

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

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OA.No. 415 of 1994

(8)

Dated New Delhi, this 2nd day of December, 1994

Hon'ble Shri B. K. Singh, Member (A)

Shri B. D. Narain
R/o Qtr. No. 14/200
D.M.S. Colony, Harinagar
New Delhi.

... Applicant

By Advocate: Shri B. Krishan

Versus

1. Union of India, through
Director of Estates
Directorate of Estates
'C' Wing, 4th Floor
Nirman Bhawan
New Delhi.
2. The General Manager
Delhi Milk Scheme
Ministry of Agriculture
West Patel Nagar
New Delhi-8.

... Respondents

By Advocates: Shri V. S. R. Krishna and
Shri Vijay Mehta.

JUDGEMENT

Shri B. K. Singh, M(A)

This OA No. 415/94 has been filed by the applicant against the order of cancellation of allotment in respect of Government residence No. 14/200, D.M.S. Colony, New Delhi in the name of the applicant, dated 29.10.93 (Annexure A-1). The applicant is also assailing the inaction

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on the part of the respondent No.1 in the matter of allotment of alternative accommodation in the name of the applicant despite his application for such allotment in the prescribed form (No.36168) endorsed to them vide administrative department's endorsement No.D-11022/1/94 C&G dated 13th January,1994 (Annexure A-7). The applicant is also assailing the action of the respondent No.2 in directing the recovery of the said amount of damages from the salary of the applicant as per directions in the Last Pay Certificate dated 27.11.93(Annexure A-6).

2. The material averments in the OA are these. The applicant while working with Delhi Milk Scheme, was allotted a Government Quarter No.14/200, D.M.S. Colony, Harinagar, New Delhi. He was declared surplus along with 69 other staff in the month of March,1970 on the basis of the recommendations of the Staff Inspection Unit of the Ministry of Finance, Department of Expenditure. He was relieved of his duties in D.M.S. with effect from 31.10.93 and sent to the Surplus Cell, Ministry of Personnel and Training. He was subsequently redeployed in the office of Director General of Civil Aviation, New Delhi where he joined on 1.11.93. With his joining the office of Director General of Civil Aviation(DGCA), the allotment of Quarter No.14/200,D.M.S. Colony, Hari Nagar, New Delhi was cancelled in his name with effect from 31.12.93 as per impugned order dated 29.10.93 vide Annexure A-1 which is

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under challenge in this OA. This OA was filed on 24.2.94 and an interim order was passed by this Tribunal on 1.3.94 and the recovery of damage rent was also stayed by the Tribunal.

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3. Reliefs sought are to the effect that the Tribunal should issue a direction to the Respondent No.1,i.e. the Director of Estates, Directorate of Estates,Nirman Bhawan, New Delhi to allot him(applicant) an alternative accommodation as per his entitlement or next below type of accommodation from the General Pool on out of turn basis at the earliest. (ii) That the applicant may be allowed to continue in the present Government Quarter No.14/200,D.M.S. Colony,New Delhi on normal terms, and (iii) That no damages/penal rent/market rent etc. may be charged from him(applicant).

4. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for.

5. Heard the learned counsel for the applicant, Shri B. Krishan and Shri V.S. R. Krishna for Respondent No.1 and Shri Vijay Mehta for Respondent No.2 and perused the record of the case.

6. The learned counsel for the applicant placed reliance on judgements delivered in OA.577/92 decided on 1.5.92, in OA.427/94 in which judgement was delivered on 19.9.94,in OA.23331/93 in which judgement was delivered on 25.8.94, in OA.114/93 in which judgement was delivered

