

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2193/96

105

T.A. No.

(10)

DATE OF DECISION: 26-4-2000

Sh. Gulshan Rai

....Petitioner

Sh. R. Doraiswami

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh. R. P. Aggarwal

....Advocate for the
Respondents.

CORAM

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

The Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

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

Mayur

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 2193/1996

New Delhi this the 26th day of April, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Gulshan Rai,
S/O Shri Devi Dayal
R/O 110-D, Arambagh Qrs.,
New Delhi-110055

Presently working as

OS P-32, Stores Branch,
Hqrs. N.Rly., Baroda House,
New Delhi-1

.. Applicant

(By Advocate Sh.R.Doraiswami)

Versus

Union of India- through

1. Secretary to the Govt. of India,
Dept. of Supply, 'C' Wing,
Nirman Bhawan, New Delhi-11
2. Director General of Supplies and
Disposals, Jeevan Tara No.5,
Sansad Marg, New Delhi-1
3. Ministry of Railways (Rly. Board)
through Executive Director,
Rail Bhawan, Rafi Marg, N/Delhi-1
4. General Manager,
Northern Railway, Baroda House,
New Delhi-1
5. Director of Estates,
Nirman Bhawan, New Delhi-1
6. Estate Officer,
O/O the Estate Officer and
Deputy Asstt. Director of
Estates (Litigation) Dte. of Estates,
Nirman Bhawan, New Delhi-11

.. Respondents

(None for the respondents 1-4)

(By Advocate Sh.R.P. Aggarwal, learned
counsel for Respondents 5-6)

O R D E R (ORAL)

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

The applicant has claimed the following reliefs in the
OA filed under Section 19 of the Administrative Tribunals
Act, 1985:-

- (i) To respondents No.1 and 2 to take back the applicant
as J.P.O. in the cadre post in the DGS&D in which
post the applicant has the lien.

12

12

- (ii) To respondents 3 and 4 to relieve the applicant to enable him to revert back to his lien post in the DGS&D.
- (iii) To quash the wrongful and retrospective allotment cancellation order dated 30.8.96 and allow the applicant to continue in the Central Govt. general pool accommodation, and
- (iv) To pass any other order as deemed fit and necessary to protect the legitimate rights of the applicant including his right to continue in the accommodation on payment of normal licence fee."

2. The brief relevant facts of the case are that after following the policy decision taken by the Government of India to decentralise part of the Central Govt. purchase functions carried on by Respondents 1 and 2 i.e. Directorate General of Supplies and Disposals (DGS&D), the applicant, along with twenty eight other employees of that Directorate were transferred with their posts to various Ministries/Department of the Govt. of India. The policy decision taken by the Govt. of India has also been referred to by the respondents in their reply, as a result of which the employees of the DGS&D were proceeded on transfer to Zonal Railways and ineligible offices of Defence in various places like, New Delhi, Bombay, Calcutta and Madras. The applicant was admittedly transferred along with his post of Junior Progress Officer (JPO) to the Ministry of Railways by Office Order dated 25.3.1992 (Ann. A.2) and he assumed the charge of the post in the Ministry of Railways on 1.4.1992.

3. Following the aforesaid decision of the Govt. of India, the Directorate of Estates had taken a decision on the subject of Govt. accommodation in favour of employees of DGS&D who were transferred to ineligible offices such as Railways and Defence by Office Memo. dated 20.7.95 (Ann. R.1). Shri R.P. Aggarwal, learned counsel for the respondents has submitted that this decision of the Directorate of Estates has been taken under the powers vested with the Govt. of India under SR 317 B-25. In this OM, the Govt. took a decision that in case of ^{the} aforesaid twenty nine employees of DGS&D, including the applicant, who have

proceeded on transfer to Zonal Railways and ineligible offices of the Govt. of India were allowed to retain the Govt. accommodation in their possession for a further period of six months i.e. from 10.5.95 to 10.11.1995. Learned counsel for the respondents has submitted that this, therefore, meant that persons like the present applicant, who had already been allotted the Govt. accommodation by the DGS&D in accordance with the Rules were allowed to retain that accommodation for a total period of 3½ years after their transfer.

