CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.132/96

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

New Delhi, this 28th day of August, 1996

1. Shri Amitabh Kumar
s/o Shri Ambika Prasad
working as L.D.C. in
Cabinet Secretariat
NEW DELHI
r/o at Sector - III/1075
R.K.Puram
NEW DELHI.

2. Shri Ambika Prasad
s/o Shri Gopi Nath
retired as Section Officer
from Cabinet Secretariat
NEW DELHI
r/o Sector-III/1075
R.K.Puram
NEW DELHI. ... Applicants

(By Shri B.Krishan, Advocate)

Versus

1. Director of Estates
Directorate of Estates
4th Floor 'C' Wing
Nirman Bhawan
NEW DELHI.

2. The Estate Officer
Directorate of Estates
4th Floor 'B' Wing
Nirman Bhawan
NEW DELHI. ... Respondents

(By Shri Ms. Aparna Bhatt, Advocate)

ORDER

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

In this application, the eviction order dated 14.12.1993 passed by the Estate Officer under case No.EC/256/ADM/LIT/93 TC directing the applicants to vacate the quarter No.1075, Sector-III, R.K.Puram, New Delhi and the levy of damage rent in respect of the same premises on account of overstay are being challenged.

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2. The facts of the case in brief are that the Applicant No.2, Shri Ambika Prasad retired from the post of Section Officer in the Cabinet Secretariat w.e.f. 28.2.1987. His sone Shri Amitabh Kumar, Applicant No.1 secured an appointment as Lower Division Clerk(LDC) in the same office i.e. Cabinet Secretariat w.e.f. 25.2.1987. The Government accommodation allotted to Applicant No.2 belongs to Type-C while Applicant No.1 was entitled to allotment of only Type-B accommodation. The case of the applicants' is that Applicant No.1 was entitled for ad-hoc out of turn allotment for Type-B since he fulfilled all the conditions prescribed for such an allotment on the retirement of his father and the applicants were entitled for retaining the existing Government residence till such time the alternative one was allotted to the Applicant No.1 on payment of licence fee on normal terms. The grievance of the applicants is that though Applicant No.1 applied for allotment of Type-B accommodation, in the prescribed form and complete in all respects vide his application dated 1.3.1987 immediately on retirement of his father, and the same was duly forwarded to the Respondent No.1 by the concerned administrative authority, no action thereon was taken until a clarification was sought vide letter dated 3.1.1991 (Annexure A4). The Applicant No.1 promptly rectified the discrepency on 20.2.1991, but the Respondent No.1 neverthless, continued to send reminders vide letters dated 22.11.1991, 3.1.1992, 25.2.1992 and 10.8.1993. The Applicant No.1 also continued to send clarification till his reply dated 23.8.1993 was taken note of by the Respondent No.1; only thereafter, a

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sanction was accorded for allotment of Type-B accommodation in the aneme of Applicant No.1 but a condition was imposed that damage rent at the rate of Rs.928/- per month should be first deposited before possession letter could be handed over. Respondent No.2 also served a notice dated 7.10.1993 upon the applicants to show-cause as to why an eviction order should not be passed against them. This was also replied to on 25.10.1993 but without considering the said reply of the applicant, the impugned eviction order dated 14.12.1993 was passed (Annexure A13). The applicants thereafter filed an Original Application No.2735/93 before this Tribunal and also obtained an interim order to continue in the present residence. Simultaneously, the applicants also approached higher authority for intervention and on their assurance of a favourable action, they withdrew the aforesaid OA which was disposed of vide order dated 23.5.1995 with liberty to challenge if any final order is passed and or if there is any existing order for payment of any amount of damages. This assurance of the higher authority resulted in the allotment of Type-B accommodation vide respondents' letter dated 1.7.1994, on the condition already mentioned that the arrears of rent if any on account of the present quarter will be recovered in advance in lumpsum. The applicants submitted a representation, regarding this condition stating that they were not liable to pay any damage rent as Applicant No.1 had not been allotted the alternative accommodation to which he was entitled, as also because Applicant No.1 was holding a job which entitled him to rent free

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accommodation from the date of his initial appointment. The decision to allot Type-8 accommodation resulted in the offer dated 22.8.1994 of Quarter No.51, Sector -IX, R.K.Puram, New Delhi. But as the applicants did not comply with the demand of arrears of rent to the extent of Rs.1,01,145/- the occupation slip was not issued. The applicants followed up with a number of representations between 15.9.1994 to 13.7.1995. The respondents thereafter allotted another Type-8 accommodation bearing No.439 in Sector-VIII, R.K.Puram vide their letter dated 16.11.1995 though with a revised demand of Rs.1,34,365/- towards the arrears of rent. This led to further representations by the applicants and also an interview with the Minister-in-charge for his intervention. Despite this, the demand of arrears of rent was increased to Rs.1,39,682/- while alloting another accommodation No.287 in Sector-V of R.K.Puram. The applicants state that this time they filed another representation dated 9.1.1996 with the request that the demand of damage rent may not be insisted upon and instead, whatever was legally recoverable may be allowed to be paid in easy instalments. The applicants state that instead of considering the representation, the respondents threatened that in case the present accommodation is not vacated, the applicant shall be evicted by use of force and no further allotment shall be made.