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on 6.4.94 and in OA.2801/92 in which judgement was delivered on 7.7.93. He argued that in the similar circumstances as that of the applicant Shri Mohammad Rahmat was granted the relief by this Tribunal and issued directions to Respondent No.1 for allotment of first available vacancy as per his entitlement or one step below his entitlement vide order dated 10.2.94 in OA.2000/93. He was also sent to the Surplus Cell and redeployed subsequently under Central Government. He was also holding Government residence belonging to the D.M.S.Pool(No.14/201,D.M.S.Colony, Hari Nagar). He joined Central Government in December,1974 in Ministry of Home Affairs. Earlier similar relief was granted to Shri Ram Konwar vide OA.577/92 and the said employee was also similarly placed. As against this, I have meticulously gone through the various judgements on which reliance has been placed by the learned counsel for the applicant. In all these OAs, most of the officials were occupying departmental pool accommodation and were subsequently transferred to other offices and the directions were issued for an out of turn allotment of accommodation as per their entitlement or one step below their entitlement or allotment of a quarter out of turn on ad-hoc basis.

7. When a person is declared surplus, he is sent to the Surplus Cell and the moment he is relieved from the department where he was declared surplus, his relationship of master and servant gets snapped. He can utmost be allowed to retain the quarter for a period of two months. It is only in case of retirement/voluntary retirement or transfer from one station to the other that a person is allowed to retain the quarter for a period of four months and as per instructions issued by the Directorate of Estates a person on the basis of illness of self or wife or on account of dislocation in the

studies of children can retain the quarter for another four months on payment of double the licence fee but the latter is subject to either production of a medical certificate that the wife/allottee is under treatment of a Doctor and, therefore, retention of accommodation is a must. It can also be on the basis of a certificate produced ^{from} ~~by~~ the University or School where the children are studying and the transfer is in the mid session.

8. In case of compassionate appointment also there are instructions that if a Government servant had been sharing accommodation with his father who dies in harness or who retires, the quarter can be regularised in his name if he is entitled to that type of quarter or he will be allotted a quarter as per his entitlement and the rules in this regard are absolutely clear. The rule stipulates that one out of five adhoc allotments will be considered for being given to a compassionate appointee in the order of his seniority. This rule which was previously meant for those Government servants who were sharing the accommodation with the parent or with the guardian, was also extended to those who got an appointment within 12 months of the death of a Government servant, that is the father in harness. But this also is subject to the condition that on the basis of his seniority, he will be entitled to an out of turn allotment, one out of five on the basis of seniority of compassionate xxxxxx appointees. The other rule (SR.317-B-25 is a general instruction contained in Circular No.12035(7)/69/POL dated 8.9.69 which reads as follows:

"Officers who are occupying accommodation in other pools on transfer to offices eligible for General Pool

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may be considered for allotment of accommodation in the next below type the General Pool unless they are eligible for their entitled category by seniority."

9. All the OAs quoted above by the learned counsel for the applicant are based on a Division Bench judgement in OA.1963/91 in case of Jairam Yadav Vs UOI & Ors. In the said OA, a prayer was made for issue of a direction to Respondent No.2&3 to allow the applicant to retain the quarter allotted to him in Service Centre, Netaji Nagar, New Delhi till the applicant was allotted alternative accommodation by Respondent No.1 on payment of normal rate of licence fee. In this OA, Respondent No.1 on notice, did not appear though he had been served and he also did not file any counter reply. The applicant was a Junior Engineer who was working with Respondent No.2 in the CPWD 'E' Wing and he was allotted his residential quarter having been working as Junior Engineer. In this case also the ^{order} interim was passed on 27.8.91. The applicant went on deputation to Delhi Administration, and, therefore, the quarter meant for essential maintenance under CPWD staff was required to be vacated. The OA was allowed and a direction was issued to Respondent Nos.2&3 not to evict the applicant till he was allotted a suitable accommodation by Respondent No.1. It was further directed that Respondent Nos.2&3 will not ^{charge} penal rent from the applicant but accept only licence fee as due according to rules.

