

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~E.A. No.~~

874/

1988

DATE OF DECISION October 30, 1989.

Shri Chander Shekhar Arora Applicant (s)
and Another

Shri B. Krishan Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

Shri P.P. Khurana Advocat 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.

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No.

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein there are two applicants viz., (1) Shri Chander Shekhar Arora and (2) Shri Sant Prakash. Applicant No.1 is the son of applicant No.2. Applicant No.2 was an allottee of Qr. No.26, Probyn Road, Delhi, who retired from the post of Office Superintendent, Directorate General, Central Reserve Police Force, New Delhi with effect from 30.11.1987. In the Original Application, the following relief was prayed for: -

"Allotment of the premises bearing No.26, Probyn Road, Delhi may be regularised in the name of the Applicant No.2 with effect from 1st May, 1984 and for the period of unauthorised occupation from 9.2.1982 to 30.4.1984 he may be charged damages for unauthorised use and occupation. Applicant No.1 may be allotted an alternative accommodation of his entitled type on grounds of his father's retirement. The applicants may be

allowed to continue in premises No.26,
Probyn Road, Delhi till allotment of
alternative one."

2. The applicants have filed M.P. No.1541/89 for amendment of the main application by adding the following in the prayer clause:

"No penal licence fee / damages should be charged from the applicants beyond the period commencing from 1.4.1988 till the applicant No.1 is allotted an alternative accommodation by the respondents."

3. Applicant No.1 is working as a Camera Man in Doordarshan Kendra, Delhi and living with applicant No.2 in the aforesaid premises.

4. The facts of the case, in brief, are as follows: -

Mr. No.26, Probyn Road, Delhi was allotted to the applicant No.2 while he was serving in the office of the Director General, Central Reserve Police Force, New Delhi. He was transferred to Gandhi Nagar, Ahmedabad (Gujarat) where he joined his duties on 9.12.1981, but he continued to retain the said Government accommodation. He was transferred back to Delhi and resumed his duties in Delhi with effect from 1.5.1984. He neither intimated the fact of his transfer or his resumption of duties in Delhi, nor did he apply for regularisation of the accommodation in his name on transfer back to Delhi. When the fact of his transfer to a place outside Delhi came to the knowledge of the respondents, the earlier order of cancellation of allotment of the said premises with effect from 31.3.1988 (after allowing four months beyond superannuation) was modified to be effective from 9.2.1982 after allowing the concessional period of two months as admissible under the rules. Eviction proceedings were also initiated against him under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and an eviction order dated 13.11.1987 under Section 9 of the said Act was passed by the Estate Officer. He

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filed an appeal before the Additional District Judge, which was dismissed as withdrawn and he was granted time upto 15.4.1988 to hand over the vacant possession of the said premises. However, vide their letter No.397/S-67/TC/79, dated 17.1.1989, the respondents decided to regularise the allotment of the above premises in the name of applicant No.2 with effect from 1.5.1984 and the allotment of the said premises was cancelled in the name of applicant No.2 with effect from 31.3.1988 on account of his retirement with effect from 30.11.1987. It was also mentioned in that letter that applicant No.2 shall be liable to pay damages at market rate in terms of SR 317-B-22 for the period of his overstay. In view of this letter of the respondents, the prayer in the application to the effect that allotment of the premises bearing No.26, Probyn Road, Delhi may be regularised in the name of the applicant No.2 with effect from 1st May, 1984 has become infructuous. Similarly, the prayer to the effect that for the period of unauthorised occupation from 9.2.1982 to 30.4.1984, he may be charged damages for unauthorised use and occupation has also become infructuous because the allotment has been regularised from 1st May, 1984 only after the applicant had deposited damages for unauthorised use and occupation of the premises for the period from 9.2.1982 to 30.4.1984.

5. We are now concerned with the prayer to the effect that the applicant No.1 be allotted an alternative accommodation of his entitled type on grounds of his father's retirement and that applicant No.2 may be allowed to continue in premises No.26, Probyn Road, Delhi till allotment of alternative accommodation to applicant No.1 and that no penal licence fee / damages should be charged from the applicants beyond the period commencing from 1.4.1988 till the applicant No.1 is allotted an alternative accommodation by the respondents.

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6. The case of the applicants is that applicant No.1 had applied for allotment of the same accommodation which was earlier allotted in the name of his father (applicant No.2) within one month of the date of retirement of applicant No.2, as required under the rules and that applicant No.1 is entitled to the same accommodation; as such, only normal licence fee should be charged till alternative accommodation is allotted to applicant No.1 and that legally damages at the rate of Rs.20/- per sq. mt. for living area as prescribed vide Ministry of Urban Development (Directorate of Estates) Office Memorandum No.18011(12)/73-Pol.III, dated the 27th August, 1987 and which are effective from 1.9.1987 i.e., unauthorised occupation commencing from 1.9.87, cannot be recovered from him as this Office Memorandum cannot supersede the provisions of Fundamental Rules and Subsidiary Rules. The judgement of the Hon'ble Supreme Court in P.D. AGGARWAL AND OTHERS Vs. STATE OF U.P. AND OTHERS (AIR 1987 S.C. 1676 - para 19 at page 1686) was also cited.

