

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No.1981/94

Date of decision 18.7.1995

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

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

Mrs P.Toppo,
w/o Mr.E.Toppo,
R/o SPM Residence,
Delhi Cantt.Post Office
and presently posted as
Dy.Post Master (HSG-I)
Lodhi Road, Head Post Office,
New Delhi-110003

... Applicant

(By Advocate Shri Sant Lal)

Vs.

1. Union of India
through Secretary,
Post & Telegraph, Dak Bhawan,
New Delhi-110001
2. Chief Post Master General,
Delhi Circle, Meghdoot Bhawan,
New Delhi-110001
3. Estate Officer
Mr.R.K.Srivastava, 5th Floor,
office of Chief Post Master General,
Delhi Circle, Meghdoot Bhawan,
New Delhi-110001

... Respondents

(By Advocate Shri M.K. Gupta)

O R D E R

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

The applicant, who is working as Deputy Post Master, Lodi Road Post Office, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the following orders:-

- (i) Order letter No. BDG/EP-23/94,
dated 22.9.1994 of Estate Officer
(Annexure A-1).
 - (ii) Order letter No. BDG/EP-23/94,
dated 26.7.1994 (Annexure A-2).
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- (iii) Order letter No. BDG/EP-23/94, dated 8.9.1994 (Annexure A-3).
- (iv) Order letter No. BDG/EP-23/94, dated 28.7.1994 (Annexure A-4).

The applicant being aggrieved by these orders has filed this application seeking a declaration that the recovery proceedings instituted by the Estate Officer are illegal and the same should be quashed, and for a direction that the Chief Post Master General (CPMG) should consider her application for allotment of quarter before getting her evicted from the quarter she was then occupying and damages in the circumstances of the case. She has also sought an interim order requesting stay of the proceedings of the recovery of dues as well as eviction from the Government accommodation she was staying in till finalisation of the main O.A.

2. The interim order dated 13.9.1994 against operation of the letter dated 26.9.1994 (Annexure A-1) regarding the stay of eviction from the Government quarter was vacated by order dated 30.11.1994. The learned counsel for the applicant, Sh. Sant Lal, confirmed that in accordance with this order, the applicant has since vacated the quarter which she had been occupying while posted at the Delhi Cantonment Post Office.

3. In view of the above, the question of taking further proceedings for eviction of the applicant in pursuance of the impugned orders is not applicable in the circumstances of the case.

4. The brief facts are that the applicant was allotted a post-attached quarter, free of rent, when she was posted as Sub-Post Master (SPM) at the Delhi Cantonment Post Office in May, 1987. She was transferred to the Lodi Road Post Office in January, 1991 as Deputy Post Master (HSG) but she continued to stay in the quarter allotted to her while posted at Delhi Cantonment till she vacated the same as mentioned above.

5. The applicant claims that she never received the cancellation of the allotment of the quarter at Delhi Cantonment Post Office with effect from 1.4.1991. She also states that although she was allotted an accommodation under the general pool by CPMG on 10.3.1988, she did not avail of the allotment as it was necessary for her to remain in the rent free accommodation for proper discharge of her duties at the Delhi Cantonment Post Office at that time. According to her, she made an application for allotment of an alternative accommodation vide her letter dated 13.8.1991 (Annexure A-6). She also claims that she is entitled for a priority consideration out of the Lady Officers' Pool and that she is a scheduled tribe woman. The applicant has vehemently denied that she is in unauthorised occupation of the accommodation allotted to her at Delhi Cantonment as mentioned in the impugned order. She claims that she had again requested the CPMG by letter

dated 16.5.1994 giving the reason that on medical grounds she could not vacate the quarter and requesting for an alternate accommodation to be allotted to her on her transfer to Lodi Road Post Office (Annexure A-9).

