CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(22)

O.A./~~TXX~~ No. 1731 of 1994 Decided on: 30.5.96

Dr. Neena Diwan ....Applicant(s)

(By Shri B. Krishan Advocate)

Versus

The Principal and Medical ....Respondent(s)
Superintendent & Another

(By Shri M.M. Sudan Advocate)

CORAM:

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

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? No

2. Whether to be circulated to the other Benches of the Tribunal? No

(K. MUTHUKUMAR)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1731 of 1994

New Delhi this the 30th day of August, 1996

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

Dr. Neena Diwan
D/o Late Shri C.S. Diwan
R/o D-II/27 West Kidwai Nagar,
New Delhi. ...Applicant

By Advocate Shri B. Krishan

Versus

1. The Principal and Medical Superintendent,
Lady Harding Medical College and
Smt. S.K. Hospital,
New Delhi-110 001.

2. The Estate Officer,
Lady Harding Medical College and
Smt. S.K. Hospital,
New Delhi-110 001. ..Respondents

By Advocate Shri M.M. Sudan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant is a Professor in the Lady Harding Medical College (hereinafter referred to as LHMC) and she was allotted a Government residential accommodation bearing No.D-II/27 West Kidwai Nagar, New Delhi. She was transferred to Calcutta on 9.10.1987 and the aforesaid allotment was cancelled and an eviction order was also passed by the Director of Estates, respondent No.2 by the order dated

19.3.1990. The applicant challenged this order before the Hon'ble District Judge, who set aside the eviction order and allowed the petitioner to retain the said premises upto 31.7.1994. She was reposted back to Delhi with effect from 17.6.1988 and she rejoined her post in the LHMC and hospital on 1.7.88. Consequent on her reposting, the applicant had been trying for regularisation of the accommodation which was originally allotted to her and which was also a matter under litigation before the Tribunal. The application for regularisation of the accommodation was finally allowed by this Tribunal by its decision dated 3.8.1994. When the applicant rejoined the post under the first respondent, she had prayed to respondent No.2 for allotment of accommodation in the campus of respondent No.2 and it is submitted by the applicant that the respondent No.1 recommended her case to the Director of Estates for retention of the Kidwai Nagar Flat in exchange for which, the respondent No.1 offered to place another similar type of house at the disposal of the Director of Estates from his Departmental Pool Accommodation and at that time as no accommodation was available with the hospital, i.e., respondent No.1 and the applicant was informed that she would be allowed only in accordance with her seniority. Ultimately, the respondent No.1 allotted the accommodation D-II/B-37 Moti Bagh, New Delhi in favour of the applicant by their letter dated 23.12.1993. This allotment was accepted by the

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applicant andshe took physical possession of the said accommodation on 6.1.1994. The applicant, however, did not vacate the previous accommodation in view of the pendency of his case before the Tribunal. The respondent No.1 cancelled the allotment of the D-II/B-37 Moti Bagh, New Delhi by the impugned order dated 3.3.94 and directed the applicant to hand over the accommodation to the CPWD, Moti Bagh, New Delhi and submit the vacation report. The applicant represented to the respondent No.1 that her request for regularisation of the Kidwai Nagar Flat allotted to her was pending consideration with the Director of Estates and till the decision was taken, she would be allowed to continue and her regularisation xxxxxxxxxxxxxxx of the accommodation at DII/27, West Kidwai Nagar was also before the Tribunal and in view of this, she should be allowed to wait for the decision of the Tribunal in order to decide to shift to Moti Bagh Flat permanently. However, by the impugned orders dated 7.4.1994 and 12.7.94, she was informed that it was was not possible to withdraw the cancellation order as she had already been occupying two Government quarters since 28.1.1994 and she was liable to pay market rent in respect of the hospital accommodation D-II/B-37 Moti Bagh, New Delhi with effect from 6.1.94 in accordance with the rules, and that the market rental amounting to Rs.37,530/ for the period from 6.1.94 to 5.7.94 would be recovered

