

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 999/ 1989
~~TA No.~~

DATE OF DECISION October 17, 1989.

Shri R.C. JHAMTANI Applicant (s)

Shri B. Krishan Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

Shri P.P. Khurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, 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. To be circulated to all Benches of the Tribunal ?

yes.
yes.
No.
No.

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who is working as Deputy Adviser, Planning Commission, New Delhi, has prayed for the following reliefs: -

"(A) That the allotment of Government Residence bearing No.D-II/23/1 & Garage No.G-25, Andrews Ganj, New Delhi be ordered to be regularised in the name of the applicant with effect from 20th February, 1989 i.e. date of his reposting back to Delhi from Kabul on payment of normal rate of licence fee.

(B) That the applicant be directed to be levied only double the standard licence fee / normal licence fee for the period from 25.3.1988 to 24.9.1988 i.e. six months after the cancellation of allotment. The applicant is, however, ready and willing to pay the market licence fee for the period of his overstay for the period from 25.9.1988 to 19.2.1989 in terms of O.M. dated 31.7.1976 (Annexure A-11).

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(C) The respondent No.3 be restrained from giving effect to any order passed or to be passed by him in the proceedings in Case No.EC/121/DD/LIT/88 under the provisions of the Public Premises Act, 1971. "

2. The facts of the case, in brief, are as under: -

The applicant was allotted Government residence bearing No.D-II/23/1 and Garage No.25, Andrews Ganj, New Delhi, vide letter dated 27.1.1983 (Annexure A1 to the application). He was sent on deputation to Government of Afghanistan with effect from the afternoon of 24th September, 1987 vide Notification dated 25.9.1987 (Annexure A2 to the application). A copy of this Notification was, however, not endorsed to the respondents. It was only on 23rd May, 1988 that the Planning Commission, vide its Office Memorandum at Annexure R-I to the counter-affidavit, sent a copy of the aforesaid Notification dated 25.9.87 to the Directorate of Estates, New Delhi, for taking appropriate action in regard to the Government residence which had been allotted to the applicant. On return from assignment with the Government of Afghanistan, the applicant resumed duty in the Planning Commission as Deputy Adviser with effect from the forenoon of 20th February, 1989. The respondents have already acceded to the request of the applicant by revising the cancellation of allotment of Government residence w.e.f. 25.3.88 instead of 25.11.87 after allowing him six months concessional period permissible under the rules, vide Annexure A-7 to the application. His request for retention of the said Government residence during the period from 26.3.88 to 25.9.88 on payment of double the standard licence fee has not been acceded to; nor his prayer for regularisation of the flat in his name consequent on his reposting in Delhi is found covered under the rules. Accordingly, he was asked to vacate the flat immediately to avoid embarrassment of facing eviction proceedings under the Public Premises (Unauthorised Occupant) Act, 1971, vide letter dated 19.4.89 (Annexure A-7 to the

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application). In his application, the applicant has stated that he was entitled to retain the said premises on payment of twice the standard licence fee / normal licence fee in terms of respondent No.2's O.M. No.12033(5)/78-Pol.II dated 4.11.78 read with O.M. No. 12035(22)/83-Pol.II dated 3.9.1984 for the next six months ending on 24.9.1988, but this concession has been denied to him in an arbitrary and illegal manner. In the matter of regularisation of the allotment of the flat on his reposting in Delhi also, he has raised the plea of discrimination by quoting a few instances where the allotments in respect of unauthorised occupants on their reposting to Delhi have been regularised. He also claims that the levy of damages is devoid of any legal sanction and the rental liability of the applicant should also be adjudicated upon.

3. I have gone through the pleadings carefully and heard the learned counsel for the parties at length.

4. The learned counsel for the applicant has finally relied on the judgement in O.A. 510/89 in the case of Shri Mohan Chandra Pandey Vs. Union of India & Others, delivered by Hon'ble Shri B.C. Mathur, Vice Chairman, Central Administrative Tribunal, New Delhi, on 27.9.89, and has placed a copy of the same on record. The learned counsel for the respondents has also filed written submissions in regard to the said judgement.