The respondants have alleged that the applicants are being discriminated as a number of similarly placed Government employees have been allotted alternative accommodation without charging even a single paisa on account of damage rent. They also plead

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that as Applicant No.1 is entitled for rent free accommodation, he is not liable to pay even the normal rate of licence fee for the existing accommodation. It is also pleaded that the applicants are entitled to retain the existing accommodation on normal rent in terms of Office Memorandum (OM) dated 01.05.1981 read with OM dated 9.11.1987 of the respondents and that, even otherwise, the Estate Officer could not undertake the assesment of the damage rent without following the due process of law under the Public Premises Act, 1971 (hereinafter called the PP Act). The applicants, therefore, seek a direction to the respondents to allot a Type-8 accommodation in favour of Applicant No.1 and to quash the demand for damage rent in respect of the previous residence and also to quash the eviction orders dated 14.12.1993.

3. The respondents controvert the above allegations. They state that the allotment of the existing quarter was cancelled after allowing the concessional period of four months prescribed under the rules. The application of Applicant No.1 for ad-hoc allotment for Type-8 accommodation was not properly verified by the applicant and the same was returned on 02.01.1991 and though it was followed by various reminders, the application was finally received by the department in the proper form only on 18.2.1994. This was followed by various allotments of Type-8 accommodation to which the respondents have referred. It is the case of the respondents that the applicants

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are unauthorised occupants of the existing residance and as such they are liable to pay the damage rent. The respondents have denied that the applicants have been discriminated in comparison with the similarly situated other Government employees since the cases of those cited by the applicants are stated to be of different nature. It is also contended that the eviction order passed after issue of a notice is legal and is in order. As regards the calculation of damages rent it is claimed can be done by the department and the Estate Officer comes into the picture only if the recovery proceedings are initiated.

4. I have heard the arguments of the learned counsel on either side. Learned counsel for the applicants in his argument, has reiterated at length the pleadings of the applicants. He also argued that the concession of ad-hoc allotment to the dependents was a concession by way of a welfare measure, and where the dependent was entitled to the same category, the existing allotment could be regularised otherwise an alternative ad-hoc allotment of the entitled category was to be made. He submitted that if there was a delay on the part of the concerned authorities, in making the alternative allotment, to the eligible relative of the retiree official, for no fault of the original allottee or his relative, then clearly the retired officer was entitled to hold on to the previously allotted accommodation since, otherwise, the welfare measure would lose its very objective and become meaningless. He submitted that such retention/occupation could

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not be regarded as unauthorised. The learned counsel for the applicants relied on the Judgment of this Tribunal in O.A.No.413/94 (Shri R.P.Sharma Vs. Union of India) and said that the present case was also squarely covered by that Judgment and the applicants in the present case should also be charged normal licence fee for the period of overstay. He further argued that as per the Government of India orders under SR-317-B quoted in Swamy's Fundamental Rules (Edition No.12 in page 380-381) licence fee/damages will have to be paid by the retired Government employee if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony where the retired official was having the accommodation. In the present case no such restriction was sought by the applicants, and the delay in alternate allotment had not taken place on that account. Learned counsel for the applicants also pointed out that though the Applicant No.1 had submitted his application for allotment of alternative accommodation immediately on the retirement of his father, the respondents sat over it and considered the application only to raise queries three years later in 1991. Even then the information submitted by the Applicant No.1 was not taken into account and instead reminders were kept being sent till 1993, even alleging, at one time, that Applicant No.1 was not a government employee in the Cabinet Secretariat. The learned counsel said that the queries of Respondent No.2 (Directorate of Estates) were sent to one wing of the Cabinet Secretariat while

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the Applicant No.1 was working as Lower Division Clerk in a different wing, located in a different place. In the circumstances, the delay in allotment of accommodation was totally on account of the negligence and lethargy of the respondents, which left no choice for the applicants consisting of a large family, but to continue in the old allotted premises. The Applicant No.1 had accepted all the four allotments but the possession was refused by the respondents in all cases because of the non payment of damage rent which was also calculated on a basis which was not revealed for the applicants and which was in any case not legal and in accordance with the rules laid-down for that purpose.

