

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 380/1989

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T.A. No.

DATE OF DECISION 10.5.1989.

Shri Raj Singh

Petitioner

Shri B. Krishan

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M. L. Verma

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Ajay Johri, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND—12 CAT/86—3-12-86—15,000

(Ajay Johri)
Member (A) 10.5.89.

Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn. No. OA-380/1989

Date of Decision 10.5.1989.

Shri Raj Singh

... Applicant.

Versus.

Union of India & Ors.

... Respondents.

For the applicant

... Shri B. Krishan,
Advocate.

For the respondents

... Shri M. L. Verma,
Advocate.

CORAM: Hon'ble Shri Ajay Johri, Administrative Member.

JUDGEMENT

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant has challenged an order dated 15.1.87 issued by the Station Head Quarters, Ministry of Defence rejecting the request of the applicant for the retention of Government Quarter in Andrews Ganj, New Delhi. The ^{2/} application has not been admitted yet.

2. The applicant's case is that he was transferred to Masimpur Depot on 18.9.1986. He accepted the transfer on a commitment by the respondents that he will be allowed to retain the Government accommodation in his occupation if he so desired. This commitment was given in OA-710/86 another application he had filed in a transfer case. He applied for retention of the accommodation, that he was occupying, on 22.12.1986 as he was also entitled to it in terms of Ministry of Defence No. A/26761/AG/PA 3(B)/141-S/2/D (Pay service) dated 2.3.1968.

3. The request of the applicant was rejected on 15th January, 1987 and he was directed to vacate the accommodation on the grounds that Defence Pool Accommodation could not be allowed to be retained on posting to another station as per existing rules. The applicant was thereafter served with a show cause notice under the P.P. Act, 1971. The applicant

^{2/} could not appear before the Estate Officer because he

received the intimation late and he was at Masimpur but the wife of the applicant appeared before respondent No.2 in respect of the show cause notice. Her presence was not accepted by the respondents and an ex-parte order of eviction was passed on 21.4.1988. This order was assailed by the applicant before the District Judge, Delhi under the P.P.Act, 1971. His appeal was dismissed by the Additional District Judge on 25th October, 1988 with the direction that the eviction from the accommodation should be extended up to 28.2.1989. In the meantime, the applicant was posted back to Delhi on 14th March, 1988 and is still continuing at Delhi. On his reposting, he moved an application for restoration of the allotment but his representations have not been decided. The applicant alleges that after giving the commitment for allowing him to retain the said accommodation, the respondents should be estopped from going back from the said commitment. According to him, the respondents are committed to allow him to retain the premises in terms of the Ministry of Finance, Department of Expenditure Memo No.20014/3/83-E-E-IV dated 14th February, 1983 read with OMs. of 28.7.87 and 15.7.88 whereby certain facilities including retention of Government accommodation have been extended to those who are posted to the North-eastern States. The applicant feels that he is being discriminated in the matter of allotment of accommodation. He has, therefore, sought relief that the residence where he is living at present (F-57/2, Andrews Ganj) be regularised in his name with effect from the date of cancellation on grounds of his posting to Masimpur, Assam ^{W and reporting to Delhi}.

4. The respondents in their reply have challenged the maintainability of the application. According to them, the application is barred by the doctrine of estoppel as the applicant chose the forum of the District Court and in a detailed judgement pronounced on his appeal No.171/88 on 25.10.88, the application was dismissed but the time of eviction was extended up to 28.2.1989. The respondents have

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Further stated that this Tribunal has no jurisdiction to try the matter as has been held in Milon Das Vs. Postmaster General North-Eastern Circle, 1987(3) ATC (Gauhati) 965, Nawal Singh Vs. U.O.I. (Ahmedabad), 1988(6) ATC 928 and Gulab Chand Vs. U.O.I., 1987(3) ATC 482. According to them the application is also barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. Replying on merits of the application, the respondents case is that the applicant is not entitled to get accommodation from the Station Headquarter Delhi Cantt as he is not a part of the Defence force or civilian serving in Defence Services. The present allotment was made to him on humanitarian grounds. He is to be allotted accommodation only under the general pool. Hence the retention of the accommodation when he was posted to Masimpur in the Defence Pool could not be allowed. It is also the respondents plea that this subject is not a service matter. In the reply it has also been stated that the applicant is not a part of the Defence Forces or Civilian working in defence services but he belongs to the Canteen Stores Department. If any commitment was made by the department that he should be allowed to continue in the accommodation at Delhi on his posting at Masimpur that department should have allotted him some accommodation from the general pool but they could not make a commitment in respect of the accommodation personally occupied by him which is in the defence pool. Since the applicant was declared as an unauthorised occupant of the Government accommodation his case was referred to the Estate Officer under the P.P. Act. He deliberately avoided the notice issued to him, therefore, an ex-parte order had to be passed.

