

Central Administrative Tribunal
Principal Bench

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O.A. No. 998/94

New Delhi, this the 17th day of August, 1995.

HON'ble Shri J.P. Sharma, Member (Judicial)

Shri Zile Singh
r/o K.131, Pushp Vihar,
Sector No. 4, MB Road,
New Delhi.

...Applicant.

(By Shri B.B.Raval, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Environment and Forests,
Baryawaran Bhawan 'B' Block,
Phase-II, CGO Complex, Lodi Road,
New Delhi- 3.
2. The Director of Estates
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

...Respondent.

(By Shri J.Banerjee proxy for Sh. Madhav Panikar, Advocate)

ORDER (ORAL)

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

The applicant is son of Shri Hari Ram who is retired from Group 'C' post on superannuation w.e.f. 31st October, 1991 and was an authorised allottee of quarter No. K.131, Pushp Vihar, Sector No. 4, MB Road, New Delhi which was originally a type-III quarter but subsequently it was changed to type-II quarter. Before retirement of the father, the applicant was regularised in his appointment on a group 'D' post w.e.f. 8.12.1988 and as per rules he was

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not drawing any benefit of H.R.A. available to those who are not normally allotted government premises. The applicant continued not to draw the same. The applicant applied for regularisation of the aforesaid quarter to the respondents Directorate of Estates on 21.4.1992. The respondents did not allow the regularisation of the said quarter and initiated proceedings of cancellation of the aforesaid quarter against the father of the applicant by the impugned order dated 26.11.1993 mentioning therein that if he fails to vacate the premises by due date the officer shall be liable to pay the damages.

The respondents in their counter have also stated that certain proceedings under Public Premises (EQU) Act, 1971 were initiated on the basis of unauthorised occupation of the applicant since 1.11.1991 and thereafter the eviction order was passed on 10.1.1994 after serving a notice on the applicant on 7.1.1994. It is also stated that the applicant could not produce the evidence that he was residing with his father before the father retired from the active service from the central government as such the applicant has no claim for regularisation of the aforesaid quarter.

The applicant, in the rejoinder, has disputed the correctness of the fact that proceedings under section 5 & 7 of the Public Premises (EQU) Act, 1971 were initiated against the applicant. It is further stated that certain anti-social elements removed certain articles to dispossess him from the disputed premises but with certain pressure from the political sphere the applicant is also in possession

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of the said premises. The applicant was never out of possession of the said premises.

We have heard the learned counsel for the parties at length and perused the record. The relevant O.M. for giving beneficial allotment on out of turn basis to the retiree ward is of 1987 and was re-enforced in 1991 where it is laid down that if the ward of the retiree has been living with his father continuously for three years before his retirement or from the date of his appointment in the Central Government employment then such a ward may be considered for allotment or regularisation of eligible type of quarter on out of turn basis. The learned counsel for the respondents Shri Banerjee appears as proxy stated that the Ration Card produced by the applicant does not contain the name of the applicant and as such since it was not shown that he was residing with his father, so the regularisation was not given to applicant of the aforesaid quarter. Infact, the preparation of the ration card is done by another department and the respondents in their own O.M have not mentioned that it is mandatory on the part of a expectant allottee to get his prior entry in the ration card though that may be the evidence of the sharing accommodation with the retiree, however, the best evidence available with the respondents is the address given by the applicant at the time of his regularisation in group 'D' post and Shri Banerjee proxy counsel pointed out that address available is not different what was shown by

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the father of the applicant. Further the learned proxy counsel also not disputed the fact that the applicant was not drawing any H.R.A. since his regularisation from 8.11.1988. When these conditions are satisfied the case of the applicant is fully covered under the aforesaid O.M. of out of turn allotment to the ward of the retiree. This is a welfare scheme and it is for the rehabilitation of the aged retiree and the ward has to give an undertaking that he will maintain the retiree with him and his family. When all these conditions are satisfied, the respondents have to carryout their own instructions in letter & spirit.

The contention of the respondents counsel that eviction proceedings were initiated is not substantiated by any document. When a fact is reduced into writing, the document is primary evidence and has to be produced. Mere averment will not substitute the fact when it is denied by the other side in the rejoinder. No such document has been placed on record and further it appears that a notice was issued on 7.1.1994 and the order was passed on 10.1.1994 giving no time to the noticee to contest the proceedings. This appears to all a formality. In view of this there appears to be no justification of passing any order in the nature of eviction if at all there is any.

The applicant, however, continues to be in possession of the disputed premises. The fact remains, however, that the applicant is group 'D' employee and is eligible for type-I quarter. The father of the applicant was group 'C'

post holder and was allotted a type-III quarter which was later on converted to type-II quarter, so the regularisation of this quarter cannot be made in the name of the applicant. However, the respondents are bound to consider favourably the allotment of the eligible type-I quarter to the applicant.

The application is, therefore, disposed of with direction to the respondents to consider the case of the applicant for allotment of eligible type-I quarter to the applicant within a period of three months or from the date any vacancy occurs and till such time the applicant and his father retiree will continue to occupy the said premises on the same licence fee as was being paid by the retiree before his retirement as and when the eligible type-I quarter is allotted and made available in vacant possession to the applicant, the applicant shall shift therein within a period of eight days. If the applicant fails to shift along with his family and family of the retiree in the newly allotted premises then in the event the respondents are free to evict the applicant from the present quarter as per rules and also assess the licence fees according to rules. In case the applicant shifts to the newly allotted premises then this procedure need not to be adopted. Licence fee for the period under occupation would be paid by the applicant to discharge the burden of the retiree till the date he gets/occupies the newly allotted type-I government accommodation.

The application is, therefore, disposed of with no orders as to cost.

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