5. Having given careful consideration to the pleadings on record and the arguments of the counsel on either side, I am unable to find any merit whatsoever in the application. It is correct that the facility for ad-hoc allotment to the dependant Govt. servant is available under the Rules issued by the Government from time to time. However, the right to continue in the old allotted accommodation of the retiring official, even after his retirement, and cancellation of the allotment, does not subsist after the expiry of the prescribed period and is not related to the concession accorded to the dependants either by way of regularisation or by ad-hoc allotment of alternative accommodation for his son or daughter. The retiring official may nominate one of his children who is a Government employee and is otherwise eligible for such an ad-hoc allotment and this allotment may be given by the respondents if the prescribed conditions

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are met. But there is nowhere any provision in the Rules that the retiring official can continue to stay in the old allotted quarter even after his retirement till his nominated son- or daughter gets regularisation or obtains an alternative accommodation. If the retiring official continues to stay in the premisss even after the cancellation, he would be liable to pay the penal rent under the relevant rules and would also be subject to eviction under the Public Premises Act, 1971. Once the allotment has been cancelled then the continuation of the old allottee in the premises can only be termed "unauthorised". Section 2(3)(g) of the Public Premises (Eviction of unauthorised Occupants) Act, 1971 defines that "Unauthorised occupation", in relation to any public premises, means the occupation by any person of the public pramises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant of any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. After cancellation of allotment, the Applicant No.2 they clearly became an unauthorised occupant. I also do not agree with the contention of the learned counsel for the applicants that the ratio of O.A.No.413/94(Supra) applies to the present. No where in that Judgment has it been held that the retiring official is entitled to hold the old accommodation after the allotment has been cancelled. The Judgment shows that it was urged before the Hon'ble Member as to whether the applicant therein should be declared as unauthorised occupant of the Government quarter allotted in the name of his

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father from the date of consideration till the date of the allotment of alternative occupation in the name of sone of the retiree and thus be liable to pay damages for that period. No finding on this issue was however given. But in the facts and circumstances of that case, it was held that the Minister-Incharge endorsed the out of turn allotment whereby it should be deemed that he had relaxed all the conditions and therefore, the applicant should be charged only normal licence fee in terms of the respondents' letter dated 18.5.1992. There are no such directions of the Minister-Incharge in the present case.

6. The reference made by Shri B.Krishan, learned counsel for the applicants to Government of India orders quoted at page 380 of Swamy's Fundamental Rules (SR-317-B) also do not support his contentions "that damages will be paid only if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony (Para-7). In this context, it would be worthwhile following the above quotation by quoting Para-8 also:

> "Para-8: All the dues/outstandings in respect of the quarters in occupation of the retired Government servant should be ~~xxxxxxxxx~~ cleared, after which the allotment to the dependant/relation will be considered. Where arrears are due from retired persons, a statement indicating arrears due should be furnished to the dependant and he should be asked to furnish a certificate regarding payment of licence fee/damages from the office where the official was working during the period such arrears were due, in case recovery has already been made or should be asked to make payment of the amount and this should be stipulated as a condition in the letter sanctioning ad-hoc allotment."

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7. Clearly, therefore, in the very nature of this concession and the Government orders thereon, no right accrues to continue in the cancelled accommodation till the allotment of alternative accommodation to the ward of a retired official. In the present case the Applicant No.2 retired on 28.2.1987. The allotment of his accommodation was cancelled w.e.f. 30.6.1987. There is therefore, a liability to pay the damage rent from 1.7.1987 till the date of eviction or surrender of the unauthorised retention.

8. The learned counsel for the applicants submitted that the respondents took three years to even raise their first query on the request of allotment of alternative accommodation for Applicant No.1. On their own ~~task~~ part, the applicants have not spoken of a single reminder or any effort on their part till 1991 to follow up their application. Even later when reminders were being received from the Respondent No.2, it would have been the easist thing for the Applicant No.1 to visit the office of the Respondent No.2 and get the matter settled. Going through the pleadings on record one is left with the impression that the applicants deliberately wanted to delay the allotment of the alternative accommodation. This can be clearly inferred from the fact that in the various recommendations which they secured from VVIPs, the plea made was that the Applicant No.1 should be allotted the same accommodation by giving him allotment of one category above that of his entitlement. Thus, in his representation to the Minister dated

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15.7.1994(Annexure A17), Applicant No.2 writes as follows:

> "In between, six VVIPs came to rescue by way of their recommendations (ann:B-1 to B-7). Hon'ble Shri S.K.Shinda desired for allotment of existing quarter in the name of my son - Amitabh Kumar.
>
> Hon'ble Shri Jagdish Tytler recommended for regularisation of this quarter in son's name on over-riding priority as a special case (keeping in view my clinical research of international significance)."

