

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA-3002/97

New Delhi, this the 1st day of January, 1998.

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

Anoop Bhatnagar
S/o Late Shri Rajender Prasad,
Aged about 25 Years,
R/o G1-845, Sarojini Nagar,
New Delhi - 110 023
and employed as:
Lower Division Clerk in
Ministry of Defence
Government of India
South Block
New Delhi

...Applicant.

(By Advocate : Sh.B.B. Raval)

Versus

Union of India : through

1. The Secretary
Ministry of Defence
Government of India
South Block
New Delhi - 110 001
2. The Director
Directorate of Estates
Government of India
Nirman Bhawan
New Delhi - 110 001

...Respondents

ORDER

By Sh.N. Sahu, Member(A) -

Heard Sh.B.B. Raval, counsel for the
applicant.

2. The prayer in this case is to quash
Annexure-A dated 17.12.1997 and direct the Respondent
No.2 to allot to the applicant the accommodation of
his entitlement. The interim prayer is to restrain

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the respondents from acting on this impugned order and to restrain them from deducting any penal or market rent.

3. The impugned order shows that Sh. Rajender Prasad (when he was alive) was allotted G1-845, Sarojini Nagar, New Delhi in which he and the applicant continued to stay. The impugned order states that this allotment was cancelled w.e.f. 07.06.1994 by an order of the Directorate of Estates' letter No.G1/845/SN/TC(A)/97 dated 29.08.1994. Under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, the family of late Sh. Rajender Prasad were directed to vacate the premises failing which they shall be liable to be evicted from said premises after the notice period.

4. The grievance of the applicant is that he was not allotted a Type-II quarter for which he applied. It is admitted that the applicant was served a show-cause notice in September, 1997 by the Directorate of Estates to show-cause as to why he should not be declared an unauthorised occupant.


5. Even at the time of the hearing the learned counsel was not in a position to give full facts. The applicant's father was an Assistant in the Ministry of Defence and was occupying Type-III quarter. Learned counsel was not in a position to give the precise date of death except saying that

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Sh. Rajender Prasad probably died during December, 1993. He was not in a position to give the date on which he applied for accommodation for his own entitlement. The only fact available is that he was appointed as a LDC on 12.12.1994 on compassionate grounds.

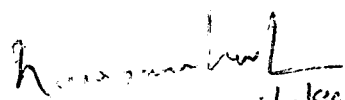
6. It is not possible even to admit this case without full and complete particulars. It is settled law of the Hon'ble Supreme Court in Amitabh Kumar and Anr. Vs. Director of Estates - 1997 SCC (L&S) 698 that notwithstanding the pendency of application for allotment of house in substitution of his father on the ground of being in Government service after the expiry of the permitted time limit, such applicant is an unauthorised occupant and, therefore, liable to pay penal rent. The Supreme Court had an occasion to examine Memo No.12035 dated 09.11.1987. The prescribed period is one year.

7. The initial cancellation order was dated 29.08.1994. This order has not been challenged. When this order was passed, the applicant did not receive any order of compassionate appointment. Even after receiving the order of appointment, when he applied for substituted accommodation is not clear. If the cancellation order of his late father's accommodation is not challenged, there is no question of the said allotment in his name as a substitute. That apart, his father's category and his category of accommodation are distinct and different. If he had applied for a lower category he should have also



stated reasons for out of turn allotment in the lower category and if no order was passed thereon he should have agitated the same. Thus, I am unable to admit this petition on the ground that it does not contain basic particulars, on the ground of laches because it did not contest the order of cancellation dated 29.03.1994. Once the cancellation order becomes final, the declaration that the applicant is an unauthorised occupant is automatic and the legal consequences will flow therefrom.

In this view of the matter, the OA is dismissed at the admission stage.


(N. Sahu)
Member (A) 1/1/98

/Kant/