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Central Administrative Tribunal, Principal Bench,
New Delhi

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O.A. No. 2515/94

New Delhi, this the 12th Day of July, 1995.

Hon'ble Shri J.P. Sharma, Member (J)

Smt. Amarjit Kaur
wife of Shri S.K. Luthra,
Working as a Training Graduate Teacher
under the Directorate of Education,
Government of N.C.T. of Delhi,
(Office address:- Govt. Girls Secondary School
No. 3, West Patel Nagar, New Delhi) and
residing at Govt. Quarter No. 49/IV, North
West Moti Bagh, New Delhi.

... Applicant

(By Shri B. Krishna, Advocate)

Versus

Union of India through:-

1. The Director of Estates,
Directorate of Estates,
4th floor, 'C' Wing,
Nirman Bhawan,
New Delhi.
2. The Estate Officer,
(Shri A. Bains),
Directorate of Estates,
4th floor, 'B' Wing,
Nirman Bhawan,
New Delhi.
3. The Secretary,
Land & Building Department (Allotment Cell),
Govt. of N.C.T. of Delhi,
'A' Block, Ground Floor, Vikas Bhawan,
I.P. Estate, New Delhi-2.

... Respondents

(By Shri B. Lall, Advocate)

ORDER (ORAL)

by Hon'ble Shri J.P. Sharma, Member (J)

The applicant is the legally wedded wife of
Shri S.K. Luthra who was allotted the premises No. 49/IV
North West Moti Bagh, New Delhi. The wife since her marriage

sharing accommodation with her husband Shri S.K. Luthra and was not drawing any H.R.A. from the date of allotment since September, 1990. She has been in the employment of Delhi Administration since 1960. Shri S.K. Luthra retired from active service on superannuation on 31st August, 1993. The husband of the applicant was Senior Research Officer at the time of retirement under Govt. of India i.e. in Planning Commission. The applicant has also been getting salary at Rs. 3400/- and the accommodation is being type-'D' totally corresponds with the eligibility for allotment of that accommodation. However, the Directorate of Estates on the petition submitted by the wife did not consider it feasible to regularise the accommodation because of the certain administrative instructions on the point/subject. The administrative instructions have been issued on 27.12.1991 by the Directorate of Estates regarding allotment of general pool accommodation to teachers/other staff working in the schools of Delhi Administration. These instructions make the employees of Delhi Administration employed with the Directorate of Education ineligible for allotment of premises from general pool accommodation. This is because of the fact that the Delhi Administration is having its own pool which also caters to the teachers and other staff of the school under Delhi Administration. This circular of 1991 also lays down that any consequent benefit which may accrue to an allottee under Allotment Rules on account of being in occupation of general pool accommodation will also be

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admissible to teachers and other staff of the schools of Delhi Administration, they will be allowed retention after cancellation of allotment admissible under SR 317-B-22 temporary allotment for marriage purposes, ad-hoc allotment/regularisation on retirement/death ground to their wards in case such wards are employed in an eligible office, It is, however, clarified that the benefit of ad-hoc allotment/regularisation on retirement/death ground will not be admissible to the ward of such allottees in case the ward is employed as a teacher in the staff of a school under Delhi Administration.

On the basis of the above circular of 1991, the impugned order has been passed by the Estate Officer, Directorate of Estates on 16.11.1994 against the husband of the applicant and all other concerning members under the provision of sub section 1 of Section 5 of the Public Premises (EQU) Act, 1971. This eviction order has been passed after rejection of the petition filed by the applicant for regularisation of the aforesaid quarter by the order dated 15.3.1994 informing the Principal of the Institution where the applicant is working, that her request cannot be considered since the same is not covered by the Allotment Rules.

The applicant, therefore, filed this application on 14.12.1994 and when the matter came before the Single Bench on 20.12.1994 an interim direction staying the operation of the impugned order ex parte, was granted which continues till today.

On notice respondents No. 1 & 2 contested this application by filing a reply and also annexed with the reply the O.M. Of Directorate of Estates dated 27.12.1991 as Annexure R-I. It is stated that the applicant is working as T.G.T. Teacher in the Govt. Girls Senior Secondary School, West Patel Nagar and as such under the aforesaid O.M. she is not entitled for getting the benefit of regularisation of that quarter in her name after the retirement of her husband Shri S.K.Luthra in August, 1993 as Shri Luthra belongs to the Planning Commission and retired as Senior Research Officer.

The applicant has not filed any rejoinder.