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from her pay in 10 instalments and from 6th July, 1994 onwards, the monthly market rent of Rs.6,255/ would be recovered from her pay regularly. It is against these impugned orders that the applicant has approached this Tribunal with the present application and has prayed that the impugned orders dated 3.3.94, 7.4.94 and 12.7.94 at Annexures A1, A-2 and A-3 respectively be quashed. The applicant has also prayed for a direction for reassessment of the the rental liability in respect of D-II/B-37 Moti Bagh, New Delhi on normal terms .

2. When the application came up for pleadings and admission after notice, the Tribunal by its interim order dated 2.9.1994 stayed the impugned order dated 12.7.1994 and the respondents were directed to file a short reply. The interim order was continued from time to time and when the pleadings were complete, the matter was taken up for final disposal at the admission stage itself.

3. The respondents in their reply have contended that the applicant should have surrendered the General Pool Accommodation consequent on her transfer to Calcutta in 1987 and was not entitled to retain her accommodation eventhough she rejoined this institution in 1988 and consequently the Director of Estates, i.e., respondent No.2 had taken action for eviction. Taking into account her difficulties due to eviction of General Pool Accommodation, the

Hospital Pool Accommodation No.D-II/B-37 Moti Bagh, New Delhi was allotted to her in January, 1994 and, therefore, she should have surrendered the General Pool Accommodation but she retained both the accommodation at the same time for a long time without further authorisation or proper justification and there is no provision in the rules for the applicant to retain two houses at the same time. She should have shifted to the Hospital Pool Accommodation and should have surrendered the General Pool Accommodation. As she did not occupy the Hospital Pool Accommodation, the said allotment order was also cancelled. The respondents further contend that it was not possible to have interpool change between Hospital Pool Accommodation and General Pool Accommodation and the applicant could not be allowed to retain two Government accommodation simultaneously. It was in these circumstances that the Hospital Pool Accommodation was cancelled and she was imposed a recovery of market rent for a period from 6.1.1994 to 5.7.1994 at the rates approved by the Government, taking into account the area of house. In the light of this, the respondents contend that there is no merit in the application and the same deserves to be dismissed.

4. The learned counsel for the applicant made the following submissions:-

(a) In ordering recovery of market rent, the respondents have not followed the due course of law

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and have also not followed the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(b) By their letter dated 13.1.1990, the first respondent had in fact written to the respondent No.2 that as there was no accommodation available at the relevant time under the Departmental Pool Accommodation, the applicant might be allowed to retain the accommodation allotted to her from the General Pool and that a flat of the same type from the Departmental Pool could be placed at the disposal of the third respondent as and when the flat under the Departmental Pool became available. In the light of this, the respondent No.2 was obliged to consider and allow the applicant the continued retention of General Pool Accommodation.

(c) Cancellation of the accommodation by respondent No.1 has no legal sanction and SR 317(B)(12) has no application.

(d) The respondent No.1 having made a promise by their letter dated 16.1.1990 to respondent No.2 that as and when a flat becomes vacant in the Departmental Hospital Pool, the respondent is estopped from allotting the flat to anyone else whereas the respondent did not place the accommodation at the disposal of the respondent but allotted it in usual course. The applicant was, however, allotted accommodation in the Departmental Hospital Pool in January, 1994.

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(e) The quantum of damage rent has not been assessed in accordance with the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. The learned counsel also contends that the respondent No.2 had issued the impugned order dated 12.7.1994 without following the provisions of the aforesaid Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

6. The learned counsel has referred to certain decisions in support of his contentions. However, in the light of what is stated hereinafter, it is not necessary to burden this judgment by referring to those decisions.

