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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.472/89

New Delhi this the 23rd Day of February, 1994.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Dr. L.B.S. Dey,
S/o late Sh. P.K. Dey,
R/o Sector-IV/1042,
R.K. Puram,
New Delhi-22.

Petitioner

(By Advocate Sh. B. Krishan)

versus

1. Union of India,
through its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi.
2. Office of the Director,
Central Govt. Health Scheme,
Nirman Bhavan,
New Delhi.
3. The Director of Estates,
Directorate of Estates.
Nirman Bhavan,
New Delhi.
4. Estate Officer,
(Sh. P.M. Sharma),
Directorate of Estates,
Nirman Bhavan,
New Delhi.

Respondents

(By Advocate Sh. P.P. Khurana)

ORDER

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

This O.A. has been filed by Sh. L.B.S. Dey challenging the following orders:-

(i) Letter dated 19.3.1985 (Annexure A-2.

(ii) Letter dated 19.12.1986 at page 22 of the paperbook; and

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(iii) Order dated 22.2.1989 (Annexure A-19.

The first order pertains to cancellation of allotment and the second order relates to rejection of the request of the applicant for ad hoc allotment. Both these matters are service matters and do not arise out of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is only the third order, i.e., the eviction order, which has been issued under the above Act.

The relief prayed for in this application is that the allotment of Government residence No. Sector IV/1042, R.K. Puram, New Delhi may be regularised in the name of the applicant from the effective date of its cancellation on payment of normal rate of licence fee. Thus, the relief prayed for is also connected with the first two impugned orders as mentioned above.

On 17.3.1989 this Tribunal passed an interim order stating that "As the applicant is eligible to CGHS pool accommodation now and since he is already living in that house, the respondents may not evict him from that house till the case is decided on merit."

This interim order was challenged by the respondents on the basis of a decision of Full Bench of this Tribunal in O.A.No.89/88 (Rasila Ram Vs.

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Union of India & Others. After examining the aforesaid issue, it was held that eviction of a government employee from such a house cannot be separate and should logically be included under the definition of "Service matter" and, therefore, within the jurisdiction of the Tribunal. Vide order dated 24.1.1990, the interim order was continued till the disposal of the O.A.

In the counter filed on behalf of the respondents, the main averments are these. Flat No.1042, Sector-IV, R.K. Puram, New Delhi is in the CGHS Pool and had been allotted to Dr. L.B.S. Dey in accordance with his seniority. On his transfer to N.I.C.D. office in the afternoon on 28.02.1985, he was asked to vacate the C.G.H.S. Pool accommodation after expiry of two months concessional period of two months i.e. on 30.4.1985. He was allowed at his request to retain this quarter for a further period of six months from 01.05.1985 onwards on payment of rent at the rate of double the pool licence fee or double the standard rent whichever is higher and was requested to vacate the quarter latest by 30.10.1985. His request for allotment of alternative accommodation under the general pool could not be considered as per his seniority. The accommodation occupied by him was categorised as essential services quota, he was not eligible for allotment of this accommodation also.

We have gone through the records of the case and heard the learned counsel for the parties.

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The learned counsel for the applicant has drawn our attention to the circulars issued by the Government from time to time on this subject. In the circular dated 16.2.1979 (Annexure A-16) it has been provided that accommodation allotted to the doctors in General Pool may be retained by them at normal rate of licence fee on their transfer to the hospitals, until they are allotted accommodation from their respective hospital pools. Conversely those doctors who are transferred from non-eligible office to eligible office may be considered for alternative allotment of accommodation in the next below type of their entitlement in General Pool unless they are eligible for their entitled category by seniority. In circular dated 01.08.1988 (Annexure A-17), it has been provided that the pending cases of unauthorised retention of Government accommodation by such officers who, after their initial transfer etc., have been reposted to Delhi may be regularised subject to clearance by them of licence fee and damages as per rules. The unauthorised occupation will be regularised on payment of damages/market rate for the period beyond the permissible period of retention and upto the date of reposting to the station irrespective of the fact whether the date of priority on the date of reposting was covered or not. He also brought to our notice cases of three of his colleagues, namely, Dr. A.K. Bowmik, Dr. S. Malik and Sh. Vinod Khurana who were occupying departmental pool quarters and were on the transfer to the General Pool, are continuing the same

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accommodation. This was under a scheme based on reciprocal inter change of accommodation between the two pools.

From the afore-mentioned discussion, it is clear that (a) the applicant was occupying a departmental pool accommodation and was transferred to an office eligible for General Pool accommodation and later retransferred to an office eligible for departmental pool accommodation. (b) In a number of such cases, the principle of reciprocity and exchange of pool accommodation has been followed by the respondents. (c) In any case such eventualities are covered by the O.M. dt. 1.8.1988 which provides for regularisation of the pending cases.

The learned counsel for the respondents has argued that since after his transfer to N.I.C.D., he was not entitled to allotment of General Pool accommodation as per his seniority at that time, he could not be given the General Pool accommodation. He has also argued that the afore-mentioned O.Ms. dated 16.2.1979 & 1.8.1988 do not cover the case of the applicant as he was not transferred out of Delhi and as his case has already been considered by the competent authority who has since then passed orders of eviction. We are not convinced that this is so. The question of jurisdiction of this Tribunal in such cases has already been decided by the order of this

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Tribunal dt. 24.1.1990 (89/88). We, therefore,
dispose of the application with the following
directions:-

- (1) The respondents shall reconsider the case of the applicant on the same basis as in case of Mr. Bowmik, Dr. Malik and Dr. Khanna. If such facility is extended to him, he shall be treated as entitled to retention of the accommodation on payment of licence fee.
- (2) In case the respondents find that such benefit cannot be extended to the applicant, he shall be entitled to regularisation of the above accommodation in his name from the date of his reposting on payment of arrears of licence fee and damages in terms of O.M. dt. 1.8.1988.
- (3) These orders shall be implemented within a period of three months from the date of receipt of a certified copy of this judgement.

There shall be no orders as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)

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