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10. The fact of the case under consideration is different

from the facts of the case decided by the Division Bench of

this Tribunal. It is a case of the Junior Engineer whose

parent cadre actually is CPWD and during his posting under

CPWD, he was allotted a residential quarter after having

been posted as Junior Engineer in 'G' Division, CPWD, New

Delhi. He subsequently went on deputation to Delhi

Administration and the CPWD wanted to evict him since the

quarter was meant for a Junior Engineer posted in 'G'

Division for maintenance of essential services. The

fact is distinguishable. The applicant was an employee of

D.M.S. and was allotted quarter No.14/200, D.M.S. Colony,

Hari Nagar, New Delhi on the basis of the recommendations

of the Staff Inspection Unit, Department of Expenditure,

Ministry of Finance. The applicant along with 69 others was

declared surplus and sent to the Surplus Cell of the

Ministry of Personnel and was subsequently absorbed in the

Ministry of Civil Aviation under DGCA. The Delhi Milk

Scheme is a wing of the Ministry of Agriculture and it has

its own colony where they have built the accommodation for

their employees. Once the relationship of master and

servant is totally snapped and the applicant was retrenched

and sent to the Surplus Cell functioning under the Ministry

of Personnel his right to retain that quarter ~~as it~~ ceases

automatically since he is no longer an employee of the

D.M.S. In the departments and various Ministries, there

is already a queue of employees for allotment of houses.

The scheme of redeployment of the surplus staff normally

envisages that as a result of his redeployment, he may be

either accommodated in an equivalent post or on a lower

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post and if he is offered a lower post, it is open for him to accept or to reject it and prefer abadonement of job offered to him. In case, he is offered an equivalent post and his emoluments etc. are protected and in such a case his length of service is taken into consideration for purposes of pension, gratuity etc. But the rules clearly stipulate that it is not counted for purposes of seniority in the new department. He will be placed at the bottom of the list since all those who have joined as members of that cadre earlier than him will rank senior to him. His seniority in that cadre will count from the date he joined as a member of that cadre. The applicant was working as a Peon and he was transferred to the office of DGCA and he will be junior most Peon in the office of DGCA since all those who have joined as a regular employee will rank senior to him. The General Pool accommodation is allotted on the basis of seniority of the people registered with them. He is the last member to join the cadre of DGCA and he cannot even for the purposes of allotment of a house can steal a march over those who are working as Peons in the office of DGCA and whose names are registered with the Directorate of Estates. Similar will be the case of other Peons working in other departments. The extracted rule envisages that officers who are occupying accommodation in other pools on transfer to offices eligible for General Pool may be considered for allotment of accommodation in the next below type/ⁱⁿ the General Pool unless they are eligible for their entitled category on seniority. Firstly, there is no category below the Peons. Therefore, the question of considering the case for allotment of a

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type below his entitlement is not possible. It further must lays down that such a person be eligible for a next allotment below type General Pool on the basis of seniority. As stated above there must be hundreds of Peons working in the various Ministries who are standing in the queue and who are not before me and have not been made parties before me, will be adversely affected if I pass an order or issue any direction for an out of turn allotment. Even in case of compassionate appointment as stated above where a dependent person is sharing accommodation out of turn, allotment can be only one out of five/ It implies that there also the seniority of the eligible compassionate appointees will have to be considered. Such an appointee will have to stand in the queue for an adhoc out of turn allotment.

11. The Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs Mrs Asha Ramchandra Ambekar & Anr. in CA.No.1381 of 1994(JT 1994(2)S.C.183 decided on 28.2.94, has observed that High Courts and Tribunals are expected to follow the rules strictly. It was observed that the High Courts and the Administrative Tribunals are not expected to confer benediction impelled by sympathetic consideration. The Division Bench presided over by Hon'ble M.N.Venkatachaliah, CJI. & S. Mohan, J. quoted Shakespeare's observation in Merchant of Venice as follows:

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"The quality of mercy is not strain'd;
It droppeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that takes;"

The Hon'ble Supreme Court said that these words do not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be. The Hon'ble Bench quoted the judgement in the case of Martin Burn Ltd. Vs. The Corporation of Calcutta AIR 1966 SC 529 as follows:

"As result flowing from astatutory provision is never an evil, a Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

12: In this case, the admitted facts are absolutely clear and unambiguous and the legal position also is crystal clear. The applicant along with 69 others was declared surplus and accordingly he was relieved of his duties and transferred to the Surplus Cell. He ceased to be an employee of D.M.S. The relationship of master and servant in his case came to an end the day he was relieved of his duties and transferred to Surplus Cell. He ceased to be an employee ~~of D.M.S.~~ of D.M.S. He subsequently joined under DGCA as a Peon on nomination by Ministry of Personnel and from the Surplus Cell, he went and joined there. The claim for allotment will be below those who are registered with the Directorate of Estates

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for allotment of a house as a Peon in the Ministry of Civil Aviation as well as in other Ministries. Since he is not an employee of D.M.S. any longer, the General Manager, D.M.S. (Respondent No.2) is well within his right to charge damages/penal rent/market rent etc. after permitting him to retain the quarter for a period of four months on payment of double the licence fee provided he had made application to that effect accompanied by Medical/Educational Certificates and had made a request for retention of the quarter on the basis of medical or educational problems for himself or his wife or ~~for~~ the education of his children issued as per the Central Government instructions by the Directorate of Estates. The Respondent No.2 was well within his right to cancel the allotment after the normal period if he did not make any request for retention of quarter either on medical grounds or on grounds of dislocation of the studies of his children. I do not find any averment to that effect.

12. The counsel appearing on behalf of the Respondent No.2, Shri Vijay Mehta rightly contended that the applicant cannot retain the quarter of the D.M.S. since he is no longer an employee of D.M.S. and the relationship of master and servant has already ceased from the date he was relieved from D.M.S. No direction can be issued even to Director of Estates for allotment of a house on out of basis. turn His seniority for purposes of Pension and Gratuity are protected on account of provisions contained in regard to the redeployment scheme of the surplus placed in the Surplus Cell. But there is no provision to the effect that he will

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rank senior to other members in regard to his entitlement for a quarter. He will be placed at the bottom of all those who have joined as Peons earlier than him and he will also have to stand in the queue for allotment in his own turn. The words used in the instructions below SR.317-B-25 is:

"Officers who are occupying accommodation in other pools on transfer to offices eligible for General Pool may be considered for allotment..."

The circular does not envisage any mandatory requirement for allotment of a quarter. The Respondent No.1 may consider the case of the applicant in his own turn since the circular does not envisage an out of turn allotment in his case. It is for Respondent No.1 to consider whether he can allot a quarter on ad-hoc basis to him or not. On the basis of seniority he does not have the eligibility since he is a member of Grade 'D' cadre of DGCA and being the last to join in that cadre, his previous seniority in the D.M.S. will not count for purposes of allotment, since all those Grade 'D' whose names are registered with Directorate of Estates earlier than him will have a claim superior to his.

13. Thus, on the basis of the rules, no case is made out for an ad-hoc or out of turn allotment. I do not find any ratio established in the Division Bench ruling and as such it is not a binding precedent. It has ^{has frowned} simply conferred benediction and the Hon'ble Supreme Court on these tendencies of the High Courts and Tribunals. They

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are not to be impelled by sentiments and emotions in deciding the legal issues. Where statutory provisions are clear and unambiguous, we cannot twist the rules and distort the provisions to relieve distress or hardship of an individual since this will be against the law of the land and according to the Hon'ble Supreme Court, "law is the embodiment of all wisdom" and this has to be followed strictly. There is no ratio established in the Division Bench judgement nor has it interpreted the rules and since all other OAs cited above have followed this Division Bench ruling and it is difficult to accept it as a binding precedent, and accordingly this application fails and is dismissed leaving the parties to bear their own costs. The interim order is vacated.


(B.K. Singh)
Member (A)

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