6. The applicant has filed a rejoinder to the short reply filed by the respondents opposing the continuation of the interim order dated 30.9.1994 and another rejoinder to the reply filed by the respondents. Shri Sant Lal, learned counsel for the applicant, was heard at great length on behalf of the applicant. His first objection that the counter-affidavit on behalf of the respondents has not been verified and signed by a duly authorised officer ~~and~~ can be straightaway rejected, having regard to the revised provisions of S.R.O. 351 dated 14.2.1990 which empowers all gazetted officers to verify and sign ^{the} counter-affidavit.

7. The other main ground taken by the applicant are that the Estate Officer has not given ^{her a} reasonable opportunity ~~to the applicant~~ to be heard. She draws attention to the Annexure A-2 order dated 26.7.1994 which requires the applicant to show cause by 10.8.1994 why an order of eviction should not be made against her, whereas within 2 days of this notice, the Annexure A-4 order dated 28.7.1994 has been passed for recovery of outstanding dues of licence fee of Rs. 2,02,560/- , thereby violating the principles of natural justice.

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8. The next ground taken is that the CPMG to whom the applicant had made application for allotment of alternate accommodation had not taken any decision on her repeated requests. In the circumstances, she had assumed that her continuation in the quarter she was occupying was in order and she cannot be charged the damages as claimed by the respondents. The next ground taken by Shri Sant Lal is that in accordance with rule 29(4) of the Rules of Allocation and Allotment of P&T quarters issued by DGP&T, the applicant was entitled to a post-attached accommodation on her transfer and posting as Deputy Post Master Incharge of Treasury in Lodi Road Post Office, New Delhi. He also claims that the applicant was entitled for allotment of quarter on out-of-turn basis as her turn came for regular allotment when she was occupying the post-attached accommodation as Sub-Post Master, Delhi Cantonment Post Office in accordance with the letter dated 5th June, 1973 addressed to all Heads of Circles and Telephone Districts (Annexure A-11). The relevant portion of this letter reads as follows :-

- " (i) An official in occupation of attached to post quarters, on transfer from that post to a post to which no quarters is attached at the same station and in the same unit should be allotted a quarter on out of turn basis if his turn had come for regular allotment when he was occupying the attached to post quarter or if he had vacated a P & T Quarters at the same station duly allotted to him in his turn before occupying the post quarter.

- (ii) As far as possible, officers occupying attached to post quarters should be rotated within themselves so that the hardship involved in vacating post quarters and/or providing alternate accommodation is minimised to the extent possible.*

According to Shri Sant Lal, having regard to Rule 29(4) of the Allotment Rules and the DGP&T letter dated 5th June, 1973 (Annexure A-11), the applicant was entitled to be considered and allotted either a post-attached quarter as she was the Deputy Post Master Incharge of Treasury at Lodi Road Post Office to which she was transferred or alternatively she ^{was} entitled to an allotment of quarter on out-of-turn basis. The applicant also submits that she has been discriminated because a number of officers have been allowed to retain post-attached quarters when they had already been transferred from that post. Shri Sant Lal's contention is that the respondents having failed to give her a quarter on out-of-turn basis in accordance with ^{the} rules, ^{they} cannot saddle her with penal rent/damages for her continued stay in the quarter allotted to her at Delhi Cantt. In the circumstances of the case, he prays that the application may be allowed and that the impugned orders may be quashed and set aside.

9. We have seen the replies filed by the respondents, and also heard Shri M.K. Gupta, learned counsel. According to the respondents, the applicant was transferred to Lodi Road Post Office in January, 1991. As per rules, she was required to vacate the post attached accommodation on her transfer. They state that the allotment of the post attached quarter at Delhi Cantt. was cancelled w.e.f.

