

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.329 of 1994.

New Delhi, dated this 11th day of Oct. 1994.

HON'BLE MR. B.K. SINGH, MEMBER (A)

1. Bhawani Das
S/o Late Shri Hariram,
aged about 64 years,
R/o Quarter No.1438, Sec.III,
M.B. Road, Pushp Vihar,
New Delhi.
2. Abhay Kumar
S/o Shri Bhawani Das,
Aged 27 years,
R/o Wfr. No.1438/ Sec.III,
Pushp Vihar, M.B. Road,
New Delhi. ... Applicants

Outline of India - Through:

1. Secretary,
Ministry of External Affairs,
South Block,
New Delhi.
2. Director of Estates,
Nirman Bhawan,
New Delhi-11.
3. Estate Officer,
Nirman Bhawan,
New Delhi. Respondents.

ORDER

Hon'ble Mr. B.K. Singh.

This OA No.329/94 is directed against order No. EC/197/ADP/LIT/92/T-D dated 24.3.1993 issued by the respondent No.3. There is an interim order passed to the effect that the applicant will not be evicted until further orders. The interim order is still continuing.

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2. The uncontroverted facts are that the applicant Shri Bhawani Das, father of the applicant, who was serving in the Ministry of External Affairs was allotted quarter No.1438, Sector III, M.B. Road, in his turn in 1982. He retired with effect from 31.7.1989 on super-annuation. He was allowed to retain the quarter on normal licence fee for a period of 4 months. The allotment was cancelled after 4 months with effect from 30.11.1989.

3. The father and son are both applicants in this OA. Father is Applicant No.1; whereas son is applicant No.2. The Applicant No.2 was engaged as casual labourer in the Ministry of External Affairs in the year 1986 and he was holding the temporary post of a Peon in the same Ministry when his father was retired. He was made a permanent Peon on 23.8.1993.

4: The applicant No.2 Shri Abhay Kumar, son of Applicant No.1 Shri Bhawani Das has applied for regularization of the quarter occupied by his father. This is a general pool accommodation under the control of Ministry of Urban Development, Department of Housing and Works, Directorate of Estates, New Delhi. His application was forwarded by the Ministry of External Affairs for consideration by the Directorate of Estate on 14.12.1992 as is evident from Annexure III, enclosed to the OA. There is no application, not even a whisper from the applicant to the respondent i.e. the Department of Works and Housing, Ministry of Urban Development for regularization of the quarter of his father in his name prior to this date. In the application, which has been forwarded by the Ministry, it has been stated that the applicant No.2 has not been drawing any HRA from 23.8.94. However, during the

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course of argument, the learned counsel for the applicant pointed out that this has been corrected in the rejoinder. It was stated that he had not been drawing any House Rent Allowance since August 1990. He placed reliance on the judgement and order of the Hon'ble Tribunal delivered in OA 2716 of 1992 on 2.12.1993 - Ravinder Kumar Petitioner vs. Directorate of Estates, Nirman Bhawan, New Delhi and Executive Engineer (c), Mechanical Workshop Division, East Block, RK Puram, CPWD, New Delhi as a Respondent.

5. In the aforesaid OA, the facts are distinguishable from the present facts; Secondly in the O.A. No. 2716/92 on which reliance has been placed, no counter affidavit has been filed and therefore, the court placed reliance only on the original application and averments made therein and passed relevant judgements and order on the basis of the averments made in the application. The benefit of the OM issued on 13.4.82 issued by the Directorate of Estates stipulates that the employee working on an adhoc basis on the date of retirement of his/her parent can also be given concession of UM dated 1.5.1981 for the purpose of allotment in case his/her service was regularised subsequently without any break. It is admitted by both the parties that he was a casual labourer upto 2.8.1990 and he was appointed as an adhoc Peon on 3.8.1990 and he was made a permanent Peon with effect from 23.8.93. In the order and judgement dated 2.12.93 in OA No. 2716/92, the applicant was sharing the accommodation with the permission of the competent authority 6 months before the retirement of his father and he made the application for regularisation ~~or~~ ~~regularisation~~ of the quarter immediately after the retirement of his father. This is not so in

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the present application. He has submitted his application to his department sometime in June 1992 which was forwarded to the respondent² only on 14.12.92. His father retired on 31.7.89 and it is after more than 3 years, the applicant woke up from his dogmatic slumber and sent his application to his department, which after verifying various entries, forwarded the application to the Directorate of Estates on 14.12.92, after practically 3½ years. ~~the~~

b. The cause of action arose in 1989 itself with the retirement of his father and the applicant, who was working then in the Ministry as a casual labourer from 1986 should have applied for a quarter to which he was entitled. His father was a Senior Gestetner Operator and retired as such. Thus, the applicant No.2 i.e. son, who was working on adhoc basis as Peon could have claimed a type of quarter to which he was entitled to. His sharing the accommodation, when he was not employed also has no relevance to the facts of his sharing the accommodation prior to his appointment. If he had shared the accommodation from 1982, it was as a dependent and not as an employee of the Ministry of External Affairs. He was born in the Ministry as a Casual Labourer only with effect from 5.2.1986 and continued to be so till 2.8.90 and he became an adhoc Peon with effect from 3.8.90. Even now he is only a permanent Peon. The Peon cannot claim quarter occupied by his father, who was a Senior Gestetner Operator in the Ministry of External Affairs. Since it was general pool accommodation, Ministry of External Affairs was not competent to regularise the quarter. They had only forwarded the application for consideration by the Directorate of Estates.

