

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1316/96
T.A. No.

199

(9)

DATE OF DECISION 28.10.1996

Dr. S.P. Balu

Petitioner

Sh. B. Krishan

Advocate for the Petitioner(s)

Director of Estates and Ors.

Versus

Respondent

Ms Aparna Bhatt

Advocate for the Respondent

CORAM

The Hon'ble Mr.s Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi S.

(Smt. Lakshmi Swaminathan)
 Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1316/96

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New Delhi this the 28th day of October, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Dr. S.P. Balu,
S/o Shri K.C. Balu,
15/282, Lodhi Colony,
New Delhi.

...Applicant.

By Advocate Shri B. Krishan.

Versus

1. The 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 Advocate Ms Aparna Bhatt.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order dated 22.5.1996 issued by Respondent 1 rejecting his request for regularisation of allotment of the Government Quarter No. 15/282, Lodhi Colony, on his reposting to Delhi. He has also challenged the action of the respondents in sealing the premises, in question, on 13.3.1996 on the basis of the eviction order dated 1.2.1995. The impugned orders are at Annexures A-1 and A-2.

2. The brief facts of the case are that the applicant was allotted the aforesaid quarter while he was posted at Delhi. He was transferred out of Delhi w.e.f. 12.12.1993 and in accordance with the rules his allotment was cancelled w.e.f. 12.2.1994.

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by respondents letter dated 16.8.1994 in which they have also stated that the applicant will also be liable for payment of damages for the period of over stay. The applicant was reposted to Delhi and he assumed charge as Medical Officer on 30.5.1995 and was shifted to the Central Government Health Scheme by order dated 17.10.1995. According to the applicant, he assumed charge in CGHS on 14.12.1995. He submits that both the Directorate of Health Services as well as ⁱⁿ the CGHS ^{are} eligible for allotment of general pool accommodation. He submits that while his application for regularisation of allotment of the Quarter was under consideration, he was evicted from the said premises on 13.3.1996 on the basis of the eviction order dated 1.2.1995.

3. The applicant has earlier filed O.A. 618/96 which was disposed of by order dated 17.4.1996. In terms of that order, the applicant was allowed to remove his personal effects from the quarter. There was also ^a further direction that till such time such representation of the applicant is disposed of, the quarter, in question, will not be allotted to anybody else. The applicant submits that the quarter is still lying in the same position, as it has not been allotted to anybody else. The applicant has assailed the impugned orders on the ground that the respondents have adopted pick and choose policy in regard to allowing regularisation on reposting. Apart from some of the cases where the Tribunal has ordered the regularisation of the allotment of the quarter on reposting, the learned counsel for the applicant relies on the judgements of the Tribunal in Dr. Neena Diwan Vs. Union of India & Ors. (O.A. 2004/93), R.C. Jhumtani Vs. Union of India & Ors., O.A. 999/89 and Mohan Chandra Pandey Vs. Union of India & Ors. (O.A. 510/89). Therefore, ^{8.} he has submitted that the rejection letter is discriminatory

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and that he has not been given an opportunity of being heard before the eviction order was passed on 1.2.1995. The respondents have filed a reply to which a rejoinder has also been filed by the applicant.

4. The respondents have in their reply submitted that the rejection of the applicant's request for regularisation on reposting has been rejected correctly as his date of priority has not been covered for allotment of the accommodation. According to them, the applicant's date of priority was February 14, 1985 whereas what is covered by the existing date of priority is October 26, 1964. Hence, the applicant's representation was rejected. They have also stated that in accordance with the order of the Tribunal dated 17.4.1996, the applicant was allowed to remove his personal effects from the quarter. They have also submitted that in accordance with the Tribunal's order they have passed a speaking order dated 22.5.1996 giving the reasons for the rejection. They have also explained that the fact that the applicant is reposted in Delhi does not by itself entitle him for regularisation of the quarter in his name. They rely on the O.M. No. 12035/21/95-P1/II dated 4.12.1995. They have also submitted that in accordance with the rules, the applicant is required to pay the arrears of damages in respect of Type 'C' quarter which has been unauthorisedly retained by him from 12.2.1994. They have also submitted that the O.M. dated 1.8.1988 relied upon by the applicant (Annexure A-13) applies to only those cases which were pending as on 20.6.1988 and the O.M. applicable to this case is the O.M. dated 4.12.1995. They have also explained the circumstances and the reasons for regularisation of the quarter in the cases referred to in Para 4.12. of the O.A, namely, on the ground that at the time of regularisation the persons had become entitled

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for allotment of the Government quarter except in one case, that is, Dr. Neena Diwan's case (O.A. 2004/93 -supra), whose allotment had been regularised in pursuance of the order of the Tribunal dated 3.8.1994. They have also submitted that the eviction order has been passed as per the prescribed procedure under the allotment rules and the provisions of the Public Premises Act, 1971 and in compliance with the principles of natural justice.