4. Shri R.Doraiswamy, learned counsel for the applicant has submitted that while the applicant was working with the Ministry of Railways- Respondent 3, he had requested that he may be repatriated to his parent department i.e. DGS&D in 1995. We find from the reply filed by the respondents 1-4 that as the applicant along with other staff of DGS&D have been transferred to other Ministries/Departments, including the Railways, along with their posts, as such in the absence of the posts in the parent office, repatriation of the applicant or others ~~was~~ not possible. The respondents in their reply have further submitted that the option which has been submitted by the applicant was given at a time when DGS&D, respondent 2, was considering a proposal relating to purely ad hoc promotion against direct recruitment posts of Assistant Director Grade-II (Supply). On a subsequent review of the matter, they have stated that they have decided not to pursue the proposal. This would, therefore, mean that the applicant having been transferred in public interest as a result of ^{the} policy decision taken by the Govt. of India is for letting him to continue with the Ministry of Railways, as the respondents have themselves stated that in the absence of the posts in the parent office, repatriation of the applicant was not possible. It is also seen from the reply filed by Respondents 1-4, that initially all officers and staff, including the applicant were transferred from DGS&D and its Regional Offices to the Railways consequent upon decentralisation of ad hoc purchases are being treated as on ' deputation in a technical sense' pending

(A)

finalisation of terms and conditions in regard to their absorption being settled. They have also stated that "once the terms and conditions of their absorption in the organisation of Ministry of Railways are worked out, these employees are to be permanently absorbed there." This reply has been filed on 21.3.97. As none has appeared for Respondents 1-4 when the case was taken up for hearing today, we are not apprised of the present position of the case regarding the terms and conditions, if any, worked out by the concerned departments for absorption of the employees who were earlier in the DGS&D and having been transferred in public interest in 1992.

5. In the above circumstances, Respondent 5 had issued notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, dated 26.9.99. In this notice, it has been stated that the applicant has been continuing to occupy public premises which stood cancelled w.e.f. 10.11.95. Notice has also been given to the applicant calling upon him to show cause on or before 11.10.96 as to why such an eviction order should not be passed by the Dte. of Estates. Learned counsel for the respondents 5-6 has submitted that in pursuance of their O.M. dated 20.7.95, the allotment of the earlier quarter by the DGS&D in Genl.Pool stood cancelled w.e.f. 10.11.1995. He has relied on the judgements of the Hon'ble Supreme Court in UOI and Another Vs. Wing Commander R.R. Hingorani (1983(1)SLR 479) and the judgement of the Tribunal (Calcutta) in J.K. Chatterjee Vs. UOI (1995(29) ATC 678). He has submitted that as the applicant has no right to continue in the accommodation allotted to him earlier after 10.11.95 under the SR 317, B-11, the applicant shall, therefore, liable to pay damage rent for the intervening period after 10.11.95 till the date of vacation of the quarter under the relevant rules.

6. On receipt of the aforesaid show cause notice issued by Respondent 5 dated 26.9.96, the applicant had filed this O.A. The

(15)

2. Tribunal

by order dated 11.10.96 had stayed the operation of the impugned order dated 26.9.96 which has been continued till date. Shri R. Doraiswami, learned counsel for the applicant has submitted that in the circumstances of the case, the respondents cannot charge any damage rent from the applicant for the intervening period. He has submitted that the applicant cannot be held as an unauthorised occupant of the quarter in question, which had been allotted to him by the DGS&D during the services with them and thereafter, he is still continuing in that quarter in pursuance of the Tribunal's interim order dated 11.10.1996. He has also submitted that till the receipt of the show cause notice dated 26.9.96, the applicant was not aware that he has been given time to retain the quarter only upto 10.11.1995. In this connection our attention has been drawn to the O.M. dated 20.7.95 issued by the Directorate of Estates. In this O.M., inter alia, it has been stated that a request has been made by the officers who have proceeded on transfer to Zonal Officers of Railways and ineligible offices of Defence from DGS&D that they should be informed of the decision regarding retention of the quarter in their possession upto 10.11.95. They should also be informed that after this period, the quarter in their possession will be cancelled. Nothing has been placed on record by Respondent 4 that this necessary information about the decision mentioned in O.M. dated 20.7.95 has been conveyed to the applicant prior to 10.11.1995.

