

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

Date of Decision: 27.3.1989.

Regn. No. O.A. 745/88.

Shri Suresh Chander ... Applicant.
Vs.
Union of India. ... Respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the applicant: Shri B. Krishan, Counsel.

For the respondents: Shri P.P. Khurana, Counsel.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Suresh Chander, Section Officer, Cabinet Secretariat, New Delhi, against the impugned order dated 24th April, 1986 issued by the Directorate of Estates cancelling the allotment of the Government residence under his occupation with effect from 14.4.1986 and eviction orders dated 30th April, 1987 calling upon the applicant to vacate the said premises.

2. The brief facts of the case are that the applicant was working in the Intelligence Bureau at Delhi and was transferred to Special Bureau, Tejpur (Assam) on 14.2.1986 where he joined as a Section Officer on 18.2.1986. The applicant applied for alternative accommodation at Delhi for use by members of his family in March, 1986 and he was asked to nominate one of the family members for the purpose of acceptance of alternative accommodation but instead of allotting any alternative accommodation, the allotment

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of the premises occupied by the family of the applicant was cancelled on 24.4.1986 and eviction proceedings were started. Against the eviction order, the applicant file an appeal with the District Judge, Delhi, who allowed the applicant to retain the premises upto 30th April, 1988 on compassionate grounds. The applicant is being pressed for recovery of damages for unauthorised use of the said premises. The applicant has since returned from Tejpur and rejoined duty at Delhi on 11.4.1988. The question, at the moment, therefore, is not one of eviction but of regularisation or otherwise of the quarter, which was in occupation of his family while he was away at Tejpur. In other words, the question before the Tribunal is what damages or rent should be charged from the applicant for the period he was away in Tejpur. The applicant has cited order dated 15th February, 1984 issued by the Ministry of Works & Housing (Annexure A-1 to the Application) regarding retention of general pool accommodation by civilian Central Government employees posted to States and Union Territories of North East region. This order stipulates that in the case of an officer who may be in occupation of accommodation upto type 'E' in the general pool, alternative accommodation of one type below to the type of accommodation he was occupying may be offered to him if he requests for retention of accommodation for the bona-fide use of the members of his family and for such accommodation, licence fee would be recovered at the rate of one and a half time of the licence fee as defined under F.R. 45-A. The case of the applicant is that he had applied for accommodation of one type below than what he was occupying at Delhi but the same was not agreed to.

3. The respondents in their reply have raised a preliminary objection regarding jurisdiction of the Tribunal under the Public Premises (Eviction of Unauthorised

Occupants) Act. It has been conceded that the Central Government employees posted in the North-East area including Assam are entitled to retain accommodation at Delhi as mentioned in Annexure A-1 to the Application, but they must apply within a period of one month from the date of issue of the order of transfer. The applicant was transferred to Tejpur on 14.2.1986 and was occupying type 'C' accommodation. The allotment was cancelled with effect from 14.4.1986 after allowing the applicant to retain the accommodation for a period of two months, as permissible under the rules. The applicant had applied for allotment of alternative accommodation within the prescribed period but had not filled columns 9 and 10 of the application. He was requested to nominate a person who will convey acceptance of the accommodation on his behalf and deposit licence fee. The applicant, however, did not furnish the details as required vide letter dated 24.4.1986 (Annex. A-6). Since the applicant failed to nominate anybody on his behalf to accept type B accommodation, eviction proceedings were started against him. The respondents received a letter dated 4.9.1986 (Annex. A-13) from the applicant nominating Kumari Manju Lata to take possession of type 'B' quarter allotted to him but he did not clear arrears of licence fee amounting to Rs. 2,741/- outstanding against him in respect of the earlier quarter occupied by him to enable the respondents to allot alternative type 'B' accommodation to him. The case of the respondents is that a type B house to which the applicant was entitled for keeping his family at Delhi could not be allotted unless the applicant had nominated someone to receive the allotment letter and to make payment of the licence fee on his behalf and as the allotment of the house had been cancelled, the applicant's family would be treated as unauthorised occupants of the house and

have to pay damages according to Rules and are not entitled to normal payment of rent under F.R. 45-A, as claimed by the applicant.

