

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1526/1994

(8)

New Delhi, dated the 23th November, 1994

CORAM

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Ramesh Chander
s/o late Shri Mangat Ram
R/o A-74, HSTC Colony,
Mehrauli Road, New Delhi.

... Applicant

(By Advocate Mrs Meera Chhibber)

Versus

1. Government of NCT of Delhi
through Lt.Governor, Delhi
2. Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
3. Dy.Commissioner of Police,
HQ-III, Police Headquarters,
I.P.Estate, New Delhi.

... Respondents

(By Advocate Shri Amresh Mathur)

ORDER (ORAL)

[/] Hon'ble Smt. Lakshmi Swaminathan, Member (J) [/]

The applicant, who was Assistant Sub Inspector in Delhi Police is now on deputation to the State Transport Authority (STA) Department of Transport (D.oT.) as Sub Inspector since 1991. He is aggrieved by the letter issued by the Deputy Commissioner of Police

PS

(9)

HQ(III) dated 1-6-1993 by which the allotment of the Govt. quarter allotted to him by the Delhi Police was cancelled and it was ordered to recover damage charges @ Rs 1140.80PM from 22-10-1991 to 2-5-1993 plus water/electric charges. ^{He}

The applicant being aggrieved by this order has sought a direction from this Tribunal to quash the ^{order} same.

2. The brief facts of the case are as follows.

2.1. The applicant while working in Delhi Police, was allotted quarter No.13, PTS Colony, Malviya Nagar, New Delhi in Aug., 1982. In August, 1991, when he proceeded on deputation to the Transport Department of Delhi Administration as Sub Inspector, he was working as Assistant Sub Inspector in Delhi Police. According to him, he had submitted an application for allotment of alternative accommodation before proceeding on deputation, with the request that if alternative accommodation is not available he be permitted to retain the ~~mid~~ accommodation.

2.2. Learned counsel for the applicant also drew my attention to the letter addressed from the Joint Director (HQ) Transport Department, Delhi ~~wise~~

10

dated 23-9-91 to the Deputy Commissioner of Police

(Hq-I) regarding retention of Government accommodation by the applicant and certain other officers who were

on deputation from Delhi Police (Ann-V). Attention

was also drawn in this letter to letter of the

Deputy Secretary (PWD) Delhi Administration

dated 1-11-1978. The relevant portion of this ^{letter}

letter is reproduced below:-

" ORDER

It has been decided by the Administration to make the following additions in the Delhi Administration allotment of Government residences (General Pool) Rules, 1977 as Rule 19(4) namely:-

19(4) (a) When an employee of a department under Delhi Adminn. who have the separate pool of accommodation, is transferred, proceeds on deputation on a higher post in another department under Delhi Adminn, and is in occupation of Govt. residential accommodation will be eligible to retain the present accommodation on payment of licence fee at normal rate under F.R. 45. A till an alternative accommodation according to the rules is allotted to him from the Department where he has been posted. This will also be applicable in the case of officers/officials of Police Department."

2.3. The applicant did not receive any reply

from the respondents on his application for retention

of the Delhi Police quarter. However, vide letter dated

7-2-1992, the applicant was informed that since he had

been selected for deputation to the Transport Department

from Delhi Police w.e.f. 22.8.91, his earlier

allotment of Govt. accommodation had been cancelled

w.e.f. 22-10-1991 and he was asked to vacate the same within 10 days. He was also informed that he has been residing in the quarter unauthorisedly from 23.10.1991. By the impugned order dated 1-6-93, the applicant's present office, namely, the Department of Transport had been directed to recover the licence fee as damage charges.

2.4. On receipt of the cancellation notice, the applicant filed a suit in the court of Senior Sub Judge, Delhi for obtaining permanent injunction. The Court had granted interim relief to maintain the status quo on 13-3-1992 after issuing notice to the respondents. While the interim order was still operative, the applicant vacated the quarter vide D.O. No.56 on 2-5-1993. In the facts and circumstances of the case, the suit was ultimately dismissed by the Court of the Senior Sub Judge on 26-8-1993 on the ground that no cause of action subsisted.

2.5. After receipt of the impugned order dated 1-6-1993, the applicant again filed another suit in the court of Senior Sub Judge, Delhi (Copy placed at pages 14 to 17 of the paper book). This suits

(2)

by order dated 26-8-94 was dismissed on the ground that the court had no jurisdiction. Accordingly, the applicant has now filed this O.A. for the grant of relief as mentioned above.

3. The main grounds taken by the learned counsel for the applicant are:-

- (a) That the impugned order is illegal and contrary to the instructions issued by the Delhi Admn. in letter dated 1.11.1978.
- (b) That before the order cancelling the allotment of the quarter or before imposing the damage charges was issued ~~show~~ no/cause notice was given to the applicant thereby, violating of the principle of natural justice.
- (c) That by order dated 30-11-1991, the respondents had themselves allowed the other persons on deputation even to the Central Government to retain the Govt. accommodation till alternative accommodation is provided to them by the borrowing department. Therefore, according to the applicant there has been hostile discrimination against him in issuing the order dated 1-6-1993.
- (d) That in any case, since there was an interim order passed by the court on 13-3-1992 till he vacated the premises on 2-5-1993, he was under the protection of the court and there was no question of claiming or charging damage rent during this period.