7. Learned counsel for the applicant has also filed MA 904/2000 to bring on record certain documents issued by the respondents. This includes further notice by R-5 calling upon the applicant for personal hearing and notice for payment of dues and damages for over-stayed in Govt. Quarter No.110-D, Arambagh New Delhi which was allotted to him while he was working in DGS&D. Learned counsel has also submitted that the Ministry of Railways has promoted the applicant as Assistant Controller of Stores w.e.f. 15.1.1999. The applicant has also applied to R-4 for allotment of suitable quarter from the Railways on 3.2.1999. Shri R. Doraiswamy, learned counsel for the applicant has further submitted that the applicant has been informed that as per his own

(b)

seniority, the accommodation of Railway quarter is likely to be allotted to him ~~in~~ sometime in Nov./December, 2000. In the circumstances of the case he has prayed that the interim order dated 11.10.1996 may be continued till that date, taking into account the facts and circumstances of the case. The applicant may also be allowed to pay normal rent for the period from 11.10.95 till the vacation of that quarter on his allotment by Railways.

8. We note from the documents filed by the applicant himself in MA 904/2000, that he has not paid the rent for the aforesaid quarter w.e.f. 1.7.92. Learned counsel for the applicant submits that despite the applicant's requests to the Ministry of Railways to deduct the due amount of licence fee for the quarter for transmission to Respondent 5 i.e., ^{the} Directorate of Estates, this has not been done. However, he is willing to pay the due rents for the period till the date of vacation of the quarter.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

10. From the facts mentioned above and the averments made by the respondents themselves, it is noted that a policy decision had been taken by the Govt. of India in 1991, to transfer the work of procurement against ad hoc indents from DGS&D and its regional offices, to various indenting Ministries/Departments, including Railways along with corresponding number of officers and staff dealing with the work. In pursuance of the Govt. of India decision of 1991, the applicant along with his post he held in DGS&D at that time, was transferred in the office of R-4 i.e. M/O Railways w.e.f. 1.4.1992. At that time, admittedly, the applicant was in possession of the Govt. quarter allotted by R-5 in Genl. Pool i.e. 110-A, Arambagh, New Delhi. It is also an admitted fact that Respondent 5 while exercising the power of relaxation and taking into account the aforesaid policy decision of the Govt. of India, decided that in such cases they would allow

(A)

the employees of the DGS&D who have been transferred on deputation to Zonal Railways and ineligible offices of Defence in various places, including outside Delhi, to retain the Govt. quarter for a period of 3½ years i.e. upto 10.11.1995 when the allotment was cancelled. Thereafter they have stated that eviction proceedings will be initiated and damage rent will be charged from the date of such cancellation. Learned counsel for the respondents has submitted that in terms of the decisions of the Dte. of Estates O.M. dated 20.7.95, as the applicant has admittedly continued in the Govt. accommodation allotted to him previously the same stood cancelled w.e.f. 11.10.1995. Therefore, he was liable to pay damage rent from the date of cancellation i.e. 10.11.1995. The decision of the Govt., mentioned in the O.M. dated 20.7.95 has been taken under the powers of relaxation provided under FR 317, B-25. It is, therefore, seen from the facts of the case, that the Govt. itself has taken a decision to allow ^{to be retained by them,} the accommodation allotted to the employees of the DGS&D who had been transferred by them in public interest. It is also a fact that, as seen from the reply filed by Respondents 1-4, in the absence of the posts in the parent office, the repatriation of the applicant was not possible. ^{The} terms and conditions of ^{the} absorption of the applicant as well as ^{the} other twenty eight employees of DGS&D who were transferred to various other offices are also not before us, and indeed it is also not clear whether any such decision has been taken by the Govt. of India in the intervening period. In these circumstances, ^{the} reasons appear to have ^{been} prevailed upon the Dte. of Estates- Govt. of India in taking a decision as conveyed in O.M. dated 20.7.95 to allow such employees to continue in the accommodation which had been previously allotted to them under the relevant rules.

