

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No.1493 of 1996 decided on 3rd July, 1997.

M.M. Saxena & another
(By Advocate : Shri O.P. Sood)

...Applicants

vs

NCT of Delhi & Ors.
(By Advocate : Shri Raj Singh)

...Respondents

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES/NO

2. Whether to be circulated to other Benches
of the Tribunal? YES/NO

Narasimha
(N.SAHU)
Member(A)

Central Administrative Tribunal
Principal Bench
New Delhi

OA 1493/96

(A)

New Delhi this the 3rd day of July 1997.

Hon'ble Mr N.Sahu, Member (A)

1. Mr M.M. Saxena
S/o Mr H.P. Saxena
C-12, Mir Dard Lane, Type-III
M.A.M. College, Campus
New Delhi - 110 002.Applicants.

2. Mr Sanjiv Saxena
C/o Applicant No.1

(By advocate: Mr O.P.Sood)

Versus

National Capital Territory of Delhi through

1. Secretary
Ministry of Health
Old Sectt., Delhi.

2. Joint Secretary (Medical-I)
Estates Cell
1, Jawahar Lal Nehru Marg
New Delhi-110 002.

3. Director/Principal
Maulana Azad Medical College
Bahadur Shah Zafar Marg
New Delhi - 110 002.Respondents.

(By advocate: Mr Raj Singh)

O R D E R

Hon'ble Mr N. Sahu, Member (A)

The applicant seeks a direction to set aside the order dated 22.5.96 issued by respondent No.2. In this order, respondent No.2 levied market rent @ Rs.2368 + Rs. 15 p.m. as water charges amounting to Rs. 11905/- for the period from 1.12.95 to 30.4.96 on the ground that applicant No.1 did not vacate quarter No.C-12, Mir Dard Lane, Type III, Maulana Azad Medical College Campus, New Delhi, although he retired from government service on 31.7.95 and he was permitted to retain the said accommodation for a period of 4 months after the retirement. The second part of the impugned order informed the

applicant that the case of regularisation of the accommodation in the name of his son, applicant No.2 has been considered and rejected. Further relief prayed for in this OA is to make ad-hoc allotment of eligible accommodation to applicant No.2 and till then to allow the applicants to stay in the existing accommodation on normal rent. On 16.8.96 a Bench of this Tribunal ordered status quo, but with regard to recovery of damage rent, this court did not interfere. This order continued till date.

2. The undisputed facts are that the applicant No.2, the son was appointed as a Laboratory Attendant in Maulana Azad Medical College (MAMC) on 6.1.1995. His father, applicant No.1 was employed in the same college. Admitted fact is that since his appointment, applicant No.1 was not paid any house rent allowance on the ground of his dependency and residence with his father. The applicant submitted a representation on 16.10.95 requesting adhoc allotment in the name of his son. No reply was received on that letter.

3. In the counter affidavit, respondents contested the applicants' claim on the ground that applicant No.2 was found to be not residing continuously for 3 years preceding the date of his father's retirement and the son joined the government service only a year prior to the retirement. Thus the son was not in service for 3 years before the retirement of his father.

4. In response to this, applicant No.1 filed an affidavit to the effect that Sanjiv Saxena, the son has been residing with his father since his birth and his name duly recorded in the ration card. He studied while staying with his father and passed his secondary and senior secondary school examinations. A certificate to that effect was filed.

5. Besides a mere statement, respondents have no material to rely that the son was not continuously residing for 3 years preceding he

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date of retirement of his father. I accept the statement of the applicant that the son resided with him since his birth and resided with him continuously and not merely during the last 3 years prior to the retirement. The second point has also no relevance. There is no condition that the son should also be serving for a period of 3 years preceding the date of retirement. What the rule says is that the son must be appointed to the government service within a period of 3 years preceding the date of retirement of the government servant. These two grounds on which one part of relief is contested cannot be sustained.

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6. The rule says that the government servant in occupation of a government accommodation retires from the service, his son ~~in~~ in government service may be allotted a government quarter on ad-hoc basis. In this case, applicant No.2, the son is a government servant eligible for allotment of government residence and he filed an application to the authority competent to allot the accommodation. He stayed for 3 years with his father immediately preceding the date of retirement of his father. During the period of his employment, he did not draw any HRA. It is not disputed that the retiring government servant or any member of his family did not own a house in the place of posting of the applicant. The eligible will be allotted government accommodation as per rules provided all dues outstanding in respect of quarter in occupation of the retiring government servant are cleared, after which allotment to dependents will be considered. In this case, the applicant No.2 had already applied on 25.7.95 (Annexure-D) for allotment of a quarter on compassionate grounds because of illness of his father and by Annexure-E dated 16.10.95 for an adhoc allotment of MAMC campus accommodation to eligible dependent. In this petition dated 16.10.95, applicant No.1 only prayed for allotment of an accommodation one type below the accommodation held by

him or any other suitable accommodation. Respondents having processed the case took long time to pass the impugned order dated 22.05.1996.

7. In the concpectus of the facts mentioned above, respondents are directed to comply with the following orders:

- (a) In so far as the applicant prayed for an accommodation on ad-hoc basis and that too one type below, as he has satisfied all the conditions and is fully within his rights, the respondents shall within 3 weeks from the date of receipt of this order, allot a government accommodation on ad-hoc basis and for this purpose, they shall consider the question of arrears or rent due for recovery only as on 16.10.1995, i.e. the date on which the application was made for such allotment;
- (b) If whatever arrears of rent/other dues are due as on 31.10.1995, the same shall be paid by applicant No.1 within a period of one week from the date of receipt of a copy of this order.
- (c) Applicant No.1 shall vacate and surrender the quarter C-12 Type III, M.D. Lane, MAMC Campus, New Delhi within a week of receipt of the ad-hoc allotment order.

8. With regard to impugned order, Annexure-A, dated 22.05.1996, there is no rule which mandates the respondents to allot the same accommodation or regularisation of the same in which the father lived. In this view of the matter, respondents' refusal to regularise the same accommodation cannot be faulted. There is no rule which permits applicant No.1 to continue to stay even after the permitted period of 4 months in the accommodation allotted to the father on the ground that no ad-hoc allotment is made to his son. For continued occupation after the permissible period of four months after retirement, additional rent has to be

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levied as per rules for such unauthorised occupation. Additional levy of rent as per rules does not call for interference. Such an action is approved by the Apex Court in Amitabh Kumar & Anr.

Vs. Directorate of Estates & Anr. -1997(3) SCC 88.

OA is disposed of as above. No costs.

N. SAHU
(N. SAHU)
Member(A)

3/7/97

aa.