7. Government orders⁽¹⁾ regarding allotment of Government quarters to dependents/relations of Government employees on their retirement, as contained in Government of India, Ministry of Works & Housing O.M. No.12035 (7)/79-Pol.II, dated the 1st May, 1981 and M.U.D., Director of Estates O.M. No.12035(14)/82-Pol.II (Vol.II)(i), dated the 19th November, 1987, enable the applicant No.1 to be considered for allotment of Government residential quarter subject to the conditions laid down therein. He fulfils the condition of being a Government servant eligible for allotment of Government residence. He had also applied for the same. In the application he has stated that he has been residing in the above premises along with his father

(1) Pages 665-66 of Swamy's Complete Manual on Establishment and Administration for Central Government Offices.

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(applicant No.2) since 7th March, 1987, though he was appointed as a Cameraman on 26th August, 1985. As such he did not fulfil the condition regarding residing continuously with the retiring Government servant for at least three years immediately preceding the date of retirement of the Government servant. However, the condition of three years' continuous residence with the retiring Government servant has to be enforced with reference to his date of appointment to Government service. As such, applicant No.1 has met this condition also in so far as he was appointed within a period of three years preceding the date of retirement of applicant No.2 and living with him from 7th March, 1987 - prior to the date of retirement. Applicant No.1 is stated to be normally entitled to Type III accommodation which was allotted to his father i.e., applicant No.2, but under the Government instructions ibid, he would be allotted residence one type below his entitlement i.e., Type II. As such, he is not entitled to allotment on ad-hoc basis of the accommodation which was allotted to applicant No.2 and, therefore, it cannot be regularised in his name. Moreover, all the dues outstanding in respect of the quarter in occupation of the retired Government servant are required to be cleared before allotment to the dependant can be considered. Since this does not appear to have been done so far and one of the reliefs sought in this application pertains to charging of normal licence fee with effect from 1.4.1988, the applicant No.1 is not entitled to regularisation of allotment of premises No.26, Probyn Road, Delhi in his name even on ad-hoc basis. On regular basis, he will be entitled to allotment of accommodation of his entitled type as per his priority in the list for allotment of General Pool accommodation. As regards the prayer for allowing the applicants to continue in the aforesaid premises till allotment of alternative accommodation,

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it is not admissible in terms of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, as the premises are required to be vacated by applicant No.2 after a period of four months from the date of retirement.

8. The prayer to the effect that normal licence fee should be charged for the above premises till an alternative accommodation is allotted to applicant No.1 is also not tenable for the reasons given above. The question whether the charges can be recovered in terms of Office Memorandum No.18011(12)/73-Pol.III, dated the 27th August, 1987 with effect from 1st Sept.,1987 has been raised on behalf of the applicants at the bar and it was argued that the orders contained in this Office Memorandum cannot be given effect to unless the relevant rules have been modified accordingly. Reliance has been placed on the judgement of the Hon'ble Supreme Court in the case cited above. In that case the Hon'ble Supreme Court observed as below: -

"19. The office memorandum dated December 7, 1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in *Sant Ram Sharma v. State of Rajasthan*, (1967) 1 SCR 111: (AIR 1967 SC 1910). Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable. "

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9. Office Memorandum dated 27.8.1987, inter-alia, mentions that suitable amendments are being carried out in the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 to delete the words 'market rent' and to substitute the same by the word 'damages'.

10. It is not clear from the records as to whether the amendment to the Rules has since been made and, if so, with effect from what date. Till the amendment comes into force, the applicants will be liable to pay market rent under the pre-amended rules and after the amendment comes into force, they will be liable to pay damages under the amended rules.

11. In the light of the foregoing, the application is disposed of with the following orders/directions: -

- (1) The applicants are jointly and severally liable to pay the market rent in respect of the premises at Qr. No.26, Probyn Road, Delhi till the date of commencement of the amendment to the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 providing for payment of damages instead of market rent. For the period after the commencement of the amendment to the said Rules and till applicant No.1 is regularised in the said quarter or he is given alternative accommodation, they are liable to pay damages instead of market rent at the rates prescribed.
- (2) The respondents shall take a decision on the question of regularisation and allotment of the aforesaid accommodation in the name of applicant No.1 or allotment of an alternative accommodation to him of his entitled type in any locality expeditiously, but in no event later than 31st December, 1989. Applicant No.1 shall be allotted the accommodation accordingly but subject to his clearance of the dues mentioned in (1) above.

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12. The parties shall bear their own costs.

(See 30/10/89)
(P.C. JAIN)
MEMBER(A)