GE Akhnoor (J&K) as an alternative accn to T-2 ($\frac{1}{2}$) Kirby Place Delhi Cantt.
3. Handing/Taking over will be done through MEs channel within ten days.
4. Retention of above referred accn. will be valid upto the date the officer is posted at tenure stn and entitled to retain accn for his family at Delhi as per existing Govt. orders/instrs.

Sd/O
Yogendra Singh
Major
SSO (B)
for Stn Cdr

Copy to:-

AAO BSO (West) Delhi Cantt

BSO (West) Delhi Cantt.

Shri SK Anand
AGE (T)
GE Akhnoor (J&K) 181201

- You are advised to vacate unclass acc (T-2) ($\frac{1}{2}$) Kirby Place) allotted to you on temp. basis.

Thus, it is evident from this Order that a Type III Quarter No. 50/6 Kabul Line, Delhi Cantt was allotted to the applicant as an alternative accommodation to T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt. Thus, it is also evident that even on 27.11.1994 the occupation of the applicant of Quarter No. T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt

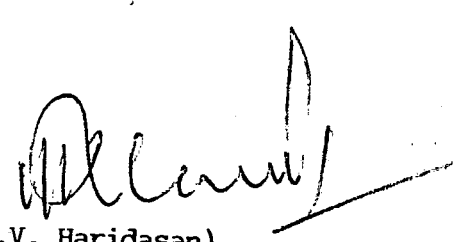
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was no considered unauthorised because an alternative accommodation would not have been allotted if his occupation was considered unauthorised. Therefore, the impugned order at Annexure A-1 of the second respondent itself cancelling the allotment with effect from 15.6.1993 is unjustified and illegal. The impugned order at Annexure A-4 holding that the applicant was unauthorisedly in occupation of the quarter T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt was passed by the third respondent on the ground that the allotment in his name stood cancelled. Since the impugned order at Annexure A-1 retrospectively cancelling the allotment of the quarter in the name of the applicant with effect from 15.6.1993 while he was allotted alternative accommodation in view of T-2 ($\frac{1}{2}$) Kirby Place, Delhi Cantt by Order dated 27.6.1994 (Annexure R-12) cannot be sustained, the finding that the applicant was in unauthorised occupation from 1.9.1993 to 6.8.1995 also cannot be upheld. Since the order cancelling the allotment in the name of the applicant prospectively had not been issued and as the applicant had not been told that if he hold on to the accommodation after that date he would be treated as unauthorised occupant and liable for any penal rent, I am of the view that the impugned order at Annexure A-4 cannot be sustained.

4. In the light of the foregoing discussions, I find that the applicant is entitled to have the impugned order at Annexure A-1 and A-4 set aside and that the respondents are not justified in recovering damage rent from the applicant for the period in question.

5. In the result the application is allowed in part. The impugned order at A-1 and A-4 cancelling the allotment of accommodation No. T-2($\frac{1}{2}$) Kirby Place, Delhi Cantt dated 7.11.1994 with effect from 15.6.1993 and the order of the third respondent holding that the applicant was unauthorisedly in occupation of the said quarter from 1.9.1993 to 6.8.1995 and that he was liable to pay damage rent at the rate of Rs. 3383/ per month are set aside. The respondents are directed to collect from the applicant only the normal rate of licence fee till date of his retirement and to recover the licence fee from the date of his retirement till he vacated the quarter at the rate as specified by rules. The matter shall be so settled and the retiral benefits of the applicant disbursed to him making deductions, if any, on account of the licence fee as stated above within a period of two months from the date of a copy of this Order.

There is no order as to costs.


(A.V. Haridasan)
Vice Chairman (J)

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