

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2309 of 1996

New Delhi, this the 6th day of October, 1997

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

Karan Singh Gautam, S/o Shri Mam Chand,
Age about 29 years, R/o Qr.No.S-I/923,
R.K.Puram, New Delhi - APPLICANT

(By Advocate Shri S.K.Gupta)

Versus

1.Union of India, through Director,
Directorate of Estates, Nirman
Bhawan, New Delhi.

2.Estate Officer, Directorate of
Estates, Nirman Bhawan, New Delhi.

3.Executive Engineer, Public Works
Department, Division No.21, Delhi
Administration, 42, Ishwar Nagar,
Kalka Mod, New Delhi-110 065 - RESPONDENTS

(By Advocate - Shri K.R.Sachdeva)

J U D G M E N T (O r a l)

By Mr. N. Sahu, Member (Admnv)-

The prayer in this Original Application is made against an order of respondent no.2 dated 15.10.1996 (Annexure-A-1) under which the applicant was accused of occupying quarter no.923, Sector-I, R.K.Puram, New Delhi even after the allotment in his name stood cancelled with effect from 2.8.1990 vide Directorate of Estates letter No. 5779/M-391/T-I/68 dated 14.11.1990.

2. The brief facts are that the applicant's father Sri Mam Chand, died in harness on 2.2.1990. The applicant was appointed to the post of Peon on compassionate grounds on 24.9.1991. The applicant's

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father during his life time was allotted the quarter referred to above and after the stipulated permissible extended period after death the allotment of the quarter was cancelled on 11.9.1990. The important point here is that ultimately respondent no.1 vide their letter no.5779/M-391-T-A/68 dated 17.11.1995 (Annexure-A-2) regularised the said quarter with effect from 24.9.1991. The applicant remained in occupation of the said quarter during the period from 2.2.1990 till the date of regularisation, namely, 17.11.1995. He deposited the damages and rent due for the period from 11.9.1990 to 24.9.1991. He also undertook to clear other arrears of rent. After the receipt of the letter dated 17.11.1995, the applicant completed all the formalities. It is necessary to mention here that in the meantime a revised cancellation order dated 10.4.1995 (Annexure-R-3) was also issued to the applicant. It is stated in that order that allotment of the quarter is being cancelled with effect from 2.2.1991 after allowing a concessional period of 12 months. The applicant was informed that failure to surrender the vacant possession of the quarter would render the occupant liable to face action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Para 4.12 of the O.A. also speaks of a letter dated 11.9.1996 (Annexure-A-8) issued by respondent no.3 giving a hearing to the applicant against the proceedings pending against him. These proceedings as the reference no. (EC No.240/ADM/Lit/90/A) are proceedings initiated during the year 1990. The applicant appeared and produced the letter of

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regularisation of the quarter in his name dated 17.11.1995. Notwithstanding that, the impugned order dated 15.10.1996 (Annexure-A-1) has been served on the applicant against which he is aggrieved.

3. The learned counsel for the respondents submitted that in O.A.408 of 1996 in the case of Manoj Kumar Mishra, by an order dated 4.11.1996 a Bench of this Tribunal disposed of a large number of cases on the identical point leading to adhoc allotments in the name of near relations and held that the regularisation of the accommodation in the name of the dependent relative must be made within a period of one year and the Tribunal cannot relax this period. The learned counsel also brought to my notice record of proceedings dated 19.10.1995 of the Hon'ble Supreme Court in the case of Keshar Singh which is a part of the order in Shiv Sagar Tiwari Vs. Union of India & others, Writ Petition(C)No.585 of 1994. Their Lordships have held that unless the ward/dependent gets the appointment on compassionate grounds within one year after the death of his parent or guardian, he would not be entitled to the transfer of the house in his name. Their Lordships have further directed that all those stray cases wherein such transfers have been regularised by the Supreme Court, may be brought to the Court's notice by way of a review application so that consistency is maintained.


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4. I have carefully considered the submissions. In fact I have myself applied the above law laid down by the Hon'ble Supreme Court by holding that if within a period of one year after death in harness there is no order of appointment on compassionate grounds, there can be no transfer of the house held in the name of the deceased. Be that as it may, in the present case there is an order of the competent authority dated 17.11.1995 (Annexure-A-2) expressly regularising this accommodation with effect from 24.9.1991. By this date we must remember the order dated 10.4.1995 (Annexure-R-3), namely, the revised cancellation order was issued. The question at issue is whether the order dated 15.10.1996 (Annexure-A-1) can be properly issued in the face of order dated 17.11.1995. It sounds patently inconsistent. On the one hand the competent authority had regularised the allotment with retrospective effect and the applicant had fulfilled all the other conditions mentioned in the order of allotment. He has paid the arrears of rent, damage rents and has been staying for the last 5 or 6 years in that accommodation. A vested right has been created in his favour. That apart there are instructions that even after the period of one year under exceptional circumstances the competent authority is empowered in its discretion to relax this condition. A presumption, therefore, is possible that the competent authority had obtained such approval from the concerned Minister. The learned counsel for the respondents submits that after the judgment of the Hon'ble Supreme Court in Kesar

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Singh's case (supra) by a revised circular dated 22.5.1996 this discretion has also been restricted. It appears that by these instructions the competent authority can only extend by a period of one month. Since the order of regularisation is dated 17.11.1995, it is presumed that the regularisation has been effected by following the rule before the amendment came into effect. If the respondents so want, they should first cancel the existing order dated 17.11.1995 (Annexure-A-2) in the light of the Supreme Court's decision and this cancellation can be done only by the appropriate competent authority and it is only after that cancellation that the applicant can be treated as an unauthorised occupant and the proceedings thereafter can be followed in accordance with law. It is admitted by the learned counsel of parties that Annexure-A-2 has not been cancelled by the competent authority and, therefore, arms the applicant with the right to continue to stay in the said quarter. In this view of the matter, the impugned order dated 15.10.1996 (Annexure-A-1) declaring the applicant as unauthorised occupant is contrary to the order dated 17.11.1995 (Annexure-A-2) and, therefore, stands vitiated and quashed.

5. In the result, the Original Application is allowed. The parties shall bear their own costs.


(N. Sahu)
Member (Admnv)