5. The facts in the case of Shri Mohan Chandra Pandey (supra) are not exactly the same as in the instant case. In the written submissions, the learned counsel for the respondents has pointed out the following facts of difference in the two cases: -

(1) The applicant in the instant case did not inform the Directorate of Estates of the fact of his leaving abroad on deputation; nor did he apply for retention of the accommodation.

(2) The applicant in the instant case did not deposit the rent/damages fallen due from the

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date of his departure till his resuming back duties in India.

- (3) The applicant in the instant case remained abroad on deputation for about one year and five months whereas the applicant in the cited case was away only for a year and 10 days and the 10 days was the transit period.
- (4) The representation of the applicant in the instant case has been rejected unlike in the cited case where it was still pending.
- (5) The facts as noticed about Mr. M.J. Singh's case in the cited judgement can be of no avail to the applicant in the present case as the Tribunal has to go by the pleadings on record in the case before it.

6. The applicant has already been allowed retention of the house for the period of six months as admissible under entry (xi) below sub-clause (2) of S.R. 317-B-11. As regards retention of accommodation for the next six months, i.e., from 26.3.88 to 25.9.88, proviso to S.R. 317-B-22 permits the Director of Estates to allow such retention on payment of enhanced licence fee. The circumstances under which such permission can be granted are not enumerated or illustrated in the proviso to the above Rule. However, these are said to have been mentioned in O.M. No.12035(22)/83-Pol.II, dated 3.9.1984. This O.M. was, however, superseded by Memorandum No.12035(5)/87-Pol.II, dated the 23rd June, 1987 (Annexure R.III to the written statement) wherein it was laid down that retention of the accommodation on payment of enhanced rent under the above mentioned proviso should not be allowed as a matter of routine course but only in very exceptional cases of extreme hardship. In the case before me, the element of hardship is contained in para 14 of the representation dated 27.2.89 addressed by the applicant to the Director of Estates, in which it is stated that his mother who is running in her sixties is a patient of Arthritis and Blood Pressure and she requires constant medical check up/treatment. Whether any

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medical certificate to that effect was sent with this representation is not mentioned therein, nor the existence of such a certificate has been brought to my notice. The applicant has primarily relied for his prayer on this point on the ground of discrimination. He has cited two cases in his application. In the case of Shri M.J. Singh, the respondents' plea was that he did not own a house while the applicant owned a house. In the copy of the judgement in O.A. No.510/89 (Shri Mohan Chandra Pandey Vs. Union of India & Others) on which the applicant has relied, it is clearly mentioned that Shri M.J. Singh not only owned a house in Janakpuri in Delhi, but also remained out at Paris with UNESCO for a period of two years and yet his case was regularised. In the other case of Shri P.K. Bhatnagar of the Ministry of External Affairs, the respondents stated in their written statement that in the absence of any details, no reply could be furnished. Some details were given by the applicant in his rejoinder. Another case of Shrimati Nirmala Joshi, Producer, All India Radio, was also mentioned in the rejoinder. No comments were, however, offered on behalf of the respondents in regard to these two cases in the course of the oral arguments. Thus the applicant has a case for similar treatment in the matter of retention of accommodation for the next six months permissible under proviso to S.R. 317-B-22. Action in exercise of the discretionary powers, as seems to be involved under proviso to this Rule, can become irritating and result in a feeling of discrimination in the minds of those where the discretion exercised is not in their favour.

7. The other issue for adjudication in this case is of regularisation of accommodation which was allotted to the applicant on 27.1.1983 as an ad-hoc change in lieu of earlier accommodation allotted to him. The conditions for such regularisation are enumerated in the Directorate of Estates Office Memorandum No.12016(2)/80-Pol.II (Vol.III (xxiii),

