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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 2335/2000

Friday, this the 7th day of December, 2001

Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri Tej Kishan
S/O Shri Gopinath Bhat
R/O Z-20, Sarojini Nagar
New Delhi-23.

..Applicant

(By Advocate: Shri George Paracken)

Versus

1. Union of India
through Secretary
Ministry of Home Affairs
North Block
New Delhi-1.
2. Secretary
Ministry of Urban Development
Nirman Bhawan,
New Delhi-11
3. Director
Directorate of Estates
Nirman Bhawan
New Delhi-11.

..Respondents

(By Advocate: Shri M.K.Bhardwaj for Shri A.K.Bhardwaj)

O R D E R (ORAL)

Applicant, who is a Kashmiri migrant, has retired from Govt. service on 30.6.2000. Prior to his retirement, he was residing in Govt. accommodation No.Z-20 Sarojini Nagar, New Delhi which was duly allotted to him. In terms of the relevant rules, he is entitled to continue to reside in the same accommodation for a period of 4 months, i.e., upto 31.10.2000 on payment of the prescribed licence fee.

2. The applicant has no accommodation available to him in Delhi. His house located in Srinagar has been burnt/destroyed by the militants. In the circumstances, he has no house to live in and accordingly, prays for a

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direction to the respondents to quash and set aside the letter issued by the Directorate of Estates on 24.7.2000 (Annexure-A) by which his request for retention of the aforesaid Govt. quarter for two years after retirement has been rejected by relying on the rule position which permits continued occupation of Govt. accommodation after retirement for a total period of four months only on payment of prescribed license fee. The impugned letter further states that there is no provision for allowing retention of Govt. quarters by the retired Govt. servants on any ground whatsoever. He also prays for a direction to the respondents to allow him to continue to reside in the aforesaid Govt. quarter until it becomes possible for him to return to Srinagar with his family or until a suitable alternative accommodation is provided to him for residing in Delhi.

3. On 13.7.2000, the applicant had filed a representation before the Minister for Rural Development and Urban Affairs (Annexure-F) requesting therein that he be allowed to retain the aforesaid Govt. quarter for a minimum period of two years on payment of the present licence fee. In the aforesaid representation, the applicant had brought out the bad and unsafe conditions prevailing in the Jammu & Kashmir valley. The contention raised on his behalf is that the rejection letter dated 24.7.2000, though it makes a reference to his aforesaid representation made to the Minister, has not been issued after obtaining the Minister's approval, and to this extent, the same cannot be sustained and deserves to be quashed and set aside.

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4. I have considered the submissions made by the learned counsel on either side and find that, in terms of rule position, the impugned orders passed by the Directorate of Estates cannot be found fault with. By the same token, no fault can be found with the letter issued by the same Directorate of Estates on 14.7.2000 (Annexure-1 to counter reply) which seeks to direct the applicant to vacate the aforesaid Govt. quarter on or before 1.11.2000 failing which action to evict him was to be taken in accordance with Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The relevant supplementary rule being S.R. 317-B-11 clearly provides that where a residence is retained by a Govt. servant for a period of four months after his retirement, the allotment of the accommodation shall be deemed to have been cancelled on the expiry of the admissible/concessional period. In the case of a retired Govt. employee, according to the same rule, the admissible retention period is four months which, in the instant case, ended on 31.12.2000. Thus, by the operation of the aforesaid rule, the allotment of the Govt. accommodation in question in favour of the applicant stands cancelled automatically rendering him an unauthorised occupant from 1.11.2000 onward.

5. The learned counsel appearing on behalf of the applicant has not disputed the rule position relied upon by the respondents. He has, on the other hand, relied on a decision rendered by the Hon'ble Supreme Court in SLP-7639/97 (Shri J.L.Kaul & Ors. Versus State of J & K & Ors.), wherein, in a similar situation, the

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petitioners have been allowed to continue to reside indefinitely in the Govt. accommodation situated in Jammu in the State of Jammu & Kashmir. The Supreme Court in the aforesaid case has further provided that the petition could be activated only when the State was in a position to assure the return of the petitioners to their respective homes in the Kashmir valley and also ensure their safety and personal property. It is the applicant's case that he is entitled to similar treatment even though he is located in Delhi and not in Jammu.