4. In the rejoinder, the applicant has cited letter dated 1.8.1988 from the Directorate of Estates regarding regularisation of allotment of residence on re-posting which indicates that when an officer is reposted, he would be entitled to the regularisation of the house on re-posting provided he pays the damages/ market rate for the period beyond the permissible period of retention and upto the date of re-posting to the station. The question before the Tribunal is now confined only to the amount which has to be paid by the applicant for the period he was working at Tejpur and his family continued to live in type 'C' house at R.K. Puram, New Delhi. The question of eviction or even regularisation of accommodation at this stage would not be of any relevance.

5. The learned counsel for the applicant cited an order dated 26th March, 1987 issued by the Ministry of Urban Development, Directorate of Estates (Annexure A-15 to the rejoinder) which clarifies that in the case of officers who may be in occupation of accommodation below their entitled type on the basis of emoluments prescribed on the crucial date of the relevant Allotment Year, they may be allowed to retain the same accommodation in case the accommodation occupied is from type 'B' to type 'E'. As the applicant was in occupation of type 'C' quarter, which was below to his entitlement, he would be entitled to the same type of accommodation.

6. It has, however, been checked up that factually this position is not correct. On the crucial date, which in this case would be 1.10.84, the applicant was entitled to a Type 'C' quarter.

7. The position as it emerges is as follows:

The applicant who was working as a Section Officer in the Cabinet Secretariat was transferred from Delhi to Tejpur on a sensitive assignment. Under the rules, he was entitled to retain a house in Delhi but of one category below to which he was entitled. He was in occupation of a Type 'C' quarter and after two months, his family should have shifted to a Type 'B' quarter until the applicant was posted in the North-East area. The applicant did apply for allotment of a Type 'B' category quarter, but on technical grounds that the applicant had not nominated a person, his allotment of a Type 'C' quarter was cancelled and when the formalities were completed, he was asked first to clear the arrear damages which were on a higher rate before he could be allotted a Type 'B' quarter. Technically, this may be the correct position under the rules issued by the Directorate of Estates, but this can ^{cause} ~~cost~~ a lot of harassment to a person who is posted far away in Tejpur from Delhi. The family is not expected to be on the road merely because the form was not filled correctly by the applicant. If the Directorate of Estates had been a little more helpful, allotment of a Type 'B' quarter could have been made without first insisting on payment of damages. In a sensitive job, like the one held by the applicant, he would have been required to go to Tejpur immediately without completing all the formalities and as such, it is felt that ^{he} could not be penalised when the respondents did not take action to allot him a quarter even though the rules provide that a person is entitled to keep

family in a house at Delhi even though of a category one below than the entitled. The entitlement itself is calculated on a date very much before the actual date concerned. The crucial date for entitlement is 1.10.1984 whereas the officer was transferred in 1986 on which date his salary was more than Rs. 500.00 entitling him to Type 'C' accommodation. The respondents have been very prompt in cancelling the allotment of the applicant and started eviction proceedings without giving any thought about the welfare of the family as to where they will go when the applicant is in Tejpur and no allotment of even a lower category of a house has ^{been} made. As mentioned earlier, the rules might be such, but certainly in this case they would have acted very harshly against the applicant. In the special circumstances of this case, which may not form a precedent, it is directed that

- (i) the house concerned will be regularised in the name of the applicant, if this has already not been done;
- (ii) no penal rent/damage will be charged from the applicant for the occupation of Type 'C' quarter in which he was living before he proceeded to Tejpur. He will be charged normal rent for two months, namely, 14.2.86 to 13.4.86 and thereafter till he ^{re}joined ^A back duties at Delhi, ^{be} he will be charged normal rent/licence fee as applicable to officers who are allowed to retain the house for family when they are posted in the North-East area.

8. It is true that the applicant should have filled the form properly and should have nominated somebody as

required under rules, but this is not so serious a lapse that his family in Delhi should be without a roof when he was serving in a far away place. The applicant did file an application for allotment of a type 'B' house and had a house been allotted, the family would have shifted to a lower category of house, but instead of being helpful, the rules were applied mechanically and harshly. The applicant and the members of his family have already suffered a lot of harassment and as such, the application is allowed as a very special case, with the directions indicated in the earlier paragraph. There will be no orders as to cost.



(B.C. Mathur)
Vice-Chairman