

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A.W. No. 1162 of 1995 Decided on: 16.2.96

Shri Yag Dutt Gaur & AnotherApplicant(s)

(By Shri D.R. Gupta Advocate)

Versus

U.O.I. & AnotherRespondent(s)

(By Shri J. Banerjee, proxy Advocate)
counsel for Shri Madhav Panikar, Counsel

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1162 of 1995

New Delhi this the 16 day of April, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Yag Dutt Gaur
S/o Late Shri Jai Devo Sharma
R/o House No.40, Mangase Pur,
P.O. Qutab Garh,
Delhi-110 039.
2. Smt. Bharpati Devi
W/o Late Shri Jai Devo Sharma,
R/o House No.40, Mangase Pur,
P.O. Qutab Garh,
Delhi-110 039. ..Applicants

By Advocate Shri D.R. Gupta

Versus

1. Director of Printing,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. The Manager,
Government of India Press,
Ring Road,
Maya Puri,
New Delhi-110 064. ..Respondents

By Shri J. Banerjee, proxy counsel for Shri Madhav Panikar, Counsel

ORDER

Hon'ble Mr. K. Muthukumar

This application is directed against the impugned order of the respondents dated 9.3.1995 and subsequent reminders thereto directing the applicant to deposit a sum of Rs.43,174/- towards damage rent for the period from 3.4.1993 to 12.1.1995 (date of vacation) in respect of the quarter allotted to the husband of applicant No.2. This application is also joined by the son of the

h

deceased Government employee as applicant No.1.

2. The brief facts in this case are as follows. Shri Yog Dutt Gaur, who was working as a Mono Caste Operator in the Government Press in Delhi died in harness. On 3.6.1992, the applicant No.2 requested for compassionate appointment and this having not been agreed to by the respondents, had approached this Tribunal earlier in O.A. No. 853 of 1993. The above application was disposed of with the direction to the respondents to reconsider the case of the applicant for compassionate appointment. Accordingly, the applicant No.1 was informed that his case would be considered in turn for compassionate appointment. In the meanwhile, the applicant also requested for retention of Government accommodation allotted to the father of the applicant. It is alleged that the respondent did not communicate that decision in regard to the retention of the quarter. The applicants, however, continued to retain this accommodation and had vacated the accommodation on 12.1.95. This retention of the accommodation finally resulted in the issue of the impugned order issued by the respondents charging them damage rent for the period from 3.4.93 to 12.1.95. The Tribunal by its interim direction on this application had directed that the legal heirs of the deceased Government employee, namely, applicant No.1 and 2 would deposit licence fee at the rate it was being paid by the deceased employee upto the date of vacation of the quarter pending disposal of the O.A.

3. The applicants have assailed the impugned

orders on the following grounds:

(i) The applicants are entitled to retain the accommodation on payment of normal licence fee in terms of the judgment of the Apex Court in Smt. Shilpi Bose & Another Vs. Union of India.

(ii) The respondents themselves had been allowing retention for 2 years from the date of death of the deceased Government servant and had not been charging any damage rent for the said period in the light of the decision in Phoolwati's case.

(iii) Since the respondents have agreed to consider the case of the applicants for compassionate appointment and have also included the name of the applicant No.1, the applicants are entitled to retain the Government accommodation till they are so appointed.

(iv) The respondents have not followed the statutory procedure prescribed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and no show cause notice was given.

4. In the light of the above, the applicants have prayed for quashing of the impugned order and for direction to the respondents to charge only the normal licence fee in respect of the quarter retained by them.

5.. The respondents have contested the averments made in the application. The respondents contend that in the order passed in O.A. 853 of 1993, there was no specific direction in regard to the Government quarter which was retained by the family of the deceased Government employee. They have also relied on the decision of the Apex Court in L.I.C.

W

64

Vs. Asha Ramchandran Ambedkar and Others and also the judgment of the Tribunal in the case of Smt. Kulwant Kaur in O.A. No. 2367/94. The respondents contend that the applicants have unauthorisedly retained the quarter for more than 2½ years and, therefore, the applicants are bound to pay damage rent or penal charge amounting to Rs.43,174/- out of which they have deposited a sum of Rs. 1879/- on the basis of the interim direction of the Tribunal and the balance damage charges are recoverable. The respondents contend that notices dated 1.12.94 and 19.12.94 were also followed through notice dated 14.6.95. This, however, has been denied by the applicants in the rejoinder and they contend that the necessary statutory procedure prescribed for the purpose have not been followed in this case. The respondents also contend that the normal period of retention of Government quarter in such cases is only one year and, therefore, any retention beyond this period is not admissible in any case. The respondents have also denied the plea of the applicants that they are in indigent circumstances in as much as the widow has received terminal benefits of Rs.1,09,244/- and is also in receipt of family pension of Rs.1200/-p.m. and, therefore, contended that the applicants have to deposit the balance amount of penal rent. It is also contended that the penal rent has been levied as per the norms as decided by the Directorate of Estates and there is no ambiguity in the calculation of the licence fee.

6. The learned counsel for the applicants

U

argued on the pleadings. He pleads that the only question to be decided is regarding the quantum of damage rent to be levied on the applicants and submits that the damage rent cannot be excessive and has also argued that the compassionate appointment is on the grounds of equity. The charging of excessive damage rent in respect of the bereaved family would be unjust and in the circumstances where the applicants had retained the accommodation, when compassionate appointment had also been promised, it would be fair only if the normal licence fee was recovered. He also strongly pleads that the respondents have not followed the procedure prescribed as no notice has been given to the applicants.

7. I have heard the learned counsel for the parties and have also perused the record.

8. In regard to the question of retention of accommodation, reliance of the applicants on the decision in Shilpi Bose's case is somewhat misplaced in as much as in that case their Lordship had given that specific relief only in respect of the petitioner in that case. It cannot be construed that retention of quarter for 2 years has been allowed as a general rule or law by the Apex Court. As per the provisions of Office Memorandum dated 20.07.95 annexed by the respondents at Annexure R-1, the permissible period of retention in the case of death of the allottee is only 12 months. Even in Shilpi Bose's case, the Apex Court had allowed accommodation for 2 years on normal rent and had rejected the prayer for retention till appointment

h

(H)

on compassionate basis. The instructions issued by the respondents under SR 317B 11(2) vide their circular dated 20.07.92 still holds good and have not been struck down.

9. In the circumstances, I am of the considered view that the applicants have not made out a case for retention of the accommodation beyond a period of one year on payment of normal licence fee and, therefore, they are liable for the payment of penal rent/damage charges beyond this period of 12 months. It is an admitted position that the Government servant died in harness on 3.6.92. Accordingly, the respondents are entitled to recover damage charges from 3.6.93 to 12.1.95. However, the respondents have proposed damage charges from 3.4.93 itself, which cannot be sustained. In the light of the foregoing the application is disposed of with the direction to the respondents to consider recovering penal rent/damage charge from 3.6.93 to 12.1.95 instead of from 3.4.93 to 12.1.95, as mentioned in the impugned orders. In the circumstances, there shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

RKS