7. The learned counsel for the respondents contended that the applicant is trying to make use of the court proceedings and had tried to play the Estate Officer, Urban Development Ministry against the respondent Nos.1 and 2. Although the proceedings were pending in the Tribunal in respect of his accommodation at D-II/27 West Kidwai Nagar, New Delhi under the General Pool Accommodation, the fact remains that the applicant was duly allotted a Departmental Pool Accommodation by the respondents' letter dated December, 1993 and the possession was taken over by her in January, 1994. In accordance with the provisions of SR 317(B)(12), the applicant should have vacated the said accommodation in D-II/27 West Kidwai Nagar, New Delhi and should have shifted to the Hospital accommodation. It is only because

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she failed to do this and had not occupied the said accommodation, the allotment had to be cancelled and penal market rent was to be imposed on her and this action of the respondents cannot be faulted. The learned counsel for the respondents also submitted that just because the respondents had suggested to the Director of Estates that if the applicant was allowed to retain the General Pool Accommodation, it might be possible to exchange Hospital Pool Accommodation with the General Pool Accommodation as and when such Hospital Pool Accommodation became available. This by itself, did not imply any commitment as the suggestion was one sided and it was never accepted by the Director of Estates, Mnistry of Urban Development and, therefore, there was no question of any promissory estoppel in this regard.

8. I have heard the learned counsel for the parties and have carefully perused the records.

9. It is an admitted position that the applicant was allotted an accommodation D-II/27 West Kidwai Nagar under the General Pool which was canelled subsequent to her transfer to Calcutta and also subsequent to the rejection of her request for regularisation of the aforesaid accommodation which she had retained. The eviction order passed against the applicant by the Estate Officer was challenged by the applicant in O.A. No. 2004/1993. During the pendency of this application, the respondents had allotted in January, 1994, the Departmental Pool

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Accommodation which the applicant had accepted and took possession on 6.1.1994. Finding that the applicant had not occupied the premises allotted by the respondents, the said allotment was cancelled by the impugned order dated 3.3.1994 and she was asked to hand over the possession to C.P.W.D., Moti Bagh, New Delhi. By the impugned order dated 12.7.1994, the respondents directed recovery of the market rent from the pay of the applicant including arrears of market rent for recovery in instalments, from 6.1.1994 to 5.7.1994, when she had actually vacated the accommodation.

10. It is seen from the records that by the order dated January, 1994, the applicant was informed that as she had not vacated the flat at D-II/27 West Kidwai Nagar occupied by her and consequent on her allotment of the Hospital Pool Accommodation, she was required to vacate the General Pool Accommodation within 7 days, as otherwise market rent would be charged for one accommodation, as she could not occupy two quarters for more than 8 days. Finding that this order was not complied with, the impugned orders were issued by the respondents, one for cancelling the allotment of the Hospital Pool Accommodation and the other for recovery of market rent for the said accommodation. It is no doubt true that the applicant had contested the eviction proceedings in respect of the General Pool Accommodation and her application was pending in the

Tribunal, but once another accommodation was allotted to her and she had accepted the accommodation and had taken possession, the allotment of the former accommodation shall be deemed to have been cancelled from the date of the occupation of the new residence. The applicant herself admits in her application that she had taken physical possession on 6.1.1994 and, therefore, can be said to have occupied the premises from that date. The provisions of SR 317 (B)(12) are reproduced below:-

> "317(B)(12)(2)
>
> Where an officer, who is in occupation of a residence, is allotted another residence and he occupied the new residence, the allotment of the former residence shall be deemed to be cancelled from the date of occupation of the new residence. He may, however, retain the former residence without payment of licence fee for that day and the subsequent day for shifting:
>
> Provided that if the former residence is not vacated by the subsequent date as aforesaid, the officer will be liable to pay damages for use and occupation of the residence services furniture and garden charges as may be determined by the Government from time to time, with effect from the date he takes possession of the latter residence."