JB

(3)

(e) The applicant being on deputation to the Transport Department, continues as a Police Officer there was no question of vacating the quarter in question having regard to Section 27(1) (b) of the Delhi Police Act, 1978, this Section provides that a Police Officer occupying any premises provided by the Commissioner of Police is required to vacate only on his ceasing to be a Police officer.

4. On the other hand, the learned counsel for the respondents relying on the Standing Order No.3 of 1991 passed by the Commissioner of Police states that the allotment of quarter has been rightly cancelled after allowing two months concession period after the applicant's deputation to the Transport Department. Since he did not vacate the quarter he was correctly charged damage charges. The Commissioner of Police has issued the standing order No.3 of 1991 under the powers vested in him under Sections 19(c) and 27(i) (b) of Delhi Police Act, 1978. The respondents rely on clause 19 of this Standing order which provides as follows:-

" The following procedure shall be observed for getting Govt. accommodation, if any, vacated from a government servant, who is to be relieved for deputation to a Deptt. not under the charge of the Commissioner of Police, Delhi.

(A)

Deputation

Notices inviting volunteers for deputation, shall specifically contain a clause that the selected official shall have to vacate Govt. accommodation within two months from the date of his proceeding on deputation. A written undertaking in the sub-joined preforma (Appendix VI) duly attested by a gazetted officer shall be obtained alongwith such applications before the names are forwarded to the borrowing departments. After the selection has been made, the official who is in occupation of Govt. residential accommodation and had volunteered himself for deputation shall be called upon to vacate the government quarter in his possession by stipulated date after giving two months period as permissible under the rules and vacation ensured by the quarter allotment cell of PHQ failing which the allottee concerned shall be liable for payment of licence fee at damage charges and action u/s 27(1) (b) and 27(2) of Delhi Police Act, 1978 shall also be initiated".

5. The learned counsel contends that the applicant who was on deputation to the Transport Department is required to vacate the Govt. accommodation within two months from the date of proceeding on deputation as per the above clause. To the specific query whether any show cause notice has been issued to the applicant before either the allotment of quarter was cancelled or charging the damage rent, counsel fairly admitted that no such notices have been issued.

6. It is well settled law that before any order is having civil consequence is issued, it is necessary to comply with the principles of natural justice, which includes giving a reasonable opportunity of hearing to the person who is so affected. Therefore, on this ground alone, the impugned order is liable to be quashed and set-aside for violation of the

(B)

(5)

principles of natural justice.

7. Apart from the above, it is also seen that the Standing Order issued by the Commissioner of Police under Section 19(c) of the Delhi Police Act, 1978 itself provides that it is subject to the orders of the Administrator i.e. Administrator of Delhi under Article 239 of the Constitution. The letter from Delhi Administration dated 1.11.1978 provides that under the Delhi Administration Allotment of Government Residence (General Pool) Rules, 1977 amendments when an employee under Delhi Administration proceeds on deputation on a higher post in another department under the Delhi Administration and is in occupation of Govt. residential accommodation, he is entitled to retain the same on payment of licence fee at normal rate till an alternative accommodation is allotted to him from the department where he has been posted. This order further mentions that it is applicable in the case of officers/ officials of Police Department. There is no dispute on the facts, that the applicant fully satisfies the conditions stipulated in the aforesaid order of the Delhi Administration. Any standing order passed by the Commissioner of Police under Section 19(c) of the Delhi Police Act, 1978 is subject to the

JS

16

order of the Administrator. Joint Director (HQ) Transport Department, Delhi Administration had written to the Deputy Commissioner of Police (HQ-I) that they may allow the deputationists / retain the Govt. accommodation of Police Pool in their possession as late as 23-9-91. The respondents have also allowed the retention of the Govt. accommodation till alternative accommodation is provided in the case of other deputationists to Central Government vide their order dated 30-10-1991. Therefore the allegation that the applicant is also being subjected to hostile discrimination is evident from the facts. The respondents averment that the applicant's request for retention of the Govt. quarter has not been received, is rejected in view of the same request conveyed in the letter addressed from the Joint Director (HQ) Transport Department to the Deputy Commissioner of Police (HQ-I)

8. In the facts and circumstances of the case, the impugned order dated 1-6-93 is arbitrary, illegal and in violation of the principles of natural justice and is hereby quashed and set-aside. It is further ordered that the retention of the Govt. quarter i.e. quarter No.13, PTS Colony, Malviya Nagar, New Delhi which had been

13

(J)

allotted to the applicant prior to his deputation to the Transport Department shall be regularised in his name on payment of normal rent, plus water and electric charge, till the same was vacated on 2-5-1993.

9. This application is allowed. No order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)