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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1464 of 1997

New Delhi, this the 15th day of January, 1998

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

Shri S. T. Akhtar, Son of Shri S. Mukhtar Hussain, Senior Investigator (Surplus) Office of the Development Commissioner for Cement Industry, Ministry of Industry, New Delhi and residing at C-52, Minto Road, New Delhi. - APPLICANT

(By Advocate Shri B. Krishan)

Versus

1. The Director of Estates, Directorate of Estates, 4th Floor, C Wing, Nirman Bhavan, New Delhi.

2. The Estate Officer, Directorate of Estates, 4th Floor, "B" Wing, Nirman Bhavan, New Delhi - RESPONDENTS

(By Advocate Shri R.V. Sinha)

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

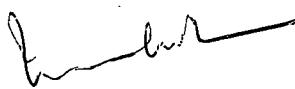
In this Original Application the applicant requests for setting aside the impugned order dated 21.5.1997 passed by respondent no.2 (Annexure-A-1) and for directing the respondents to regularise the allotment of Government accommodation bearing no.C-52 Minto Road, New Delhi.

2. The facts leading to the above cause of action were that the applicant was declared surplus from the Office of the Development Commissioner for Cement Industry while working as Senior Investigator in the Ministry of Industry. His services were placed under the Department of Personnel for redeployment. In the month of September, 1992 he was

(12)

offered a posting as an Investigator in the Labour Bureau, Ministry of Labour, Chandigarh. Due to difficulties faced by him on account of medical grounds and other family circumstances he made a representation for retention in Delhi. He represented also to the Office of the Prime Minister of India who vide PMO UO No.60031/C/1/96 ES-II(Vol.III) dated 17.9.1996 ordered that the applicant be given a change to Delhi. An additional affidavit was filed by the applicant on 12.1.1998. The additional affidavit contains an annexure dated 26.12.1997. This enclosed Annexure shows that the applicant was on commuted leave from 29.10.1992 to 21.11.1992. He did not report to the Ministry of Labour, Labour Bureau, Chandigarh on medical grounds. Vide an order dated 20.10.1997 the Department of Personnel and Training clarified that the offer of appointment of the applicant has been cancelled and he was taken back on the rolls of the Surplus Establishment. He reported for duty on 20.10.1997. The period of his absence from 22.11.1992 to 19.10.1997 has been regularised by various orders. An extract of order dated 26.12.1997 is reproduced below :

The period of his absence from duty from 22.11.1992 to 19.10.1997 has been regularised vide this office order of even numbers 5(252)/79-Admn.I/57 dt.27.1.93, 24.2.93, 10.3.93, 19.4.93, 5.3.93, 1.6.93, 29.6.93, 1(68)/93-Admn.I/316 dt. 28.4.94, 28.10.97 and 26.12.97. Now, therefore, in pursuance of letter No.4/15/92-CS.III dated 20.10.97 from Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel & Training, New Delhi, Shri S.T.Akhtar, Sr.Investigator, has been taken back



on the rolls of the Surplus Staff
Establishment of the Office of the
Development Commissioner for Cement
Industry, New Delhi
w.e.f.20.10.97(Forenoon).

3. The respondents after notice stress on the fact of relief from the Office of the Development Commissioner for Cement Industry and also on the fact that after expiry of his commuted leave he was expected to join at Chandigarh by the end of 1992. They refer to a communication of the Development Commissioner for Cement Industry to the effect that no licence fees could be recovered from the salary of the applicant with effect from March, 1993 because he did not draw any salary. Consequently eviction proceedings were initiated against the applicant and the Estate Officer has passed the eviction order on 21.5.1997.

4. I have carefully considered the rival submissions made by the learned counsel. In law the Government of India is one unit. The order passed by the Ministry of Personnel is binding on the Ministry of Urban Development and any order passed by the Ministry of Urban Development which is inconsistent with the order of the Ministry of Personnel, is to the extent of inconsistency, stands vitiated. The applicant completed his commuted leave in November, 1992. Respondent no.2 states that the applicant stopped paying his licence fees from March, 1993. The question at issue is what was respondent no.2 doing from 1993 onwards till he passed the eviction order in 1997? There is a well laid down procedure of intimation of order of transfer by one Ministry to

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another. There is also an equally well laid down procedure for the Head of the Department in which the applicant has been working to intimate the fact of transfer to respondent no.2. There is a regular intimation in every month of the amounts deducted from salary by way of licence fees. Respondent No.2 should have detected the fact of non-payment of licence fees as well as the fact of transfer and initiated proceedings declaring the applicant as an unauthorised occupant of C-52, Minto Road, New Delhi even before the end of 1993. He did not do so. He waited for a full period of four years and the order of cancellation was passed only in 1997. I have repeatedly questioned in the Bar to the learned counsel for the respondents as to whether there were any proceedings taken by respondent no.2 any time from 1993 onwards. There was no response from his side. The records and the pleadings do not indicate that any action has been taken by the Directorate of Estates between 1993 and 1997. The order placing the applicant at Chandigarh was cancelled by the highest executive of the country, namely, the Prime Minister. The entire period of absence was regularised from time to time, as extracted above, by the Ministry of personnel.

5. Two other aspects have to be highlighted. First, it was not strictly speaking an order of transfer. It was an offer by way of placing the services of the applicant at Chandigarh. The second aspect to be noted is that the applicant was throughout on medical leave and under the rules as

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pointed out by the learned counsel, the applicant is covered by rules at Annexure -R-1 : "Period for which allotment subsists under SR 317-B(11)". Under these rules under item 12 the allotment subsists for the full period of leave if the leave is on medical grounds.

6. As mentioned above, besides the order of the Prime Minister in 1996 there are orders from time to time regularising the various periods of leave by the Ministry of Personnel. These orders regularising the leave coupled with the order cancelling the earlier posting completely legalised the stay of the applicant from 22.11.1992 till 19.10.1997. As mentioned above, the orders of the PMO and the orders of the Ministry of Personnel are legally binding on respondent no.2 and any inconsistency in the orders passed by respondent no.2 which violates the above orders are to that extent bad in law and have to be ignored. If full legal effect is given to the office order of the Department of Industry and the Ministry of Personnel read with the order of the PMO then the entire period of stay from 1992 to 1997 have to be considered as legal and authorised. The respondents cannot deny that they do ~~not~~ have the knowledge about these facts. They have themselves at several occasions referred to the leave applications of the applicant. At any rate, they have passed the order in 1997. They should have verified the entire case history.

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16

7. In view of the above discussion I have no other alternative except to hold that Annexure-A-1, the impugned order which declares that the applicant should vacate the premises, is bad in law and is hereby quashed. The legal consequence of declaring the applicant as regularly working in Delhi in view of the above discussion and, therefore, legally occupying the quarter allotted to him before his services were placed at Chandigarh, are that he is liable to pay only normal rent for this period. All such liability shall be worked out and intimated to the applicant. The Original Application is allowed. The parties shall bear their own costs.

N. Sahu
(N. Sahu).
Member (Admnv)

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