Her contention that her shifting to the Hospital Pool Accommodation would weaken her case before the Tribunal could hardly be a valid ground for her continued retention. She had to either decline the allotment under the Hospital Pool and continued in the General Pool Accommodation pending the final decision of her applcation in the Tribunal or to accept the accommodation under the Hospital Pool and

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vacate the General Pool Accommodation notwithstanding the pendency of her application. What the applicant had done in this case was that she had availed herself of both the alternatives and occupied both quarters for the periods from January 1994 to 6.8.1994. She had actually vacated the General Pool Accommodation on 6.8.1994 after the judgment in O.A. No. 2004 of 1993 was pronounced on 3.8.1994. Thus, in effect, she had become liable to pay damages for the occupation and use of the former residence with effect from the date she took possession of the latter accommodation. In the aforesaid O.A., the following order had been passed:-

> " In the circumstances, I allow this O.A. The impugned orders dated 20.12.1989 and 6.4.93 are quashed and set aside. The respndents are directed to regularise the flat in the name of the applicant on payment of licence fee by the applicant as per extant rules,, if not already paid by her, within a period of two months from the date of receipt of this order by them. The O.A. is thus disposed of. Parties are to bear their own costs".(emphasis added)

So on the said date of the judgment, the applicant was liable to pay damage rent for use of former accommodation in terms of provisions of SR 317(B)(12). Her contention that vacating the General Pool Accommodation would weaken her case in the application pending before the Tribunal is not sustainable as the matter under challenge was the cancellation/eviction from quarter by the orders dated 20.12.1989/6.4.93 and the regularisation of that accommodation, and, therefore, her vacating the

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accommodation in the General Pool would not entirely frustrate the reliefs claimed in the application. On the other hand by retaining the accommodation even after the allotment of another accommodation, the applicant had violated the provisions of SR 317(B)(12) and there is nothing on record to show that the applicant had challenged the vires of that rule in the aforesaid application.

11. The judgment in the O.A. clearly stipulates that the applicant would be liable to pay licence fee as per extant rules, if not already paid by her and, therefore, by provisions of SR 317(B)(12)(the extant rule), she would be liable to pay damage rent in respect of the former accommodation though regularised in her name, beyond the date from which, her allotment should be deemed to have been cancelled under the rules, and the question of retention of General Pool Accommodation beyond the permissible period consequent on the allotment of Hospital Pool Accommodation, was not specifically covered in the aforesaid judgment. The applicant should have brought to the notice of the court the fact of allotment of Hospital Pool Accommodation and her acceptance thereof immediately after her acceptance of the Hospital Pool Accommodation. Be that as it may, by the impugned orders, the applicant has been imposed market rent in respect of the latter accommodation by the respondent Nos. 1 and 2 held by

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her under the Hospital Pool. The former accommodation falls under the General Pool under the control of Director of Estates who is not a party in this application. In the light of this, the impugned order imposing market rent by respondent Nos. 1 and 2 on the Hospital Accommodation will not be strictly in accordance with the provisions of the aforesaid Rule and cannot be sustained. No doubt they are, however, entitled to recovery of normal licence fee for the period from 6.1.94 to 6.8.94 by the competent authority in respect of the Hospital Pool Accommodation. It is however open to the respondents to initiate such action as may be necessary under the rules in consultation with the Director of Estates so as to facilitate him to give effect to the provisions of the aforesaid rules in respect of the General Pool Accommodation retained by the applicant for the above period.

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

(1) The impugned orders dated 3.3.1994, 7.4.1994 and 12.7.1994 are set aside and quashed.

(ii) The respondents are directed to charge normal licence fee for the Hospital Pool Accommodation for the period from 6.1.1994 to 6.8.1994.

(iii) It is open to the respondents to initiate such action as may be necessary in consultation with the Director of Estates so as to facilitate him to give effect to the provisions of SR 317(B)(12)

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in respect of the General Pool Accommodation retained by the applicant for the aforesaid period for recovery of Government dues on this account.

In the circumstances, there shall be no order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

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