5. On the last date of hearing the applicant was allowed time to file rejoinder. A request was further made by the learned counsel for the applicant for adjournment of the case

as he was not in a position to file the rejoinder that day. On account of the fact that more than a month had passed since he was allowed this time, his request for further adjournment was rejected and the case was heard. The contentions raised before me by the learned counsel for the applicant were that the applicant has been in occupation of the present premises since 1976. He was allotted this accommodation in lieu of his previous accommodation which he was occupying in the Safdurjang Area and which the respondents had got vacated in 1976. According to him, at the time of the allotment of the accommodation in 1976, no condition was imposed on him that this was only a temporary allotment as the accommodation belonged to Defence pool. When he was transferred to Masimpur in terms of the Government of India's instructions which permit retention of accommodation at Delhi on certain conditions, he applied for the same but his request was declined and instead ~~xxf~~ eviction proceedings were taken against him treating him as unauthorised occupant. No reasons were given as to on what grounds the cancellation has been done except that since the accommodation belonged to the defence pool he is not entitled for the same. Against the order given by the Estate Officer evicting from the accommodation, the applicant filed an appeal in the Court of District Judge, which was dismissed but he was allowed to retain the accommodation upto 28.2.1989 by which time he was supposed to find alternative accommodation. Since the applicant had, in the meantime, been posted back to Delhi and returned to Delhi on 27.4.88 he applied for regularisation but this was not allowed. According to the learned counsel the Tribunal has jurisdiction in the matter because the allotment of accommodation is subject to a judicial review. He also opposed the plea taken by the respondents that doctrine of estoppel applies in this case. According to the learned counsel for the applicant the doctrine applies to the respondents because they had promised that the

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applicant would be allowed to retain the accommodation but the same promise is not now being honoured. In regard to the matter being ~~re~~ [✓] judicata, the learned counsel contended that the Additional District Judge had over-stepped his authority under Section 7 of the P.P. Act and presently the matter was not of eviction which he was agitating but the matter of regularisation of the accommodation on his reposting at Delhi. According to the learned counsel the reasons that he could not be given the accommodation as he belongs to a different pool cannot be accepted because the Canteen Stores Department was a separate department and when OA-710/86 was being heard, all the concerned departments were present and, therefore, any commitment given by them at that time was as if it had been given by all the ~~that~~ respondents. He also emphasised/since the Government of India has permitted officers who are posted in north-eastern region to retain the accommodation he cannot be discriminated and the present refusal to allow him to continue in the same accommodation and declining to regularise the same on his return violates Article 14 of the Constitution. These contentions were opposed by the learned counsel for the respondents who submitted that since the applicant had ~~already~~ already exhausted the remedy available to him when he went to the Additional District Judge appealing against the eviction order and the order was stayed up to 28.2.1989 during which time he was to make an alternative arrangement, he could not agitate the matter again as he has already enjoyed the fruits of the judgement given by the Additional District Judge. It was further submitted by the learned counsel that in matter~~s~~ of concurrent jurisdiction a person can avail of either of the remedies available but ~~be~~ cannot after having his prayer rejected at one place seek relief on the same before the other forum. According to him his case cannot

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be reopened and also falls within the ambit of res-judicata so he cannot be allowed to agitate the matter again. In any case, the applicant is not entitled to a defence pool accommodation and if at all he can apply for general pool accommodation. I have also gone through the paper book and the reply filed by the respondents. As far as the jurisdiction in the matter of eviction of an employee who has been allowed Government accommodation under the Public Premises Act, 1971 is concerned, the matter is already before a Full Bench of this Tribunal but it has been held in various pronouncements made by the Benches of this Tribunal that since the P.P. Act, 1971 is still valid and the appeal against the order of eviction lies not before this Tribunal but before the appropriate appellate authority, which is the District Judge, matters falling within the P.P. Act could not be agitated before this Tribunal.

