

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A./XXX NO. 1555/94 /19

Decided on : 26/10/95

Shri Sri Krishan ... Applicant(s)

( By Shri B. Krishan Advocate )

versus

Union of India & Another ... Respondent(s)

( By Shri Madhav Panikar Advocate )  
and Shri V.S.R. Krishna

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THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. To be referred to the Reporter or not ?

2. Whether to be circulated to other Benches  
of the Tribunal ?

(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1555/94

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New Delhi this the 26<sup>th</sup> day of October, 1995

**HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)**

Shri Sri Krishan  
R/o 32/446, D.M.S. Colony,  
Hari Nagar,  
New Delhi.

...Applicant

By Advocate Shri B. Krishan

Versus

1. Union of India through the  
Director of Estates,  
Directorate of Estates,  
'C' Wing, 4th Floor,  
Nirman Bhavan,  
New Delhi-110 011.

2. The General Manager,  
Delhi Milk Scheme,  
Ministry of Agriculture,  
West Patel Nagar,  
New Delhi-110008.

..Respondents

By Advocate Shri Madhav Panikar for respondent  
No.1.

By Advocate Shri V.S.R. Krishna for respondent  
No.2.

**ORDER**

This application is directed against the order dated 18.04.1994 issued by the respondent No.2 cancelling allotment of the Government residence to the applicant and also imposing damages at the rate of Rs.1935 per month and also the letter of the respondent dated 22.6.94 directing the administrative department in which the applicant is presently working to deduct the damage charges in liquidation of the arrears. The brief facts in this case are as follows.

2. The applicant was working as a Dresser in the Dispensary of the Delhi Milk Scheme , and he

was allotted departmental pool accommodation of the respondent No.2. The applicant claims that the said allotment has no nexus with the duties assigned to the applicant as the said residence is not an 'essential service' accommodation. This, of course, has been denied by the respondent No.2 in the counter-reply. Consequent on the applicant being declared surplus on the recommendations of the Staff Inspection Unit of the Ministry of Finance, respondent No.2 issued an office order dated 22.8.93

Annexure A-3 relieving him of his duties in the Delhi Milk Scheme with effect from 1.9.1993 (F/N). After being declared as surplus, the applicant was deployed under the scheme for deployment of surplus staff, to the office of the Chief Architect in the C.P.W.D. under the Director General, CPWD, to which the applicant joined on 10.02.94. There upon, the respondent No.2 cancelled the allotment of the departmental accommodation which was held by the applicant after allowing 2 months' concessional period for retention of accommodation provided under the rules and on not vacating the said premises at the end of the said period, the said impugned order was passed directing the respondent No.1 to recover the outstanding arrears of licence fee and damage charges from 1.9.93 to 31.5.94 and also for arrears of water charges, amounting to Rs.30,547/-, which was ordered to be recovered in instalments by the letter of the respondent No.2 dated 22.6.94 impugned as Annexure A-2. Aggrieved by this, the applicant has approached this Tribunal with the prayer that the respondent No.1 be directed to allot an alternative accommodation

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from the general pool according to the entitlement of the applicant on outofturn basis and till such accomodation is made available, the respondent No.2 be directed to allow the applicant to continue in the departmental pool accommodation of the DMS of the respondent No.2 which was retained by him. It is also prayed in the application that the impugned orders dated 18.4.94 and 22.6.94 be quashed.

3. The applicant contends that he went on leave on medical grounds and while on leave, the respondent has declared him relieved of his duties with effect from 1.9.93 with the direction to him to join the respondent No.1. He joined the respondent No.1 on 10.02.94 and by an order passed by the Tribunal in O.A. No. 229 of 1993, the period from 1.9.93 to 9.2.94 was ordered to be treated by the first respondent in that case as leave that may be due to the applicant including leave without pay. This averment is not denied by the respondent No.2. The applicant, therefore, contends that the action of the respondent No.2 in cancelling the allotment of the premises in question with effect from 31st October, 1993 was illegal as he was on leave till 9.2.94 and the order declaring him to have been relieved from 1.9.93 (F/N) was also without any basis, as he was on leave till 9.2.94 as per the directions of the Tribunal.