6. The learned counsel appearing on behalf of the applicant further submits that three other Kashmiri migrants who are similarly placed and who also have retired from Govt. service in Delhi, have been allowed to retain Govt. accommodation for another one year for the present. In support of this claim, copy of a letter dated 13.6.2000 issued by the Directorate of Estates to one of them, namely, Mr. M.K. Khar has been placed on record at Annexure-I. Referring to the case of the same Mr. M.K.Khar, the learned counsel appearing on behalf of the applicant has supplied, during the course of hearing, copy of an order passed by the Additional District Judge on 1.2.2001. A perusal of the aforesaid order passed by the Addl. District Judge reveals that a statement was made before that court by the Deputy Director, Directorate of Estates to the effect that the Cabinet Committee on accommodation (CCA) had regularised the retention of the premises under Shri Khar's occupation in favour of Shri Khar himself. The

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aforesaid order also states that in view of the statement made by the aforesaid official of the Directorate of Estates, the order of eviction passed against Shri Khar had become infructuous. In the reply filed on behalf of the respondents also there is a statement to the effect that as regards the case of the said Shri Khar and two others, the Minister for Urban Development had approved the draft note for CCA for ex-facto approval of the Committee (CCA). The reply clearly provides that the case of the three Kashmiri migrants in question were being submitted to the CCA for ex-facto approval. The fact that the CCA has since regularised the retention of the Govt. premises in favour of Shri Khar has already been noted. The learned counsel appearing on behalf of the applicant submits that the aforesaid proposals in respect of the three Kashmiri migrants have been submitted, as stated in the respondents' reply, to the CCA for ex-facto approval. This would show that the concession in question has already been extended to the aforesaid Kashmiri migrants and now the matter has been referred to the CCA only for post-facto approval. He has on this basis submitted that the Directorate of Estates has meted out a discriminatory treatment to the applicant who is, for all practical purposes, placed on par with the aforesaid Kashmiri migrants. The treatment meted out to the applicant, according to him, is in the peculiar circumstances of the case, clearly violative of Article 14 of the Constitution. I agree.

7. I have considered the rival contentions raised on behalf of the parties carefully. Having regard to

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the decision rendered by the Supreme Court in J.L.Kaul's case, (supra) and the decision taken by the CCA in respect of three Kashmiri migrants, I am inclined to take the view that it would be desirable and in the interest of justice to expect the respondents to review the claim of the applicant at the appropriate level in the Govt. The applicant has already contended that the impugned letter dated 24.7.2000 does not show that the same has been issued after obtaining the approval of the Minister concerned. He has, after the impugned letter was issued on 24.7.2000, submitted further representations, including the representation dated 18.10.2000 placed at Annexure A-G. He would like the same to be considered along with his previous representations at the appropriate level in the Govt. Since he had filed his initial representation before the Minister, further orders in the matter should be issued, according to the learned counsel, only after obtaining the Minister's approval and the letter to be issued, whether granting the relief in question or not, should state clearly that the approval of the Minister has been obtained.

8. On a further consideration of the facts and circumstances of the present case, I find that it will be in the interest of justice to quash and set aside the impugned letter dated 24.7.2000 (Annexure-A). I direct accordingly. In the peculiar circumstances of this case, the respondents are directed to review the applicant's case in the light of the observations contained in this order and whatever else has been

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stated in the present OA in a careful manner, and to pass a reasoned and a speaking order afresh after obtaining the approval of the Minister for Urban Development and, if found necessary, after obtaining the approval of the CCA.

9. The present OA is allowed in the aforesated terms. No costs.

(S.A.T. Rizvi)
(S.A.T. Rizvi)
Member (A)

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