6. Section 3 Q of the Administrative Tribunals Act, 1985 the service matters in relation to a person has meaning that all matters relating to the conditions of his services in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India in respect/ renumerations, pension, retirement benefits, tenure including confirmation, seniority, promotion, reversion, retirement, leave of any kind, disciplinary matters or any other matter. While allotment of accommodation is a service condition as certain category/ of employees are eligible for allotment of Government accommodation but an action taken under the P.P. Act, 1971 will not be assailable before this Tribunal. However, the relief that is being sought in this case by the applicant is to the effect that allotment may be regularised in his name with effect from the date of cancellation on ground of his posting to Masimpur. Therefore, the limited matter which is adjudication

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V.C.

is in regard to the allotment of Government accommodation which will fall within the definition of service matters as it is a condition of service.

7. On the subject of retention of general pool accommodation/ allotment of alternative general pool accommodation to civilian, the Central Government employees posted to North-Eastern region, the Government of India Ministry of Works and Housing issued a memorandum on 15.2.84 laying down certain privileges in respect of retention of accommodation or allotment of accommodation on posting to the North-Eastern region. This laid down the responsibility on the officer concerned to intimate the Directorate of Estates before relinquishment of the charge immediately prior to his posting in the North-Eastern Region, the date of joining the new post and the date of handing over the charge in that region. In so far as the accommodation controlled by the Railways, Defence etc. was concerned, similar orders were to be issued separately by those Ministries. It is, therefore, obvious that the Government was seized of the problem in regard to posting of officers in the North-East region and the difficulties faced by them in taking their families along with them. It was in this background that these orders were issued. In the applicant's case he was unfortunately in occupation of accommodation belonging to the Defence Pool but all the same he had been allowed to continue in that accommodation for a long period of 10 years and during this period he was not advised by the respondents that he was occupying accommodation to which he was not entitled as it belonged to the Defence pool and could not be given to a civilian employee working in the canteen who according to the respondents could only get accommodation in the general pool. In their reply, the respondents have also said that defence pool accommodation is meant for defence service officer and civilian employees belonging to the defence services. Nowhere a plea has been taken that the employees of the canteen stores department are

not equated to the civilian defence employees who are considered for being allotted accommodation in the defence pool. If the respondents had advised the applicant in good time after their alleged compassionate allotment of the accommodation to him in 1976, perhaps the applicant would have taken action himself to register himself in the general pool accommodation. Even as late as in 1987, the Area Manager while forwarding the application of the applicant had mentioned that he was entitled to retain the accommodation under the provisions of Ministry of Defence letter of 22nd March, 1978 to which a reply was sent to the Station Commander on 15th January, 1987 that the accommodation occupied by the applicant could not be allotted to him under the existing rules as the accommodation belonged to the defence pool accommodation and was meant for JCOs and other ranks serving at the station. While it may be correct that the accommodation allotted to the applicant was meant for JCOs and other ranks the fact remains that the respondents allowed the applicant this accommodation over a long period of 10 years before he was transferred to Masimpur. In my opinion, they have permitted the applicant to continue in occupation for such a long time, actually not meant for him, they had indirectly granted him the permission to retain accommodation, and therefore, on his transfer to Masimpur when according to the Government of India's instructions he could continue in occupation of the same or alternative accommodation, their action in cancelling the allotment and treating him as unauthorised occupant of the same was not correct. The applicant did choose to move the Civil Court in appeal against the eviction order and his appeal has been dismissed and he was allowed to continue in the same quarter upto 28.2.1989 during which time he was supposed to have arranged for alternative accommodation. The applicant has evidently not taken any action to even register himself in the general

pool accommodation. To my mind his effort even if he would have registered with the Directorate of Estates would have not helped him unless he can be considered for out of turn allotment. His own department has also not taken any action to assist him in this direction. The nett effect of such a situation is that with the stay coming to an end the applicant would be thrown on the road. His apprehension that he may not get any help from the general pool has evidently prompted him to come to the Tribunal.

8. The respondents have allowed him to continue in the accommodation, which was not meant for him, for more than 10 years. Though the applicant's prayer for regularisation of the accommodation cannot be agreed to, in my opinion heavens will not fall if he is granted some more reprieve.

9. In the above view, while rejecting the application for regularizing accommodation in the name of the applicant, I direct that the applicant will immediately register for accommodation from the general pool and Respondent Nos. 1 and 3 will assist him to get an out of turn accommodation, so that he can release the present accommodation. The applicant will be allowed to retain the accommodation at normal rent till then. I make no order as to costs.

3P/R/5/189
(AJAY JOHRI)
Administrative Member
10.5.1989.