10. In the above facts and circumstances of the case, ^{the} decision of the Dte. of Estates being based on the Govt. of India decision taken in 1991, in respect of ^{the} concerned employees in O.M. dated 20.7.95 appears to be correct. The reply of Respondent 5 also

(B)

does not show why a decision has been taken in exercise of the power of relaxation for a period of 3½ years only. It is also seen from the O.M. dated 20.7.95 that from 1992 to 1995 a decision has been taken by the Govt. of India, Dte. of Estates who have taken a further decision to allow the retention of the Govt. quarter of the twenty nine employees, including the applicant, for a further period of six months upto 10.11.1995. It is relevant to note that the earlier policy decision of the Govt. had been taken in 1991 resulting in transfer of the twenty nine employees to other officers, including the Railways.

11. It is also relevant to note that the respondents have issued show cause notice calling upon the applicant to appear before them on 11.10.96 as to why eviction order should not be passed against him which process has been stayed by the Tribunal by order dated 11.10.1996. Applicant is still continuing in the Govt. accommodation which has been allotted to him in 1987 by the Dte. of Estates while he was in service with R-2 i.e. DGS&D.

12. Taking into account the totality of the facts of the case, it is seen that the transfer of the applicant from DGS&D to Ministry of Railways in 1992 has been done following the policy decision of the Govt. of India. It is also apparent from the facts mentioned above that the order issued by R-5 dated 29.6.96 has been done somewhat mechanically following their O.M. dated 20.7.95. In the circumstances of the case we are of the view that the respondents should re-examine the matter regarding the provision for permission to retain the Govt. quarter in the possession of the applicant for a further period as they had one earlier, until the competent authorities takes a final decision in the matter regarding the terms and conditions of the absorption in the M/O Railways. Consequently the action of Respondent 5 for charging damage rent against the applicant for retention of the quarter beyond 10.11.1995, without taking into account the background facts, and particularly the earlier decisions taken by the Govt. of India in public interest, which necessitated the transfer of the applicant and his post from DGS&D to the Ministry

(B)

(19)

of Railways appears to be arbitrary and unreasonable and is, therefore, liable to be set aside.

¶3. In the particular facts and circumstances of the case, the O.A. succeeds and is allowed with the following directions:-

- (i) The impugned order/show cause notice dated 26.9.96 is quashed and set aside;
- (ii) Respondents 1-4 shall take a final decision regarding absorption of the applicant, if not already done, within four months from the date of receipt of a copy of this order;
- (iii) Respondents 5-6 are also directed to take an appropriate decision in the matter, keeping in view the reasons for permitting retention of the Govt. accommodation in favour of employees of DGS&D who had been transferred to ineligible offices by O.M. dated 20.7.95, in consultation with Respondents 1-4. If necessary, they shall take an appropriate decision in the matter, as they had already done in accordance with the provisions of SR 317 B-25 in consultation with the other concerned authorities.
- (iv) The applicant shall pay all due amounts of normal licence fee for the accommodation in question to the concerned authority w.e.f. 1.7.92 within two weeks. In the meantime, R-3 shall also consider the application submitted by the applicant for allotment of Railway quarter on priority basis, and he shall not be physically evicted from the present quarter till the aforesaid decisions are taken by the competent authorities.

No order as to costs.

V.K.Majotra

(V.K.Majotra)

Member (A)

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)

Member (J)

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