4. The applicant further contends that as he has been holding a departmental pool accommodation and has been transferred to another eligible office for allotment of Government residence from the general pool, he will be entitled to the outofturn allotment from the general pool. In support of this contention, the applicant has cited various judgements.

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5. In the averments made in the counter-reply of respondent No.2, the respondent has not admitted the contentions of the applicant. It has been averred in the reply that the allotment of the departmental pool accommodation held by the applicant had been cancelled with effect from 10.04.94 after allowing 2 months' concessional period under the rules. It is also admitted in the averments that the applicant had ceased to be an employee of the DMS after deployment in CPWD with effect from 10.02.94. He had no right to continue to occupy the DMS quarter and he could retain that quarter only upto 2 months' on normal licence fee and after the expiry of the period, he had to pay the damage charges till he vacates the DMS quarter. In the averments, the respondent No.1 has contended that the applicant though eligible for allotment of general pool accommodation in his turn on his joining the service after being deployed under the deployment of Central Surplus Staff Scheme, applicant is not eligible for alternative General Pool accommodation in lieu of DMS pool accommodation held by him. The respondent No.1 further contends that his request for allotment of alternative accommodation in lieu of DMS quarter was not received. However, as per his application in DE2 Form, his name has been added for "inturn allotment list" for inturn allotment of entitled accommodation under the General Pool. It is also contended by the respondent No.1 that employees of other pool accommodation are not eligible for adhoc allotment of the DMS from the General Pool on transer to another eligible office and they had to wait for their turn. In view of these facts and circumstances, the respondents have averred that the applicant is not entitled to any relief. In the rejoinder to the

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counter-reply of the respondent No.1, the applicant contends that he was holding a departmental pool quarter as a Dresser in the Delhi Milk Scheme and this had no nexus with the duties assigned to him. He further contends that his date of priority from the General Pool has been covered by the respondent No.1 and as such, he is entitled for allotment of accommodation from the General Pool even in his own right.

6. The learned counsel for the applicant strongly urged that in identical matters in O.A. Nos. 2025 of 1993 and 621 of 1994, the Tribunal was pleased to pass an order in favour of the applicants and, therefore, prays that a similar order may be passed in the case of the applicant also. The learned counsel for the respondents cited judgments in certain other cases passed by this Tribunal and particularly in O.A. No. 415 of 1994 which was dismissed by the order dated 2.12.94.

7. I have heard the learned counsel for the parties and have carefully perused the record.

8. One of the orders assailed in the application is the order of the respondent No.2 dated 18.4.1994, under which the departmental pool accommodation allotted to the applicant was cancelled with effect from 31.10.93. In the counter-reply filed by the respondent No.2, however, it is averred that the cancellation date of the quarter No.32/446 is 10.04.94, ie. as amended (emphasis added). In the other order dated 22.06.94 assailed by the applicant, the damage rent has been imposed with effect from 1.11.93 to 31.5.94 and also difference of water charges upto August, 1993. Neither the applicant nor the respondents No.2 has, however, annexed the amended cancellation order although the

application was filed on 1.8.94. Therefore, from the averments made by respondent No.2, the date of cancellation of the quarter is to be taken as 10.04.94. It is also averred in para 4.9 of the counter-reply as follows:-

" The allotment of DMS Quarter No.32/446 had been cancelled with effect from 10.04.94 after allowing two months concessional period under the rules. The DMS quarters are meant for the operation staff of DMS. As the applicant had ceased to be an employees of the DMS after deployment in C.P.W.D., Nirman Bhawan with effect from 10.02.94, he had no right to continue in occupy DMS Quarter. He could retain the quarter in DMS Colony upto only two months on normal licence fee after the expiry of the period he had to pay the damage charges @ Rs.1780/- per month till he vacate the DMS Quarter".