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dated 24.10.1985. None of the five conditions mentioned therein is met by the applicant. He neither reported the fact of his deputation abroad within one month of transfer, nor did he seek any permission for retention of accommodation either before leaving for abroad or during the period of his deputation there. His contention that he had made such request on two occasions is not at all substantiated. He has not been posted back within the period of retention of accommodation allowed and he has not paid the arrears of licence fee / damages on that account. The facts of the case of Shri Mohand Chandra Pandey in O.A. No.510/89 are also not identical with the facts of the case of the applicant. Being a house owner in Delhi, he is also not entitled to regularisation in terms of the proviso of the Ministry of Urban Development (Directorate of Estates) Office Memorandum No.12035(21)/86-Pol.II, dated 9.11.1987 (Annexure R-IV to the written statement). The applicant, however, has relied for this prayer also on the plea of discrimination. He has cited the cases of Shri M.J. Singh, Shri P.K. Bhatnagar and Shrimati Nirmala Joshi in his application/rejoinder. The case of Shri M.J. Singh came up for discussion in the judgement in O.A. No.510/89 (supra), from a perusal of which it appears that he had gone on deputation to UNESCO for two years and the house was regularised in his favour. The judgement also shows that the case of one Shri S.C. Jaiswal was decided in favour of the petitioner by the High Court on the ground of discrimination, and in that case the petitioner had cited the case of one Shri Katuria and the court held that the case of Shri Katuria was of similar nature as of Shri Jaiswal and quashed the cancellation order of allotment as well as eviction order. It is further seen that in the representation of Shri M.J. Singh, he had cited the cases of Shri B.R. Chopra, Shri R.K. Anand and Shri H.A. Yadav in his reply dated June 11, 1987. As stated by me above, the respondents have not

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been able to either place the full facts of these cases or to distinguish them effectively. The basic issue in the instant case is of regularisation of allotment on return from the deputation abroad and levy of damages for overstayal. On the issue of regularisation, there is substance in the contention of the applicant on the ground of discrimination. The applicant has been in service since June 1974. If his prayer for regularisation is rejected, he will be thrown on the road because it is, inter-alia, stated in reply to paras 4.11 to 4.16 of the application, that officers drawing Rs.5,800 and above on 1.7.87 were only able to secure their 'inturn' allotment of Type V accommodation and the applicant was drawing a basic pay of Rs.4,325 only on 1.7.87. Further, the learned counsel for the applicant conceded at the bar that in case his prayer for regularisation of the accommodation is acceded to, the applicant would pay the damages as prescribed in the Ministry of Urban Development O.M. No.18011(12)/73-Pol. III, dated 27.8.87 and he will not press for his contention for payment of market licence fee for the period 25.9.1988 to 19.2.1989 in terms of O.M. dated 31.7.1976. This Memorandum of 1976 has already been superseded by O.M. dated 27.8.87.

8. In view of the above discussion and the ratio of the judgement in O.A. No. 510/89 decided on 27.9.89, the ^{following} respondents ~~are directed as below:~~ ^{directions are given} -

- (1) For the period from 25.3.88 to 24.9.1988, the applicant be permitted by the Director of Estates to retain the accommodation under proviso to S.R. 317-B-22 on payment of enhanced licence fee.
- (2) The accommodation at D-II/23/1, Andrews Ganj, New Delhi allotted to and in possession of the applicant be regularised with effect from 20.2.1989 i.e., the date of his reposting and joining back to Delhi on return from deputation abroad.
- (3) For the period from 25.9.1988 to 19.2.1989, the applicant shall pay damages at the rates prescribed in the Ministry of Urban Development (Directorate of Estates)

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Office Memorandum dated 27.8.87.

- (4) If the applicant pays the enhanced licence fee as per (2) above, and also pays the damages as per (3) above, within one month from the date of this order, then the accommodation at D-II/23/1, Andrews Ganj, New Delhi will be regularised in his name with effect from 20.2.1989 and from that date, he will be charged normal licence fee as per rules. It has already been clarified by the Directorate of Estate, in their O.M. No.12035(6)/85-Pol. II, dated 16.9.1988 that in case of regularisation of allotment of residence on reposting in pursuance of O.M. dated 1.8.1988 by which one time relaxation ^{of the} rule ^{was} allowed subject to the conditions prescribed therein that there would be no question of charging licence fee at a higher rate from the date of reposting as regularisation will be effective from the date of reposting. It is on the analogy of these orders that in this case also the respondents are being directed to charge licence fee at normal rate with effect from 20.2.1989.

9. The application is disposed of on the lines of the directions given in para 8 above. The parties will bear their own costs.

(P.C. JAIN) 17/8/89
MEMBER (A)