1.4.1991 vide letter dated 4.7.1991. The respondents have produced the file in which the office copy of the letter dated 4.7.1991 is available. In this letter, as also mentioned in their reply, the applicant was directed to hand-over vacant possession of the accommodation on or before 31.7.1991 to Sub-Post Master, Delhi Cantt. They state that the applicant had acknowledged the fact of cancellation of allotment of accommodation vide her representation dated 13.8.1991 (Annexure A-6). Shri M.K. Gupta on behalf of the respondents relying on Rule 16 of the P&T Rules for Allocation of Allotment of Quarters, 1956, as amended from time to time, (copy placed on record), states that the applicant should have applied for allotment of quarter in the prescribed form every year. According to the respondents, the applicant did not apply for the allotment till 16.5.1994 (Annexure A-9). As per this application, ^{the} applicant is in ^{Serial} No. 151 in the waiting list for allotment of the general pool accommodation. Shri M.K. Gupta submits that the applicant cannot rely on the D.O. letter dated 5th June, 1973 issued by DGP&T, New Delhi to the General Manager, Delhi Telephones with copy to all Heads of Circles and Telephone Districts for information and necessary action (Annexure A-11) as this is not applicable to the case of the applicant ^{who is in the Department of Posts.} He submits that Annexure A-4 order dated 28.7.1994 is not the relevant order but the relevant order is Annexure A-1 order dated 22.9.1994. He also submits that the order dated 5.4.1994 (Annexure A-10)

gives the correct calculation of the amounts due for recovery and these orders are legal and in accordance with the rules.

10. Regarding the reliance placed by the applicant on Rule 29(4) that she is entitled for a quarter at Lodi Road Post Office as she is Incharge of Treasury, the learned counsel submits that the applicant is not the senior-most at that place and the rule is, therefore, not applicable to her. He submits that there is only one quarter at Lodi Road Post Office, which has not been denied by the applicant in the rejoinder, and she being the Deputy Post Master, she is not entitled to this quarter. He submits that as per the P & T Rules, on her transfer to the Lodi Road Post Office, she had been permitted to retain the quarter at old station at normal rent for a period of 2 months and thereafter her allotment was cancelled by the letter dated 4.7.1991 after which she had continued in the quarter as an unauthorised occupant for which she is liable to pay the dues as demanded by the order dated 22.9.1994 (Annexure A-1). Shri M.K. Gupta relies on the judgment of the Supreme Court in UOI v. Wing Commander R.R. Hingorani (1987(1)SCC 551, Sushil Chander Bhatnagar v. v. UOI (1994(3)SLJ 367 CAT(PB), State of Maharashtra v. Admane Anita Moti (1994 SCC (6) Pt.I 109) and Managing Director ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993(4) SCC 72)

In short, his submission is that following these decisions of the Supreme Court, the applicant knowing very well that as per the rules her previous allotment of the quarter at Delhi Cantt. stood cancelled after 2 months of her transfer, she cannot claim that her continued stay is authorised by the Department. Further, that there has been no infringement of the principles of natural justice in this case as she was well aware of the cancellation of the allotment and no prejudice has been caused to her, if at all, by the impugned order claiming recovery of Govt. dues in the public interest.

11. We have considered the pleadings, record in this case and the arguments of the learned counsel of both the parties very carefully.

12. The respondents have asserted in their reply and the learned counsel had also stressed in the arguments before us that the applicant was well-aware of the cancellation of the said accommodation by letter dated 4.7.91 to which she had made her representation dated 13.8.1991.

The relevant portion of the letter dated 4.7.94 in Department's: F.No.BDS/6-2/93 is extracted below :-

" Sub:- Cancellation of allotment of quarter attached to the post of SPM, Delhi Cantt.

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Consequent upon the transfer from Delhi Cantt. to Lodi Road, PO, you have to vacate the attached post accommodation after two months from the date of transfer (i.e.) before 31.3.1991. But the quarter has not yet been vacated. You are, therefore, directed to vacate the attached accommodation before 31.7.1991 and handover the vacant possession to SPM Delhi Cantt. on or before 31.7.1991 failing which steps for eviction from the premises will be taken in accordance with the rules."