(V)

7. The application is directed against the Secretary, Ministry of External Affairs, South Block, New Delhi, who has no role to play in this, since it is not a quarter in the pool of the Ministry of External Affairs. The general pool of accommodation, of the Central Government under the charge of the Ministry of Urban Development, whose Secretary should have been made a party, but not Secretary, Ministry of External Affairs, New Delhi. The Director of Estates and the Estate Officers certainly are concerned officials so far as the allotment and cancellation of the allotment and eviction, of unauthorised occupants is concerned under PPE Act 1971. The case of the applicant is for regularisation of the quarter, which was rejected since he was not entitled to it and secondly because his case is not covered under the rules, on the following grounds:

i) The retirement was from 31.7.89 and the application for the first time was forwarded on 14.12.92. The applicant No.1 had been rightly allowed to stay in the quarter on normal licence fee for a period of 4 months as per his entitlement. Afterwards the Respondents were well within their rights to cancel the allotment, retention. The applicant No.1 did not apply for a gap in the quarter on medical / Education grounds on double the licence fee or on any other grounds for another 4 months. The applicant No.1 i.e. father could have retained the quarter for another 4 months on double licence fee on medical/educational grounds only. Thus this case is not covered under the rules. The forwarding application of the applicant shows that he ~~is~~ stopped drawing HRA from 23.8.91 after a gap of one year. This is as per application. However, this has been rebutted in the rejoinder by saying that he did not charge any House Rent Allowance with effect from August 1990.

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ii) The applicant No.1 was a Senior Destetner Operator and as such the applicant No.2 is not entitled to the allotment of the quarter, meant for the category to which his father belongs. They are unauthorisedly continuing on the basis of Interim Order. The respondents No.2 and 3 received the application from Ministry of External Affairs on 15.12.92 and the question of regularisation was duly considered and was rejected on the ground that he was not entitled to that quarter and secondly he was not covered under the rules on account of his appointment on adhoc basis with effect from 23.8.90 i.e. after the date of retirement of his father on 31.7.1989. In the counter reply there is an averment to the effect that the daily rated employees are not eligible for the benefit of regularisation/adhoc allotment. The employment on adhoc basis to be followed by regular employment prior to the retirement of the parent. In this case the father was retired on 31.7.89; whereas the applicant has been regularised only from 23.8.1993. Therefore, he is not entitled to the benefit of the rules and instructions of regularisation. It was rejected only because it was not covered under the rules. Thus the judgement quoted by the learned counsel for the applicant is not applicable to the facts of this case. The allotment and cancellation are within the domain of the executive. Once the allotment is cancelled, in favour of an allottee, the persons residing therein will be deemed to be unauthorised occupants and the respondents are well within their rights to charge penal rent under Rule 7 of the PPE act and to pass necessary eviction orders, after following the procedures laid down in Rule 4 & 5 of the PPE Act. The provisions of Rules 4 & 5 are to be read harmoniously. The eviction

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order has to be passed, after giving an opportunity to the applicant to show cause against eviction and to make oral submission and after examining the show cause and relevant material placed by such unauthorised persons final orders have to be passed, ~~xxxxxxxxxxxxxxxxxx~~ to vacate the quarters by a specified date and if the same is not vacated by the specified date, the ~~1971~~ authorities are competent under PPE Act to evict such persons after using minimum force.

d. After perusal of the pleadings on record, it is clear that the case of the applicant for regularisation of his quarter is not covered by the rules issued by the Directorate of Estates nor it is covered by the rules cited by the learned counsel for the applicant. There has been abnormal delay on the part of the applicant to apply for an out of turn allotment of a quarter to the Directorate of Estates ~~xxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxx~~ as a ward of a retired government servant or a retiring government servant ~~xxxxxxxxxxxxxx~~ was ~~xxxxxxxxxxxxxx~~. The application is belated one sent to the Directorate of Estates on 14.12.92, received by Respondents No.2 & 3 only on 15.12.93. The applicant's father retired on 31.7.1989 and as such the application should have been forwarded before or immediately after ~~xxx~~ retirement. But, since the applicant was conscious that he was not covered by the rules, he did not take any steps to file any application for allotment of a quarter to him out of turn. As a matter of fact, it is only ~~xxx~~ a regular employee who can claim regularisation of a quarter, if he has been allowed to share the accommodation with the permission of the competent authority. No

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such permission has been granted to share the accommodation with the father. The sharing also should be as per the entitlement and not much above entitlement. The father retired before he could become eligible to the lowest category of a quarter as per his entitlement. Since he was regularised only on 23.8.93, he could not have been considered for out of turn allotment, prior to the date of his regularisation. Even as an Adhoc Peon, he took his birth only with effect from 5.8.1990 and as such as a Peon, he could not be considered for the allotment of a quarter of a senior Gestetner Operator instructions and under no circumstances his case is covered under existing rules of allotment. A man is allotted quarters as per his entitlement and ~~50%~~ cases, the people are going for one stage below the entitlement to get a quarter.

I do not find any merit in the application and

the same is dismissed leaving the parties to bear their costs. The interim order passed by the Tribunal on 18.2.1994 is vacated.


11/1/94
(B.K. SINGH)
MEMBER (A)

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