

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 502/2000

New Delhi this the 2nd day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Goindan S. Tampi, Member (A)

M.N. Sivasubramanian,
Director (on Study Leave),
Planning Commission,
Govt. of India, New Delhi

... Applicant.

(Applicant present)

VERSUS

1. The Union of India represented by
The Secretary, Ministry of Urban
Development, Nirman Bhawan, New Delhi.

2. The Director of Estates, Ministry of
Urban Development, Nirman Bhawan,
New Delhi..

.. Respondents

(By Advocate Shri Rajinder Nischal)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The applicant has impugned the order passed by Respondent No. 2 i.e. Director of Estates, Ministry of Urban Development dated 22.10.1999 cancelling the allotment of Government quarter at D 16 Dev Nagar, New Delhi w.e.f. 1.10.1998 with consequential recovery of damages and another order dated 27.10.1999 passed by the same respondent in respect of payment of damages.

2. The brief relevant facts of the case are that the applicant while working as Director in the Office of the Planning Commission, Govt. of India, New Delhi was deputed for one year training in M.Phil. in Economic Planning at University of Glasgow, U.K. under the Colombo Plan. This has been stated in the

O.M. of the Planning Commission dated 26.9.1997. Thereafter the applicant had applied for Extra Ordinary Leave(EOL) for a period of two years w.e.f. 1.10.1998 for pursuing Ph.D from the Heriot-Watt University, U.K. in continuation of the Colombo Plan Training undergone by him from October,1997 to September,1998. This was granted by the Planning Commission by their letter dated 14.10.1998 in which they have stated that they have no objection to grant the applicant EOL for a period of two years from 1.10.1998 as requested by him. The applicant has also drawn our attention to another Circular issued by the same authorities dated 11.1.2001 in which reference has been made to his application for EOL for two years w.e.f. 1.10.1998 under Rule 32(2)(e) of CCS(Leave) Rules,1972(hereinafter referred to 'as the Rules') for pursuing Ph.D from Heriot-Watt University, Edinburgh, U.K, which was sanctioned to him. Accordingly, EL w.e.f. 1.10.1998 to 29.12.2000 for completing his thesis was also granted, and the applicant rejoined the Planning Commission as Director on 5.1.2001(FN).

3. The applicant is aggrieved by the order passed by the respondents cancelling the allotment of the Govt,quarter which was earlier allotted to him in Dev Nagar and imposition of damage rent for the period he was on EOL for two years. He submits that the leave granted to him under Rule 32(2)(e) of the Rules should be read with Rule 51(b) of the Rules. He has submitted that the facts clearly show that he had been permitted by the Planning Commission to pursue his studies for two years and had been granted EOL for the said period under the provisions of Rule 32(2)(e) of

✓ the Rules in public interest. He has submitted that under Rule 51 (b) of the Rules the retention of the Govt. quarter by him for this period cannot be considered as unauthorised for which any penalty or damage rent can be levelled against him. He has, therefore, prayed that the orders issued by the respondents cancelling the allotment of the quarter as well as levy of damage rent should be quashed and set aside that he should be allowed to continue in the Govt. quarter in question, as he has also resumed his service as Director in the Planning Commission w.e.f. 5.1.2001. He has submitted that the Tribunal by order dated 31.3.2000 had issued an order which has been continued till date and he has, therefore, continued in the said Govt. quarter. He has also submitted that the Govt. quarter in question is one type below his entitlement and therefore, he fulfils all the necessary conditions under S.R. 317-B-11(2)(x) which permits a Govt. officer to retain the residence allotted to him during the entire period of study leave. The applicant has, therefore, prayed that the OA may be allowed with compensation for his mental agony and disruption in his studies and forcing him to undertake the journey at considerable cost and time, while prosecuting studies certified to be in the public interest by the competent authority. (15)

4. We have seen the reply filed by the respondents and heard Shri Rajinder Nischal, learned counsel. The respondents in their reply have submitted that the Govt. quarter in question was allotted to the applicant on 23.3.1995. They have further submitted that the applicant was granted EOL