5. I have considered the record and the submissions made by the learned counsel for both the parties.

6. Apart from relying on the aforesaid three judgements of the Tribunal, Shri B. Krishan, learned counsel for the applicant urged that in terms of Para 1 of the O.M. dated 4.12.1995 which shows that regularisation of allotment of Government residences had been allowed in the names of the allottees on their reposting, irrespective of the dates of priority having been covered on these dates, his case may also be considered on these lines. This submission cannot be accepted, as a perusal of the O.M. dated 4.12.1995 shows that the practice of regularisation of allotment of general pool residences in the names of unauthorised occupants, on their reposting to the station at which the accommodation was originally allotted on payment of damages, irrespective of the fact whether date of priority on the date of reposting was covered or not, has been ^{actually} ~~disapproved~~. Hence, the matter has been reviewed and it is clearly stated in para 2 of the O.M. that it has been decided that pending cases of unauthorised retention of Govt. accommodation ^{may not be regularised} even on payment of damages till their date of priority ^{gets} covered for the allotted accommodation. It is clear from para 1 of the O.M. that in a large number of cases, the officers who get transferred out of Delhi

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do not vacate their allotted accommodation even after the expiry of the permissible retention period and also fail to intimate the respondents in time and only comes to their notice when they apply for regularisation of the allotted accommodation on their reposting. Para 3 of the O.M. further requires the authorities to initiate action under the P.P.E. Act, 1971 immediately after expiry of the permissible retention period in case of officers whose retention period is already over. In this case, it is seen that the respondents had cancelled the allotment of the quarter after the permissible period by letter dated 16.8.1994 w.e.f. 12.2.1994. The applicant has not disputed the respondents statement that his date of priority for Type 'C' general pool accommodation is 14.2.1985 whereas the running date is 26.10.1964. The applicant's contention that the date of priority should be given a go-bye in his case merely because certain other persons have been allowed previously which was contrary to the existing instructions, as is apparent from the O.M. dated 4.12.1995, cannot be accepted as this would lead to arbitrary exercise of power de-hors the rules and instructions. It is well settled that any action that might have been taken previously in contravention of the rules through inadvertence or for any other reason, does not give the applicant any enforceable right that such contravention of the rules/instructions should also be extended to him. Such a plea of discrimination can only be taken to enforce what is legally right and not otherwise. This plea is, therefore, rejected.

7. I have also seen the three judgements relied upon by the applicant. In the case of Dr. Neena Diwan (supra), the Tribunal had ordered regularisation of the quarter on her reposting taking into account the other two judgements and the fact that the applicant's transfer was, in fact, issued on 17.6.1988 though she was actually relieved only on 30.6.1988 due to administrative exigencies. In the circumstances, the Tribunal noting that since there was delay of about 10 days and that too not on the part of the applicant, the respondents were directed to regularise the

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quarter. That case had been considered in terms of the O.M. dated 1.8.1988 which had clearly stated that the instructions thereunder will apply only to such cases which were pending as on 20.6.1988 but in future cases, the respondents were required to take expeditious action to get the premises vacated of the unauthorised occupants. Therefore, that case will not be applicable to the facts in this case. In the case of R.C. Jhumtani (supra), the Tribunal came to the conclusion that there is a substance in the contention of the applicant, on the ground of discrimination which again is not the situation here. This case was decided on 17.10.1989 i.e. prior to the O.M. of 4.12.1995 which is the applicable O.M. and this case also cannot assist the applicant. In the third case of Mohan Chandra Pandey (Supra), which was decided on 27.8.1989, the Tribunal has stated that the cases have been decided in view of the special circumstances. I, therefore, reject the claim of the applicant that his case may be decided in accordance with these judgements as the facts and the relevant law applicable are entirely different.

8. I have also considered the other pleas taken by the applicant but find no merit in the same. The applicant is not entitled for regularisation of the quarter contrary to the relevant rules and instructions and in particular O.M. dated 4.12.1995. In that view of the matter, the impugned order of eviction dated 1.2.1995 is also in order.

9. In the result, I find no merit in this application and it is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'