A similar impression is also given by reading his representations to the Minister of State (Urban Development) dated 15.9.1994 (Annexure A23) and one dated 6.10.1994 (Annexure A25) wherein he represents to the Minister that "the alternative is your authority's discretion to regularise the existing accommodation on prescribed rental as has been done in various other cases"(emphasis supplied).

The recommendatory letter from Shri Sushilkumar Shinda, M.P., General Secretary of All India Congress Committee (I) dated 31.5.1995 (Annexure A26) also speaks of orders of regularisation of the existing accommodation in line with the other cases where one step higher have been allotted.

9. Learned counsel for the applicants also sought to take help of Order No.12035(14)/82-Pol.II (Vol.II)(i) dated 9.11.1987 (Annexure A2) in Para viii) which states that "the date of regularisation should be from the date of cancellation in case the eligible dependant is already in Government service and is entitled for regularisation and not from the date of issue of the orders which was the practice being

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followed till now." This order would in any case be not applicable since the question is not one of regularisation of existing allotment but of alternate accommodation.

10. The learned counsel for the applicants cited the case of Minoo Framroze Balsara Vs. Union of India & Others (AIR 1992 Bombay 375) in which it was held that the Estate Officer must be satisfied that Public Premises are in unauthorised occupation and that the person in unauthorised occupation should be evicted and that he must have formed opinion on both counts. The learned counsel sought to establish that declaration of a person in unauthorised occupation need not automatically lead to eviction unless the Estate Officer also concludes that the unauthorised occupant should be evicted. In the present case, it was incumbant upon the Estate Officer to consider the circumstances of the applicants as shown in their representation in reply to show-cause notice and thereafter pass a speaking order regarding eviction.

11. The pleas regarding non allotment of alternative accommodation and refusal to pay the damage rent in order to avail of the alternative accommodation ultimately offered from 1994 onwards are clearly vitiated due to the desire of the applicants to continue in the existing accommodation. Thus, one way or the other the applicants are

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continuing in Accommodation to which Applicant No.1 was no longer entitled. Thus, not only the facts in the above cited case are different, I am of the view that after the applicants have been given an opportunity to show-cause it is not necessary for the Estate Officer to meet each and every point once the applicants are established to be unauthorised occupants.

12. The learned counsel for the applicants also took the alternative stand that in case the eviction order is upheld, the second plea regarding the calculation of damages rent may be taken note of. He argued that the applicants have not been furnished any details regarding how the recoveries have been calculated. In this context, the learned counsel drew my attention to Circular No.18011(12)/73-Pol.III dated 27.8.1987 reproduced in Swamy's - Fundamental Rules at FR 45A and OMs dated 1.4.1991 and 23.4.1991 reproduced in Page 197 to 198 in Swamy's Fundamental Rules. He pointed out that formerly fixation of damage rate for licence fee in terms of OM dated 31.7.1976 (Memo No.18/11/12/73-Pol.I) was three times the market rate of licence fee. Thereafter from 1.9.1987, a damage rent of Rs.20/- per sq. mt. for Type A to D was fixed and this was revised to Rs.40/- from 1.4.1991. It was also made clear that the revision of 1.9.1987 would be applicable to the unauthorised occupation commencing from 1.9.1987. The learned counsel submitted that since the unauthorised occupation would be deemed from June, 1987 only, prior to 1.9.1987, the orders applicable would be those in OM dated 31.7.1976. I find,

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however, that the orders dt. 1.4.1991 specifically provide that even in old cases where the unauthorised occupation existed prior to 1.4.1991 damages at Rs.40/- per sq. mt. will be recovered from 1.4.1991. The respondents contend that the damages have been properly calculated though, no details of calculations have been furnished. However, I am not inclined to go into this aspect and to give any directions since the applicants have not made this an issue in the representations made by them before the respondents. Learned counsel for the applicants' argument is that this is implied when they contend in their representations that they are ready to pay the legal rent. I find this argument somewhat specious since the applicants have been harping only on the question of regularisation and charging of normal rent which they claim is the 'legal' rent which they have to pay. It is open to them to take up now this matter with the respondents but they cannot make this observation a plea to continue to occupy the premises in question or claim to take the possession of the alternative accommodation without paying the damage rent as calculated and demanded by the respondents.

13. In the result and in the light of the above discussion, the application is dismissed. There is however bø no order as to costs.

(R.K.AHOOJA)
MEMBER(A)

/RAO/