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As per rule 33(ii) of the P&T Rules, the Head of the Circle is empowered to allow the persons transferred to retain the quarter at the old station for a period not exceeding 2 months from the date of issue of the transfer order on payment of normal rent. In this case, however, it appears that the applicant was allowed to stay in the accommodation upto 31.7.1991 by the Respondents and hand-over the vacant possession of the quarter to the SPM on or before that date. In the impugned order dated 28.7.1994, the applicant has been charged Rs. 5180/- p.m. as licence fee for the quarter for the period from 1.5.1991 to 31.7.1991 amounting to Rs. 2,02,020.00 which is apparently incorrect. Further, the respondents have nowhere in their reply shown that the charging of rent at Rs. 5180/- p.m. for this period is according to the rules, taking into account their own letter of 4.7.1991 which permitted her to stay in the quarter till 31.7.1991.

13. The applicant has asserted that she had submitted an application to the CPMG on 13.8.1991 for allotment of an alternate government accommodation so that she can vacate the post attached accommodation. There is no doubt that as per the rules she was required to make the application in the prescribed proforma which she has failed to do. However, the respondents while forwarding her application dated 13.8.1991 do not appear to have

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either intimated her to file her application in the proper form or taken any further action on her request till her later request dated 16.5.1994. In the facts and circumstances of the case, we note also that the respondents have not taken any action against her for eviction or for recovery of the amounts due from her within a reasonable time after her transfer to the Lodi Road Post Office. According to them she only made the application for allotment of general pool accommodation on 16.5.1994, according to which she is in S.No. 151 in the waiting list. As mentioned above, the respondents have also failed to take necessary action under the rules within a reasonable time and they cannot, therefore, now take advantage of their own lapses. In the particular facts and circumstances of the case, the respondents are, therefore, directed to take the relevant date when the applicant applied for allotment of alternate accommodation as 13.8.1991 and not 16.5.1994 and consider her case for such allotment accordingly. If after such reconsideration of her application as directed above, the applicant is found to be entitled for allotment of a quarter from an earlier date, then the respondents shall not charge her any damage rent from that date till the actual date of vacation of the quarter at Delhi Cantt. but the applicant shall be liable to pay only normal rent from this period.

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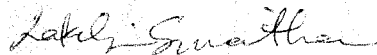
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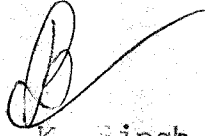
14. As regards the applicant's claim for getting the allotment under the provisions of Rule 29(4) of the P&T Rules, the applicant has failed to produce any evidence to show that she is, in fact, entitled to the same having regard to the nature of her duties. This claim is, therefore, rejected. The claim for out-of-turn allotment based on the D.D. letter dated 5-6-1973 (Annexure A-11) is also rejected because on a plain reading of this letter it appears that although it has been issued by the D.T.(Estt) Office of the DGP&T, New Delhi, this has been addressed to the General Manager, Delhi Telephones, New Delhi with copy to all Heads of Circles and Telephone Districts for information and necessary action. Sh.M.K.Gupta has correctly contended that this letter is not applicable to the applicant's case as she is strictly governed by the DGP&T Rules which does not include such a provision.

15. The plea that the applicant is entitled to out-of-turn allotment in Ladies Pool and because she is a scheduled tribe woman has also not been substantiated under any rule and hence this is rejected. The other grounds taken by the applicant are also without any substance and are rejected.

16. On a perusal of the impugned orders it is seen that while Annexure A-3 had called the applicant for a personal hearing on 22-9-1994, the Annexure A-1 order was passed on the same date. Similarly, the Annexure A-4 order was passed by the Estate Officer two days after the order dated 26.7.1994, where a show-cause notice was issued to the applicant to be heard on or before 10.8.1994. Having regard to these inconsistent stands taken by the Estate Officer in the various orders impugned in this application, we quash and set aside the impugned orders to the extent of the demand of payment of the outstanding licence fee amounting to Rs 2,02,560/-. We, however, make it clear that the respondents are at liberty to pass fresh orders for recovery of the licence fee for the accommodation occupied by the applicant at Delhi Cantt. after her transfer to the Lodi Road Post Office keeping in view the observations made above and in accordance with law. The applicant shall also be entitled to a personal hearing on this matter before the respondents pass any fresh order for recovery of licence fee in accordance with law.

17. The application is disposed of with the above directions. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)


(B. K. Singh)
Member (A)