✓ for two years w.e.f. 1.10.1998 for pursuing Ph.D from the Heriot-Watt University, U.K. in continuation of the Colombo Plan Training undergone by him during the period from October, 1997 to September, 1998. According to them, the allotment of the quarter was cancelled w.e.f. 1.10.1998 i.e. after allowing him the permissible period of retention in case of training under the existing provisions of SR 317-B-11(2)(x). According to them, thereafter the applicant is an unauthorised occupant w.e.f. 1.10.1998, for which he is liable to pay a sum of Rs.2.41,674/- upto 31.7.2000 on account of licence fee and damages. The respondents have contended that under the relevant rules the applicant was allowed to retain the Govt accommodation during the entire period of study leave. Shri Rajinder Nischal learned counsel has submitted that in this case, the applicant was granted two years EOL for prosecuting his Ph.D and not "study leave" and therefore, they have contended that their action is legal and valid and in accordance with the Rules. 16

5. We have considered the pleadings, relevant Rules and the submissions made by the applicant and Shri. Rajinder Nischal, learned counsel for the respondents

6. It is necessary to consider the Leave Rules. Rule 32 of the Rules deals with extraordinary leave. Sub Rule 2, clause (e) of this Rule provides as follows:-

YK "Unless the President in view of the exceptional circumstances of the case otherwise determines. no Government servant, who is not in permanent employ

or quasi-permanent employ, shall be granted extraordinary leave on any one occasion in excess of the following limits:-

✓ (e) twenty-four months, where the leave is required for the purpose of prosecuting studies certified to be in the public interest, provided the Government servant concerned has completed three years' continuous service on the date of expiry of leave of the kind due and admissible under these rules, including three months' extraordinary leave under Clause(a)." 17

Rule 51(b) of the Rules provides that the maximum amount of study leave, which may be granted to a Government servant shall be as follows:-

(a)

(b) during his entire service, twenty-four months in all (inclusive of similar kind of leave for study or training granted under any other rules).

7. From the certificate given by the Planning Commission, Govt. of India dated 10.2.2000 and their subsequent certificate dated 11.1.2001 (pages 32 and 64 of the paper books) it is seen that the Commission had agreed to the request of the applicant for grant of EOL (in continuation of the Colombo Plan Training) and granted the same for a period of two years w.e.f. 1.10.1998 under Rule 32(2)(e) of the Rules, for pursuing Ph.D from the Heriot-Watt University, U.K. Rule 51 (b) of the Rules provides that the maximum amount of study leave which may be granted to a Government servant during his entire service twenty four months in all (inclusive of similar kind of leave for study or training granted under any other rules). This provision will, therefore, cover the kind of leave for study or training i.e. EOL granted to the applicant under Rule 32(2)(e) of the Rules for the purposes of prosecuting Ph.D from the Heriot-Watt University, U.K. in public interest as stated in the Planning Commission's letter No.F.6(1572)/93-Admn.1


✓ dated 11.1.2001. It is evident from this letter that the applicant had been granted two years EOL w.e.f.1.10.1998. In other words, the applicant has been granted the study leave as provided under Rule 32(2)(e) of the Rules read with Rule 51(b) of the Rules for his entire service. It is also relevant to note that the applicant has stated that the Government quarter which has been allotted to him is one type below his entitlement, which has not been controverted by the respondents. S.R. 317-B-11(2)(x) provides, inter-alia, that a residence allotted to an officer may be retained on the happening of any of the events, including study leave in or outside India. Therefore, in the facts and circumstances of the case we see no reason why the permission to retain the Govt. quarter in question to the applicant could not have been granted in terms of S.R. 317-B-11(2)(x) for the entire period of his "study leave" of 24 months, which is the maximum permissible period provided under the Rules for such retention.

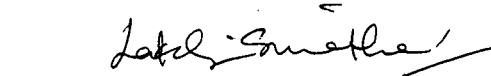
8. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:-

(i) The impugned cancellation orders issued by the respondents dated 22.10.1999 and 27.10.1999 ~~are~~ cancelling the allotment of the quarter in question as well as imposition of penal rent and damages are quashed and set aside. The applicant shall be liable to pay normal rent and other charges for the relevant period as per the relevant Rules.

(ii) With regard to the claim of the applicant for compensation, that relief is rejected. However, in the facts and circumstances of the case, we deem it fit to award costs of Rs.2000/-(Rupees Two thousand) in favour of the applicant and against the Respondents.

19


(Govindan S. Tampi)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

sk