The applicant's husband is present in person. Shri B.Lall appears for the respondents. Later on Shri B.Krishna also appeared on behalf of the applicant. The learned counsel for the respondents argued that the circular of 1991 is a hurdle because Delhi Administration has its own different pool and the teachers are entitled for allotment of accommodation from that pool only. When a separate pool has been earmarked then the employees of Delhi Administration cannot claim allotment from general pool accommodation and the Directorate of Estates has issued O.M. with regard to covering the various Ministries/Organizations and Units of the Central Government who could be covered for allotment of accommodation from the general pool. Similarly, the consequent benefits of this allotment can only accrue to the

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eligible wards of the retiree or those who suffered casualty during the service.

I have given a careful consideration to the contention of the applicant's counsel and found that it shall be a hard case where a wife who is sharing the accommodation forsaking the grant of H.R.A. for a number of years and likely to superannuate lately cannot be thrown on the street as the O.M. of 1991 came into force after she had already shared the accommodation with her husband and continued to forego the H.R.A. and even not considered for allotment of any other accommodation. Here, it may be clarified that prior to 1991 both, husband and wife, were entitled from general pool accommodation. There was no discrimination at that time. The service conditions cannot be altered retrospectively particularly in the case where husband and wife forms a unit and both are serving, at the time of entering into service, under Central Government or Union Territory controlled by the Central Government, regarding entitlement for allotment from general pool accommodation. It is the Directorate of Estates who had made available certain earmarked accommodations for Delhi Administration

and right to allot or not to allot has been specifically given to the Delhi Administration who has their own separate directorate for this purpose.

I do not propose to lay down a law to create a precedent that circular of 1991 has ~~no~~ legal basis when Delhi Administration has a different pool and the teachers are covered as such being the employee of Delhi Administration and are entitled for allotment from the pool of Delhi Administration, they cannot trespass into another pool called the general pool controlled by Directorate of Estates. However, the present case stands on different footings.

The wife and husband form a unit and they cannot be separated at this advanced stage/age or the wife cannot be thrown out on the street because the husband has superannuated first. Certain years of the life of the applicant should not pass in agony when she has contributed her better part of life for the service particularly in teaching department. With a view to balance the equity, the Delhi Administration, as pointed out by the husband of the applicant, is prepared to have exchanged one Delhi Administration pool accommodation with the same of type/general pool accommodation for allotment of eligible persons from general pool and in view thereof the present accommodation ^{may} be taken to be transferred to Delhi Administration

pool. Since none is appearing on behalf of Delhi Administration (i.e. respondent no. 3) opposite party so factual position as stated before the Bench cannot be ignored. The finding is not given but what is stated is a statement of fact which has got some weight.

The applicant will also apply for allotment of an alternative accommodation to the Delhi Administration. In the event the Directorate of Estates i.e. respondents No. 1 & 2 do not accede to the proposal of releasing one general pool accommodation in that event respondent no. 3 should consider the case of applicant on the same priority which could have been given at the time when she entered into service in the year 1960 and it appears presumably correct that no person of that period will be without allotment of an accommodation if that person was got registered for allotment of eligible type of accommodation. Till such an allotment is made in favour of the applicant, she shall not be evicted from the premises in question, and shall pay the licence fee under rules.

The application is disposed of accordingly with the following directions:-

- (i) The impugned order of eviction is quashed and set aside with direction that licence fee as was being paid earlier by Shri Luthra shall be paid by the

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wife i. e. the applicant till the time as stated herein under:

- (ii) The Directorate of Estates shall consider the regularisation of accommodation No. 49/IV, North West Moti Bagh directing the respondent no. 3 Secretary (Land and Building Department (Allotment Cell) to release one similar type of accommodation from general pool so that the deficiency caused in allotting the accommodation to the applicant can be compensated. In such a case licence fee shall be paid by the applicant as laid down under the rules.
- (iii) In the event it is not practically possible to get released one accommodation from general pool then applicant shall apply to Delhi Administration for allotment of eligible type of accommodation within a period of one month or for releasing one Delhi Administration pool accommodation in favour of Directorate of Estates for general pool accommodation and in that event the accommodation is released to the general pool accommodation, accommodation No. 49/IV aforesaid shall be regularised in favour of the applicant. In case the allotment is given of a Delhi Administration pool accommodation in favour of the applicant then she shall vacate the premises 49/IV aforesaid within a period of 7 days from such allotment and shall shift to the allotted accommodation of Delhi Admn. and if she does not vacate the said quarter the impugned order of eviction shall have its force and shall be carried out. However, in the event she shifts to thenewly allotted premises as said above in that event the impugned order of eviction will become

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redundant as well as no damages need to be paid by the petitioner.

In view of the facts and circumstances the application is disposed of accordingly leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

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