

4

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1706/1996

New Delhi, this 19th day of September, 1996

Hon'ble Mrs. Lakshmi Swaminathan, Member(A).

Shri R.L. Mehta  
s/o Shri C.S. Mehta  
161-B, DAD Residential Complex  
Panchvati, Palam, Delhi Cantt. ... Applicant

(Shri S.M. Rattan Paul, Advocate)  
vs.

Union of India, through

1. Secretary  
Ministry of Defence, South Block  
New Delhi
2. Engineer-in Chief  
Army Hqrs., Kashmir House  
New Delhi
3. Asstt. Controller of Defence Accounts  
Area Accounts Office  
Western Command, Delhi Cantt.
4. Station Commander  
Station Hqrs., Delhi Cantt.
5. Garrison Engineer (I)  
R & D, MES  
Lucknow Road, Delhi-54 ... Respondents

(Shri M.K. Gupta, Advocate)

ORDER(oral)

The applicant has challenged the validity of the orders dated 19.6.96 and 18.7.96 issued by R-3 in which his request for retention of qr. No.161-B, DAD Res. Complex, Panchvati, Palam has been rejected and asking him to vacate the same by 30.6.96, failing which he shall be liable to pay damage rent from 1.7.96 till he vacates the quarter.

2. The brief facts of the case are that the applicant was allotted the above said quarter by letter dated 4.3.92 with the condition that the allotment will continue till he remains posted under Defence Accounts

Department (DAD) at Delhi in an eligible office/zone and other conditions as mentioned therein. Admittedly, the allotment was made while he was posted at DAD. The applicant belongs to the Military Engineering Service (MES). He was transferred on 14.8.95 from the office of DAD to the office of Garrison Engineer(I), Lucknow Road, New Delhi (office of R-5).

3. By the Tribunal's order dated 14.8.96, the respondents were restrained from evicting the applicant from the above said quarter.

4. The main submission by the learned counsel for the applicant is that the applicant who is transferred to the office of R-5 should be allowed to continue to retain the quarter in the DAD colony till he is given alternative accommodation by R-5, subject to payment of normal rent. This has been opposed by the Respondents.

5. The learned counsel for the respondents has submitted that it was clearly mentioned in the allotment letter that the allotment will continue till the applicant remains posted under DAD at Delhi in an eligible office/zone. He further submits that DAD office has its own colony of residential quarters meant for Defence Accounts Department employees the allotment of which is governed by Govt. Residences (DAD Pool) Rules, 1986.

6. The applicant has relied on the Army Instructions No.26/1970 which, he states, permit retention of accommodation in big cities when they are posted to nearby stations by recovering rent from the Defence

6

Service Personnel. It provides that civilian personnel, including personnel of the DAD paid from the Defence Services Estimates, and the staff of DGOF organisation who have been allotted accommodation in the cities mentioned therein and their suburbs but who are employed in nearby stations may be permitted to continue in occupation of their quarters on payment of normal rent provided no accommodation is available for them in their new duty stations. The learned counsel also submitted that there is an upper limit to the grant of extension period for retention of the DAD quarters. He has also relied on the judgement of this Tribunal in OA 1965/91 and other connected cases decided on 3.4.92 (copy placed in the file). In this case, the Tribunal has, referring to various orders/rules issued by the Department applicable to the civilian/defence personnel, observed that, "I have not gone through any rule where a defence civilian working in the same discipline, though may be of different branch of army, air force or navy may be asked to vacate the premises unless he is allotted alternative accommodation". It was further observed that "Though MES is a different wing under ENC, yet their service cannot be undermined and if they are serving and providing road lights, fittings, furnishings etc. in the maintenance for the convenience of the forces, then they are to be provided with an accommodation and atleast they cannot be evicted from an accommodation, which they are already occupying unless and until alternative accommodation is provided".

7. The respondents are mainly contesting the claim of the applicant for continuing in the allotted quarter on the ground that he is not eligible to retain the quarter

12.

when he is transferred to ineligible zone, i.e. the office of the Garrison Engineer(I), Lucknow Road. They are not denying the fact that the applicant while posted with R-5 has been detailed to look after the essential services like water supply, electricity, A/C plant in SSPL and that his services can be required round the clock. However, the learned counsel contends that allotment rules of DAD do not provide for retention of the quarter when he is transferred from that office. The learned counsel for the respondents further submits that the Tribunal's judgement relied upon by the applicant is not applicable to the facts of the present case, nor can the applicant rely on the Army Instructions 26/70, as his case is only governed by the DAD-Pool Rules, 1986.

8. I have carefully considered the pleadings, the record and the submissions made by both parties.

9. There is a letter dated 15.6.96 written by the office of R-5 where the applicant is presently posted, stating that the applicant, Supdt. E/M Grade II is still a Key personnel as he has been detailed to look after essential services like water, electricity etc. and as such his service can be required at any time. It is further stated that some key personal quarters are under construction in that Division and will be provided after completion. It is also relevant to note that Shri Girish Kumar, Executive Engineer who has sent this letter on behalf of R-5 has stated that the application made by the applicant for allotment of a key personal quarter to Stn. HQ, Delhi Cantt has not borne any fruitful result. In view thereof, he has requested the

PS:

g

13

office of R-3 to allow the applicant to continue in the quarter in question in Panchwati for a minimum period of six months, i.e. upto <sup>the</sup> end of December, 1996. Respondents No.4 & 5 have, however, not filed any reply.

10. There is no doubt that the statutory rules i.e. the DAD Pool Rules, 1986 cannot be supplanted by the Army Instructions but it is also settled position that instructions can supplement and fill in the gap in the rules (see K.Ch. Venkata Reddy & Ors. U.O.I. (CAT)(FB) 1986-89 Bahri Bros. Page 159). I have also considered the judgment of the Tribunal in OA-1965/91 (supra).

11. In the reply, respondents have stated that after his transfer from DAD to office of Respondent 5 it was not their responsibility to provide him a quarter and that he should, therefore, vacate the quarter. The applicant was transferred to the office of Garrison Engineer(1) on 14.8.95 but by the impugned letter dated 19.6.96 he was asked to vacate the quarter ~~and to pay~~ <sup>by</sup> by 30.6.96. By the other impugned order it was intimated that he will be charged market rent w.e.f. 1.7.96 as he ceased to be key personnel of D.A.D. However, this shows that he had been allowed to stay in the quarter even after his transfer at normal rent.

12. Taking into account the fact that the applicant belongs to MES and his services have been placed under another Department which admittedly comes under the aegis and administrative control of Respondent 1 and the facts and the facts and circumstances of this case, R-2 may consider taking steps for relaxation of the rules in respect of allowing the applicant to continue to stay in

13

the quarter in question for a further period of a little over three months i.e. upto the end of December, 1996 as requested by R-5 at the normal rent and thereafter <sup>the applicant</sup> shall vacate the quarter on or before 31.12.1996. In the meantime, R-5 shall also take appropriate steps in respect of the applicant's representation for allotment of a quarter within this period as per his entitlement and rules. In the particular facts and circumstances of the case the impugned orders dt. 19.6.96 and 18.7.96 are quashed and set aside.

13. The OA is disposed of as above. No costs.

*Lakshmi Swaminathan*

(Mrs. Lakshmi Swaminathan)  
Member(J)  
19.9.96

/gtv/