From this it would appear that the impugned letter by which damage charges are levied from 1.11.93 onwards, cannot be sustained as the applicant No.1 could retain the quarter in DMS colony only upto 2 months after he had ceased to be an employee of the DMS, i.e., to say upto 9.4.94, according to the averments made by the respondent No.2 himself. The next question to be considered is whether the applicant is entitled to claim an alternative accommodation from the general pool according to his entitlement immediately on out of turn basis, as prayed for in the application. Respondent No.1 has averred that the applicant is not eligible for allotment of General Pool accommodation in lieu of DMS quarter but will be entitled to an allotment in turn on the basis of his eligibility with reference to his appointment under the respondent No.1 consequent on his joining respondent No.1 with effect from 10.04.94. and also with reference to his seniority as may be applicable to him. The applicant has referred to the order of this Tribunal in O.A. No.

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2299 of 1993 filed by him. I have referred to this order. In the said order, the Tribunal has ordered as follows in para 18:

"18. In either case, i.e., whether the applicant is taken by the Director General of Works, C.P.W.D. as a peon/messenger or whether he is retired by the first respondent, the absence of the applicant from 1.9.93, i.e., the date on which he is relieved by the Annexure A-11 order, till the date of his appointment as peon or the date of his retirement on compassionate pension, as the case may be, shall be treated by the first respondent as leave that may be due to the applicant, including leave without pay".

Thus from the date of relief from DMS to the date of his joining under the respondent No.1 as a result of his deployment, the intervening period has been treated as leave due including leave without pay. The respondent No.1 has averred that while the applicant is not entitled to outofturn accommodation in lieu of the departmental accommodation of the DMS, they have not denied the applicant's eligibility for accommodation in his turn as per the application and as per the priority date under the rules. The applicant has not shown any specific rule or order under which the applicant is entitled to outofturn allotment of the accommodation in lieu of the Department Pool accommodation under the DMS. It is, however, averred by the applicant in the rejoinder that even the normal, inturn allotment will be available to him in as much as his date of priority from the General Pool has been covered by the respondents. If that were so, there should be no difficulty in the applicant securing the accommodation in his turn. This of course is to be verified by the respondents and also the allotting authority under the General Pool. In



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any case, the applicant has not made out his case for outturn allotment.

9. On the prayer that the applicant may be allowed to use and continue to occupy the present accommodation given by the DMS on normal terms, I do not find any ground to allow this prayer. Admittedly, the occupation of the said accommodation is from the Departmental Pool. Even admitting that it has no nexus with his duties as the Dresser in the DMS Dispensary, it still remains a Departmental Pool accommodation which is outside the purview of the General Pool accommodation. It is not the case of the applicant that the Departmental Pool accommodation allotted to him should be treated as General Pool accommodation insofar as he is concerned. Such a contention will not also be tenable.

10. The learned counsel for the applicant strongly relied on the judgment in O.A. No. 2025 of 1993 decided on 24.2.95. In that case, the respondents had not filed any counter in one case and in the other case covered by the judgment, there was absence of specific averment that the applicant was allotted accommodation as an essential maintenance staff. In this case, however, respondent No.2 has specifically averred that the quarters are meant for operational staff of DMS only and that as the applicant ceased to be an employee of the DMS, he had no right to continue in the occupation of DMS quarter. Therefore, the decision on the aforesaid cases is distinguishable.

11. In the result, the application is disposed of with the following directions:-

(i) The orders dated 18.4.94 and 22.6.94 are set aside and the respondents are directed to issue a

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fresh order regarding licence fee/damages recoverable from the applicant from 10.02.94 in view of the averments made by respondent No.2 in para 4.9 of the counter-reply.

(ii) The applicant is directed to vacate the quarter within a period of 2 months from the date of receipt of this order or from the date of inturn allotment under the General Pool whichever is earlier.

(iii) The prayer for directing <sup>for allotment of</sup> accommodation under the General Pool on outofturn basis is rejected. The applicant will, however, be entitled to the General Pool accommodation in his turn according to the priority date applicable to him under the rules, and the respondents are directed to process his application expeditiously under the rules, if as stated by the applicant, his date of priority is already covered by the Estate Officer.

(iv) The interim order, if any subsisting, also stands vacated.

(v) In the circumstances of the case, there shall be no order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

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